

Healthcare re-FORUM

Maintaining the Status of a Grandfathered Plan

New regulations released on June 14, 2010, address what changes can be made to a plan that existed on March 23, 2010, without causing the plan to forfeit grandfathered status.

The Interim Final Rule (IFR) from the U.S. Departments of Treasury, Labor and Health and Human Services (the Departments) is still subject to amendment and elaboration after a 60-day public comment period.



Changes that Cause the Loss of Grandfathered Status

The following changes will cause individual and employer plans to no longer be grandfathered:

- A merger, acquisition or similar business restructuring, if the principal purpose of the action is to cover new individuals under the grandfathered plan
- A substantial elimination of benefits to diagnose or treat a particular condition
- Any increase in cost-sharing percentage requirements (such as coinsurance) above the level in effect as of March 23, 2010

- An increase in the fixed-amount, cost-sharing requirements (e.g., deductible or out-of-pocket limits) above the level in effect on March 23, 2010, other than copayments, that exceeds the sum of medical inflation plus 15 percent
- An increase in copayments above the level in effect on March 23, 2010, by an amount that exceeds the greater of the sum of medical inflation plus 15 percent or \$5, adjusted annually by medical inflation
- A contribution rate decrease by an employer or employee organization of more than 5 percent below the contribution rate on March 23, 2010, for any tier of coverage and any class of similarly situated individuals
- The addition of an overall annual limit on the dollar value of benefits if the plan was not imposing an overall annual or lifetime limit on the dollar value of benefits on March 23, 2010
- The addition of an overall annual limit on the dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010
- Any decrease in dollar value of the overall annual limit (regardless of whether the plan had an overall lifetime limit on March 23, 2010), if the plan imposed an overall annual limit on the dollar value of all benefits
- A change in health plan carriers (changing a third-party administrator has no effect)

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Changes that Do Not Impact Grandfathered Status

The following changes will not cause a plan to lose its grandfathered status:

- The addition of family members of an individual who is a member or participant of a grandfathered plan; or the addition of new employees by an employer that maintains a grandfathered plan
- One or more individuals enrolled on March 23, 2010, cease to be covered by the plan (provided that the plan or coverage has continuously covered at least one person since March 23, 2010)
- Plan premium adjustments
- Changes to conform to federal and state requirements
- Voluntary compliance with any provision of the Patient Protection and Affordable Care Act (PPACA)
- Selecting a different third-party administrator
- Plan changes effective after March 23, 2010, if the changes were made after:
 - A legally binding contract was entered into on or before March 23, 2010
 - A filing with a state insurance department was made on or before March 23, 2010, or
 - A written plan amendment was adopted on or before March 23, 2010, even if the amendment went into effect after March 23, 2010

The IFR notes there may be other changes in a plan that could trigger a forfeiture of grandfathered status. In the regulations, the Departments have requested comments about whether the following changes should result in the loss of grandfathered health plan status:

- Changes to plan structure (e.g., switching from a health reimbursement account arrangement to major medical coverage)
- Changes in a provider network
- Changes to a prescription drug formulary and the magnitude of any changes
- Any other substantial change to overall benefit design

Additional Points to Consider:

- Plans intending to remain grandfathered must include a statement in plan materials provided to participants or beneficiaries that the plan or coverage is to be grandfathered within the meaning of section 1251 of the PPACA. The IFR includes a model statement that may be used.
- The IFR requires that plans maintain records documenting the terms of the plan that were in effect on March 23, 2010, as well as any records necessary to verify or clarify the plan's grandfathered status. These documents include: plan materials; health insurance policies, certificates or contracts of insurance; summary plan descriptions; premiums or the cost of coverage and required employee contribution rates. The plan or issuer must make the records available to participants and government entities for review.
- Employers and health plan issuers are provided with a grace period within which they can revoke or modify any changes made between March 23, 2010, and June 14, 2010, where the changes might result in the loss of grandfathered status. To benefit from the grace period, plans must revoke any changes that would cause a loss of grandfathered status by the start of the next plan year on or after September 23, 2010.
- Grandfathered plan rules apply separately to each benefit package under a group health plan or health insurance coverage.
- For an explanation of the reform provisions grandfathered plans are exempt from, reference *Healthcare Re-Forum, Issue No. 1*.

Now that these regulations are in place, the next question is, "How will these rules impact my coverage and what should I do?" In an upcoming *Healthcare Re-Forum*, we will address the potential impact of this IFR on the grandfathered status of individual and group plans.

Future Topics:

- Grandfathered Plans (Updated Regulations) Part II
- Web Portal
- CLASS Act Provision