

Regulation on “Grandfathered” Health Plans

Regulation on “Grandfathered” Health Plans under the Patient Protection and Affordable Care Act Issued June 14, 2010

“[I]f you like your health care plan, you can keep it.” President Obama said this to Americans during the health reform debate, and the new grandfather regulation provides individuals and businesses the tools necessary to keep their current health insurance plans if desired. Grandfathered health plans are subject only to certain provisions of the Patient Protection and Affordable Care Act (PPACA), so it is imperative to know what changes can be made to plans without affecting its grandfathered status.

On June 14, 2010, the U.S. Departments of Health and Human Services, Labor and Treasury issued a regulation on “Grandfathered” health plans under the (PPACA). Grandfathered plans can make routine changes to policies without losing their grandfathered status. These routine changes include:

- Cost adjustments to keep pace with medical inflation
- Adding new benefits
- Making modest adjustments to existing benefits
- Voluntarily adopting new consumer protections under the new law
- Making changes to comply with state and federal laws

If a plan does any of the following, however, they will lose their grandfathered status:

- Significantly cut or reduce benefits
- Raise co-insurance charges
- Significantly raise co-payment charges – can increase by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15%
- Significantly raise deductibles – can only increase by a percentage equal to medical inflation plus 15%
- Significantly lower employer contributions – cannot decrease the percent of premiums paid by employers by more than 5%
- Add or tighten an annual limit on what the insurer pays
- Change insurance companies

Based on this new regulation, analysts predict that most large employer plans (over 100 employees) will retain their grandfathered status. Small business plans, on the other hand, tend to make significant changes more frequently than large employer plans, and as such will lose their grandfathered status more frequently. Fully-insured health plans subject to collective bargaining agreements can maintain their grandfathered status until their agreement terminates – after that time, this new regulation will be used to determine if the plan can keep its grandfathered status.

For plans that made changes after the PPACA was enacted but before this regulation was issued, the Departments issuing the regulation will take into account, for enforcement purposes, good-faith efforts to comply with a reasonable interpretation of the PPACA and may disregard changes to terms that only modestly exceed those changes that cause a plan to lose its grandfathered status. Additionally, employers and issuers are provided a grace period within which to revoke or modify any changes adopted prior to the date of filing of the regulation for public inspection, where the changes might otherwise cause the plan to lose its grandfathered status.

As always, if you have any questions or concerns about healthcare reform law or other issues in general, please contact us.

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