



# Legislative Update

June 15, 2010

## Health Reform Grandfather Plan Rules Released

On Monday, June 14, 2010, health care reform interim [rules](#) gave much anticipated guidance on how and when insured and self-insured health plans can keep their grandfathered status under the new federal health reform law (the Affordable Care Act). The White House also released a [fact sheet](#) on provisions in the rules. These long awaited rules have a material impact on employer plans since benefit plans that maintain "grandfathered" health plan status are only required to comply with a subset of the new reform law. The rules also clarify when insured (but not self-insured) collectively-bargained coverage may have a delayed effective date, and note that retiree-only medical plans and excepted benefits are generally exempt from many of the new reform law's provisions.

Under the law, grandfathered plans will avoid having to comply with the items below:

- Prohibition of prior authorizations for emergency care services or OB/GYN care;
- Insurers that require designation of a primary care provider must permit designation of any participating primary care provider;
- Insurers having to adopt specified internal claims and appeals procedures;
- Providing complete coverage for certain preventive services;
- Meeting annual reporting requirements regarding quality of care;
- Providing information to Secretary of HHS and to participants as requested regarding the amount of cost-sharing and other provisions; and,
- New non-discrimination rules applicable to fully insured plans under the tax codes.

Plans won't lose grandfathered status if they make voluntary changes to increase benefits or adopt consumer protections in the health reform law, or when conforming to legal rules. But plans will have only limited ability to decrease covered benefits, increase enrollees' contributions or cost sharing, or change annual or lifetime limits without losing grandfathered status, and insured plans generally can't change carriers without losing such status. Specifically, a plan will lose its grandfathered health plan status if any of the following changes are made to the plan as compared to their coverages in effect on March 23, 2010:

- **Plan Significantly Cuts or Reduces Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.

- **Plan Raises Co-Insurance Charges.** Grandfathered plans cannot increase co-insurance amounts (the fixed percentage of a charge - for example, 20% of a hospital bill).
- **Plan Significantly Raises Co-Payment Charges.** Compared with the copayments in effect on March 23, 2010, grandfathered plans will be able to increase the fixed-dollar amount (co-pays) for doctor's office visits and other services by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points (e.g., a plan raising its copayment from \$30 to \$50 over the next 2 years will lose its grandfathered status).
- **Plan Significantly Raises Deductibles.** Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase deductibles by a percentage equal to medical inflation plus 15 percentage points (i.e., deductibles can generally go up by 19-20% between 2010 and 2011, or by 23-25% between 2010 and 2012).
- **Plan Significantly Lowers Employer Contributions.** Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).
- **Plan Adds or Tightens an Annual Limit on What the Insurer Pays.** To retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).
- **Plan Changes Insurance Companies.** If an employer switches its insurance company, the new insured plan will not be considered a grandfathered plan. This does not apply when employers that provide their own insurance to their workers switch plan administrators or to collective bargaining agreements.

If a plan change is made that meets any of the above criteria, its grandfathered status is lost and the plan must begin to comply with the items noted above. However, the regulations apply separately to each benefit package available under a group health plan. For example, it appears that if a single ERISA group health plan includes several benefits packages (e.g., HMO and PPO), the loss of grandfathered status for one benefit package won't taint the status of the others.

With respect to collectively-bargained plans (CBAs) in effect on March 23, 2010, the reform provisions that apply to all grandfathered health plans, such as the coverage of adult children to age 26 and the prohibition on lifetime limits, also apply to all collectively-bargained plans at the same time as they apply to other grandfathered health plans. However, insured CBA coverage will be considered grandfathered until the last agreement in effect on March 23, 2010, expires - even if the insurance carrier changes in that period. This special rule does not apply to self-insured collectively bargained plans.

Retiree-only plans, as well as limited-scope dental and vision plans and other "excepted benefits," are exempt from the health reform coverage and cost-sharing standards (i.e.,

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they would not need to extend dependent coverage to age 26 nor remove annual or lifetime dollar limits on overall benefits).

Plans claiming grandfathered status must include a statement (model language provided) and contact information in plan materials given to participants. Plans must keep records of plan terms in effect on March 23, 2010, and any other documents that verify or explain the grandfathered status.

The value of maintaining grandfathered status is debatable. The primary provision that one will have to comply with if they lose grandfathered status is covering preventive care (in and out of network) at 100%. Many employers have adopted such plans already and the dollar impact of adding preventive care to 100% reimbursement is likely limited. It is important that you consider the pros and cons of maintaining grandfathered status versus making desirable plan changes going forward.

As new information is issued on this important topic, Conner Strong will issue alerts and updates. Should you have any questions with any aspects of this new law, **please contact your Conner Strong representative with any questions, toll-free at 1-877-861-3220.**

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