



Legislative Update

June 18, 2010

To Be or Not to Be a Grandfathered Plan

Group health plans in effect on March 23, 2010 are initially considered “grandfathered.” For these grandfathered plans, certain deadlines for changes are extended and other changes do not apply at all. Still other changes apply equally to both new and grandfathered plans. See the Conner Strong [Year by Year Summary](#) for information on when the various health reform provisions will take effect.

A number of short term rules (which apply to plan years beginning on or after September 23, 2010) **apply to both new and grandfathered plans** including:

- No lifetime coverage limits for essential benefits
- No annual coverage limits on essential benefits (from 2011 to 2014, except as may be permitted by HHS under to be issued guidance; after 1/1/2014, annual limits are completely prohibited)
- No pre-existing condition exclusions (only applies to children younger than 19 from 2011 until 2014 and applies to all thereafter)
- Extension of dependent coverage until the dependent turns 26 years old (from 2011 until 2014 "grandfathered" group coverage need not be extended to a dependent that is directly eligible for employer-provided coverage; after 2014 no other coverage exclusion available for any plan).

Thus, **all plans** not otherwise excepted from health care reform must generally begin to comply with the above reform rules as of the first plan year beginning on or after September 23, 2010 (e.g., October 1, 2010 for an October 1 plan year; January 1, 2011 for a calendar year plan; and July 1, 2011 for a July 1 plan year).

Additional short term rules will also **apply to a plan if it is not “grandfathered”** including:

- No cost sharing for immunization or preventive care
- Must allow individuals to choose pediatrician for child’s primary care physician
- Must allow females to choose gynecologist or obstetrician without referral
- Must allow emergency services without preauthorization and treat as in-network
- Must provide internal appeals and external review process
- No discrimination in favor of highly compensated individuals under insured arrangements

The DOL recently posted a [table](#) providing information on the applicability of reform provisions to grandfathered plans.

So how does an employer determine if plan design changes made after March 23, 2010 will result in the loss of a plan's grandfathered status? A plan will lose its grandfathered plan status (and be subject to the above additional rules) if certain changes are made to the plan as compared to the coverage in effect on March 23, 2010. Plans won't lose grandfathered status if voluntary changes are made to increase benefits after March 23. 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. In addition, an insured plan generally can't change carriers without losing the grandfathered plan status.

To allow for compliance, the rules provide a good faith compliance standard, a transition rule, and a grace period for plans that may have changed their plans subsequent to March 23, 2010. See our recent [Update](#) for more information on how and when insured and self-insured health plans can keep their grandfathered status under the new federal health reform law. Please also review recently issued agency [FAQs](#) which provide information on how the grandfather rule will affect individuals, employers, and insurers.

In order to maintain grandfathered status, a health plan must state in the plan materials provided to participants whether it "believes" it is grandfathered. The DOL has issued [model language](#) for employers to adopt to satisfy these requirements. A group health plan must also maintain records documenting the plan in existence as of March 23, 2010 in order to verify its status as grandfathered, and must make those records available upon request.

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

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