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"Grandfathered" Plan Status

HOW TO MAINTAIN "GRANDFATHERED" STATUS

If your health plan was in existence on March 23, 2010, it is generally eligible for grandfathered plan status. Although we refer to grandfathered "plans" in this document, please keep in mind that the determination of grandfathered status applies separately to each benefit package that you offer under a plan so that a plan may provide both grandfathered and non-grandfathered benefit packages.

Generally, a grandfathered health plan will lose its grandfathered plan status if it reduces benefits or increases costs to participants. Additionally, there are anti-abuse rules intended to prevent transactions seeking to retain grandfathered status by indirectly making prohibited changes to a plan. The following chart provides examples of modifications that may be made to group health plans and the impact to grandfathered status:

Modification	Loss of Grand-fathered Status?	Explanation
Entering into a new policy, certificate or contract of insurance after March 23, 2010	Yes	If a fully-insured plan signs a new insurance policy (as opposed to renewing its current policy) that takes effect before November 15, 2010, the plan will lose its grandfathered status. Insurer changes on or after November 15, 2010 will not cause loss of grandfathered status, unless it constitutes another prohibited modification.
Change of third-party administrators	No	Changing insurance providers under a fully-insured plan causes a loss of grandfathered status. Changing third-party administrators does not cause a loss of grandfathered status, unless it constitutes another prohibited modification.
Eliminating all or substantially all benefits to diagnose or treat a particular condition	Yes	For example, if the plan provides treatment for depression that is a combination of counseling and prescription drugs, and then eliminates counseling, the plan ceases to be a grandfathered plan if counseling is an element that is necessary to treat the condition.
Increasing a percentage cost-sharing requirement above the March 23, 2010 level by any amount	Yes	For example, a change in the level of coinsurance from 20% to 25% for inpatient hospital stays will result in the loss of grandfathered status.

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Modification	Loss of Grand-fathered Status?	Explanation
Increasing a fixed-amount cost-sharing requirement (other than copayments) by too much	Yes	The percentage increase cannot exceed the rate of medical inflation plus 15%. For example, if a plan increases its $1,000 deductible to $1,200 (a 20% increase), and medical inflation measured from March 23, 2010 to the date of the modification is 22.69%, the plan will maintain grandfathered status since the plan is allowed to increase the deductible up to 37.69% (22.69% + 15%).
Increasing copayments by too much	Yes	The total increase in the copayment measured from March 23, 2010 may not exceed the greater of: (i) $5 increased by medical inflation, or (ii) the rate of medical inflation plus 15%. The interim regulations contain mathematical examples of this calculation.
Decreasing the employer's contribution rate toward any tier of coverage for any class of similarly situated individuals by too much	Yes	The decrease can not exceed 5% from the rate in effect on March 23, 2010. For example, grandfathered status will be lost, if the employer decreases its rate of contribution toward family coverage by too much, even if it maintains or increases its contribution toward employee-only coverage.
Increasing or decreasing certain overall annual dollar limits	Yes	For example, a plan may not set an overall annual limit on the dollar value of benefits if, as of March 23, 2010, it either did not impose overall annual or lifetime limits on the dollar value of all benefits, or imposed an overall lifetime limit on the dollar value of benefits but not an overall annual limit. A plan will also lose grandfathered status if it decreases the dollar value of the annual limit of benefits.
Changes to premiums	No	As long as the change in premium will not result in a decrease in employer contributions that is more than the maximum permitted amount (discussed above), there is no loss of grandfathered status.
Changes to comply with Federal or state law requirements, including the Act	No	There is no loss of grandfathered status if a plan is modified to comply with the Act.
Enrolling new employees and their family members	No	If the grandfathered options of the plan do not change, but employees elect a different grandfathered option during open enrollment than they elected the previous year, there is no impact to grandfathered status.

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Eliminating an option and transferring employees to another option without a bona fide employment-related reason	Yes	For example, if the plan eliminates its PPO option and transfers covered employees to its existing HMO option, the existing HMO option will lose its grandfathered status (assuming there is no bona fide employment-related reason for the change). See DOL FAQs for guidance on bona-fide employment-related reason.
Eliminating an option and transferring employees to another option due to a bona fide employment-related reason	No	For example, the plan has a PPO option that covers only employees at a particular location. If the location is closed, that PPO option is eliminated, and covered employees are transferred to a different PPO option, the different PPO option will not lose its grandfathered status. See DOL FAQs for guidance on bona-fide employment-related reason.
Changes to plan funding	Unknown	The impact to grandfathered status is currently unknown if the plan switches from a fully-insured product to a self-insured product, or switches from a health reimbursement arrangement to major medical coverage. Comments have been requested by the agencies.
Changes in a network plan's provider network	Unknown	Comments have been requested by the agencies, specifically as to what magnitude of changes would have to be made to cause a plan to lose its grandfathered status.
Re-Classification of Drugs	No	If a drug is reclassified to a more expensive category solely because a generic alternative becomes available, then the increased cost is not considered an increase in plan costs that would cause loss of grandfathered status.
Substantial change to the overall benefit design	Unknown	Comments have been requested by the agencies.

The new rules provide that in order for your health plan to maintain grandfathered plan status, you must include a statement in any materials provided to participants that describes the benefits provided under the plan and states that you "believe" that it is a grandfathered plan under the new rules, and must provide contact information for questions and complaints. The June 14, 2010 regulations provide model language that may be used to satisfy this disclosure requirement.

To maintain grandfathered plan status, you must also maintain records documenting the terms of the plan that were in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify its status as a grandfathered plan. These records must be made available for inspection so that participants and state or federal

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agency officials are able to verify the status of the plan as a grandfathered plan. You must maintain such records and make them available for inspection as long as your plan is a grandfathered plan.

WHAT PROVISIONS DO NOT APPLY TO GRANDFATHERED PLANS

The following health care reform requirements DO NOT apply:

- providing coverage for treatment that is part of a clinical trial
- no-cost coverage of preventive health services
- reporting requirements regarding claim payment policies, enrollment/disenrollment, claim denials and cost sharing
- nondiscrimination testing of insured plans under IRC 105(h) to make sure they do not discriminate in favor of highly compensated individuals
- reporting requirements regarding plan efforts to improve participant health, safety and wellness
- revised claims and appeals process, including external review and providing benefits during appeal
- patient protections, such as primary care provider designations, OB-GYN self-referrals, out-of-network emergency services.

The following health care reform requirements DO apply:

- no pre-existing condition exclusions for children under age 19 (the prohibition applies to grandfathered group health plans and group health insurance coverage; not grandfathered individual coverage.)
- no annual or lifetime limits (the prohibition against annual limits: applies to grandfathered group health plans and group health insurance coverage; not grandfathered individual coverage.)
- prohibition on rescission, except in cases of fraud and other limited circumstances
- dependent coverage for children to age 26 (limited exemption available until 2014 if child is eligible for certain other employer-sponsored coverage.)
- no coverage for non-prescribed over-the-counter drugs under FSA, HSA, HRA and Archer MSA
- advance notice of benefit changes
- annual summary of benefits and coverage
- elimination of tax deduction for retiree drug subsidy
- availability of reimbursements through the retiree reinsurance program
- automatic enrollment (applies to employers with more than 200 FT employees.)

Grandfathered plans also must continue to comply with other federal laws, such as ERISA and the Code.

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