Maintaining Grandfathered Health Plan Status

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Group health plan coverage that was in place on March 23, 2010 (the date that health care reform was enacted), and continuously thereafter are exempt from some health care mandates that otherwise apply to group health plans. This rule providing exemption is known as the "grandfather rule," thus the plans are referred to as grandfathered health plans.

However, plans can permanently lose grandfathered status if certain coverage or design changes are made. As a result, employer-sponsors who wish to preserve a plan's grandfathered status should understand the plan design changes that are permissible and must take care to avoid implementing any change that would cause an unintended loss of grandfathered status.

The Significance of Grandfathered Status

Grandfathered health plans are exempt from some, but not all, of the health care reform mandates. This includes the patient protection provisions; the appeals and external review processes; coverage of preventive health services and the ten categories of essential health benefits; and the guaranteed renewability and availability requirements. Importantly, other mandates apply regardless of a plan's grandfathered status, which include the prohibitions on rescissions of coverage and annual and lifetime limits; the requirement to provide dependent coverage up to age 26; the 90-day limit on waiting periods; and the distribution requirement of Summaries of Benefits and Coverage (SBCs).

What is a grandfathered plan?

A grandfathered health plan is a plan that existed on March 23, 2010 (the day the Affordable Care Act, ACA, was enacted) and has not had certain prohibited chages made to it since then.

Because these plans remain subject to some health care reform mandates, the decision as to whether to maintain grandfathered status requires a cost-benefit analysis by the employer-sponsor on an ongoing basis. The advantages of avoiding the application of some mandates will need to be weighed against the considerable constraints that are placed upon the plan's design and flexibility.

Plan Changes That Jeopardize Grandfathered Status

The regulations governing grandfathered health plans contain detailed rules regarding the plan design changes that will cause a loss of grandfathered status. Grandfathered status is lost as of the effective date of the impermissible plan design change and once lost, it cannot be regained.

(1) Elimination of Benefits

The elimination of all or substantially all benefits under a plan to diagnose or treat a particular medical condition will cause a loss of grandfathered status. There is no clear rule for determining whether a plan has eliminated substantially all benefits to diagnose or treat a condition; rather, the determination is made based on facts and circumstances, with consideration to the coverage that was in place on March 23, 2010, as compared to the benefits that would be in place following the change.

Changes in prescription drug formularies may constitute an impermissible elimination of benefits if the change eliminates drugs used to treat a particular medical condition.

(2) Any Increase in Percentage Cost-Sharing

Any increase in percentage cost-sharing under the plan, such as an increase in coinsurance, will cause a loss of grandfathered status. The increase is measured from the cost-sharing in place as of March 23, 2010.

(3) Increase in Fixed-Amount Cost-Sharing

Increases in fixed-amount cost-sharing, like deductibles and out-of-pocket limits, that exceed 15% above medical inflation will cause a loss of grandfathered status. Increases may be determined by reference to the greater of either: 1). The overall medical care component of the **Consumer Price Index for All Urban Consumers** published by the Department of Labor; or, 2). the most recent premium adjustment percentage published by the Department of Health and Human Services.

Plans may make increases to fixed-amount cost-sharing that are necessary to maintain the plan's high deductible (HDHP) status without jeopardizing grandfathered status.

(4) Decrease in Rate of Employer Contributions

A decrease in the rate of employer contributions by more than five percentage points below the contribution rate in place on March 23, 2010, will cause a loss of grandfathered status. Changes to the rate of employer contributions may occur where the employer changes its contribution formula, or where the employer implements a wellness program or working-spouse carve-out that incorporates premium surcharges.

Because any decrease in employer contributions is measured against the rate in place on March 23, 2010, an employer can decrease its contribution rate across multiple plan years so long as the cumulative reduction does not exceed five percentage points.

Changes that are not expressly prohibited by the regulations will not cause a loss of grandfathered status. Therefore, an employer-sponsor may make a change not listed here without impacting the grandfathered status of their plan.

Plan Changes in Response to the COVID-19 Emergency Period

Special guidance was provided to grandfathered health plans in light of the COVID-19 public health emergency. To the extent a group health plan added benefits, or reduced or eliminated cost-sharing, for COVID-19 diagnosis and treatment or for telehealth and other remote care services, its grandfathered status would not be jeopardized if these coverage changes are later reversed following the end of the emergency period. In other words, even though reversing these changes might ordinarily constitute an impermissible elimination of benefits or an increase in cost-sharing, it will not adversely affect a plan's grandfathered status.

Preparing for the Loss of Grandfathered Status

There are many reasons why an employer-sponsor may choose to relinquish a health plan's grandfathered status. For example, the costs of maintaining the employer contribution rates may become too high when faced with rising coverage costs, the employer may prefer to work with a third-party administrator that isn't able to accommodate a grandfathered plan design, or the employer may be contemplating a business reorganization that will necessitate plan design changes.

Regardless of the rationale, employer-sponsors should prepare for the loss of grandfathered status to avoid unintended violations of health care reform mandates. Plan details should be reviewed to ensure adequate coverage for preventive care services and essential health benefits; plan documents, SPDs, and SBCs should be amended to reflect the effective date of the loss of grandfathered status; and any plan service providers, like claims administrators or other third-party administrators, should be promptly notified.

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ADDITIONAL RESOURCES

Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage
85 FR 81097

Consumer Price Index for All Urban Consumers, Table 3
U.S. Bureau of Labor Statistics

Notice of Benefit and Payment Parameters for 2024
88 FR 25740

FAQs About Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation, Part 43
DOL, HHS, and the Treasury