

Keeping Your Grandfather Status – Issues to Consider; Plan Changes to Avoid

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Grandfathered Plans

- What Is a Grandfathered Plan
- What Requirements Must Be Met by Grandfathered Plans
- What Additional Requirements Must Be Met by Non-Grandfathered Plans

Basic Rules

- Must Cover at Least One Participant on March 23, 2010
- Must Continuously Cover Someone Thereafter
- Applied on a “Benefit Package” Basis

Special Rules

- Grandfathered Plans Include Family Members That Enroll After March 23, 2010
- Grandfathered Plans Include New Employees That Enroll After March 23, 2010
- What About Opening Plan of Parent to Affiliated Employers?

Anti-Abuse Rules

- Grandfather Status Lost – if Principal Purpose of Merger, Acquisition or Business Restructuring Is to Cover New Employees Under Grandfathered Plan
- Employees Are Mandatorily Transferred to a New Plan (Transferee Plan) and There Is No Bona Fide Business Reason for the Transfer
- Treating the Transferee Plan as an Amendment to Transferor Plan There Would Be a Loss of Grandfather Status

6 Ways to Lose Grandfathered Status

- Cannot Raise Percentage Co-Insurance in Any Manner
- Cannot Significantly Raise Fixed Out-of-Pocket Maximums by an Amount That Exceeds Medical Inflation Plus 15 Percentage Points
- Co-Payment Increase Limited to Greater of (a) \$5.00 (Adjusted for Medical Inflation) or (b) Medical Inflation + 15 Percentage Points

6 Ways to Lose Grandfathered Status, cont.

- Cannot Significantly Lower Employer Contributions
 - Cannot increase the charge to employees by more than 5% (applied on a tier-by-tier basis)
- Cannot Add or Tighten Annual Limits
- Cannot Significantly Reduce or Cut a Covered Benefit

Change of Insurer or Policy Rule - Repealed

- Original Interim Rules Prohibited Change in Insurer or Change in Insurance Policies
- Group Policies Effective On or After Nov. 15, 2010 May Change Insurance Carriers or Policies
- If Previously Changed Carriers for Policy Effective Prior to Nov. 15, 2010, Grandfather Status Is Lost

Changes That Generally Won't Effect Grandfathered Status

- Changes Required by Federal or State Law
- Changes Required to Voluntarily Comply With PPACA or Increase Benefits
- Change to Plan's Third Party Administrator

Changes That Are Under Consideration

- Changes in Plan Structure – Insured to Self-Funded
- Changes in Provider Network
- Changes in Prescription Drug Formulary

Special Plan Rules

- Retiree Plans – Less Than Two Participants That Are Current Employees
- Collectively Bargained Plans
 - Must comply with all rules applicable to grandfathered plans
 - Insured plans are deemed grandfathered until expiration of CBA
 - No special rule for self-insured collectively bargained plans
- Excepted Benefit Plans

10 Major Health Care Changes Applicable to All Plans: Grandfathered or Non-Grandfathered

- Age 26 Dependent Coverage – Grandfathered Plans Can Only Exclude If Covered Under Another Employer’s Plan (Until 2014); *PHSA § 2714*
- Plan Limits – No Lifetime or Restricted Annual Limits; Special Enrollment If Already Met; *PHSA § 2711* (750,000 – 2011; 1,250,000 – 2012; 2 million – until 2014)
- No Pre-Existing Exclusion Limitation for Children Under 19 [2014 Prohibited for All Participants]; *PHSA § 2713*

10 Major Health Care Changes, cont.

- No Recission of Coverage Absent Fraud or Misrepresentation; *PHSA § 2712*
- All Plans Must Give Participants at Least 60 Days Advanced Notice of Benefit Changes; *PHSA § 2715*; Compliance Delayed Until IRS Issues Guidance on Benefit Summaries
- By March 23, 2012, in Addition to SPD & SMM Must Be Given a Four Page Summary; Delayed Pending Guidance; *PHSA § 2715*
- FSA prohibited from reimbursing over counter drugs (2013 limited reduced to \$2,500)

10 Major Health Care Changes, cont.

- Employers With More Than 200 Full-Time Employees Must Auto-Enroll in One of the Health Plans; *FLSA § 18A*; Regs. Expected by 2014
- Beginning in 2012 for January 2013, W-2 the Cost of Group Health Coverage Must Be Reported; *Code § 6051(a)*
- Beginning in 2014, Waiting Periods Cannot Exceed 90 Days and Must Notify Employees of Health Care Exchanges; *PHSA § 2708*

14 Major Changes That Grandfathered Plans Avoid

- Preventive First-Dollar Coverage; *PHSA § 2713*
- No Pre-Authorization for Emergency Services; *PHSA § 2719A*
- No Pre-Authorization for OB/GYN Care
- Designation of Any Provider for Primary Care

14 Major Changes, cont.

- Non Discrimination Rules for Insured Plans; These Rules Have Recently Been Delayed by IRS Notice 2011-1; *PHSA* § 2716
- New Internal & External Claims Processes; *PHSA* § 2719
- New Governmental Reports About Claim Information and Quality of Care; *PHSA* § 2715A; § 2717

14 Major Changes, cont.

- Beginning in 2014, Limits on Annual Cost Sharing (\$5,950 Individual; \$11,500 Family); *PPACA § 1302(o)*
- Beginning in 2014, Limits on Annual Deductible (\$2,000 Single; \$4,000 Family) *PPACA § 1302(o)*
- Mandate to Cover Individuals in Clinical Trials; *PHSA § 2709*

14 Major Changes, cont.

Primarily Carrier-Related Changes

- Guaranteed Access Guaranteed Renewal or Continued Access for Everyone; And Also to Any Willing Provider; *PHSA § 2702; § 2703; § 2706*
- Plans Must Provide Mandated Essential Benefits; *PHSA 2707*
- Must Prohibit Discrimination Based on Health Status; *PHSA § 2705*
- Premiums Vary Only by Age; Tobacco Use; Geographic Rating and Whether Coverage is Individual or Family; *PHSA § 2701*

Action Steps

- Identify Benefit Packages Offered
- Identify Retiree Medical Plans
- Consider Which Plans Should Maintain Grandfathered Status

Action Steps, cont.

- Send Notice of Grandfathered Status With Open Enrollment Materials (EOB Does Not Need to Disclose Grandfather Status)
- Amend Plan for Grandfathered Status
- Amend All Plans for:
 - Age 26 dependents
 - Limits and restrictions on coverage
 - Pre-existing conditions for children under 19
- Special Enrollment
 - Adult children
 - Lifetime limit

Action Steps, cont.

- Notify No Reimbursement for Over Counter Drugs
- All Plans for 2012
 - W-2 reporting; auto-enrollment; 4-page summary; provided guidance is issued
- Non-Grandfathered Plans
 - Preventative first-dollar care
 - Primary care designation
 - No pre-authorization emergency care; OB/GYN
 - New appeal procedures
 - Additional reporting: claims and quality of care