



Grandfathered Health Plan Regulations Released

June 25, 2010

On June 14th, 2010, the Departments of Labor, Health and Human Services (HHS), and Treasury issued regulations regarding grandfathered health plans under the new health care reform legislation. The regulations released explain the rules for determining what plans qualify as grandfathered plans, how the grandfathered status is maintained, and how a grandfathered health plan may lose its grandfathered status. The government has also released a [Fact Sheet](#) and [FAQ](#) (click for the links) to provide more information on grandfathered plans.



This issue of Unison's Health Care Reform News provides you with a summary of the new regulations. If you have specific questions about your company's health plan and its grandfathered status, please contact your Unison Benefit Consultant directly or e-mail your questions to healthcarereform@unisoninc.com.

Grandfathered Health Plans Defined

A grandfathered health plan is any group health plan or individual health insurance coverage that was in effect on March 23, 2010, the date of the new health care reform enactment. To keep grandfathered status, grandfathered health plan coverage must continuously enroll someone from March 23, 2010 forward. The regulations clarify that grandfathered status is not lost merely because one or more (or even all) individuals enrolled on March 23, 2010 cease to be covered, provided that the plan has continuously covered someone since March 23, 2010 (at all times at least one person).

Grandfathering Rules Apply Separately to Benefit Packages

The regulations clarify that the grandfathering rules apply separately to each "benefit package" made available under a grandfathered health plan. Thus, the loss of grandfathering for one "benefit package" offered under a grandfathered health plan will not cause the entire plan to lose its grandfathered status.

Example: A group health plan offers three benefit packages on March 23, 2010. Option F is a self-funded option. Options G and H are insured options. Beginning July 1, 2013, the plan replaces the issuer for Option H with a new issuer. Because the change from one issuer to another generally causes a loss of grandfathered status (see Prohibited Changes on Page 2), Option H is not grandfathered as of July 1, 2013. However, Options F and G remain grandfathered to the extent those options independently continue to meet the grandfathering requirements.

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Permitted Changes

Grandfathered health plans will be able to make routine changes to their policies and maintain their 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, or making changes to comply with state and other federal laws. Premium changes are not taken into account when determining whether or not a plan is grandfathered.

Prohibited Changes—Resulting in Loss of Grandfathered Status

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to consumers. Specifically, making the following changes would cause a plan to lose its grandfathered status:

- **Significantly Cutting or Reducing Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Raising Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Significantly Raising Co-Payment Charges.** Frequently, plans require patients to pay a fixed-dollar amount for doctor's office visits and other services. Compared with the co-payments in effect on March 23, 2010, grandfathered plans will be able to increase those co-pays by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raises its co-payment from \$30 to \$50 over the next 2 years, it will lose its grandfathered status.
- **Significantly Raising Deductibles.** Many plans require patients to pay the first bills they receive each year (for example, the first \$500, \$1,000, or \$1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points. In recent years, medical costs have risen an average of 4-to-5% so this formula would allow deductibles to go up, for example, by 19-20% between 2010 and 2011, or by 23-25% between 2010 and 2012. For a family with a \$1,000 annual deductible, this would mean if they had a hike of \$190 or \$200 from 2010 to 2011, their plan could then increase the deductible again by another \$50 the following year.
- **Significantly Decreasing Employer Contributions.** Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).

[Prohibited Changes continued on Page 3]

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Prohibited Changes, continued.

- **Adding or Tightening an Annual Limit on What the Insurer Pays.** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as a grandfathered plan, the plan cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).
- **Changing Insurance Companies.** If an employer decides to buy insurance for its workers from a different insurance company, this new insurer will not be considered a grandfathered plan. This does not apply when employers that provide their own insurance to their workers switch plan administrators or to collective bargaining agreements.

Special Rules for Collectively-Bargained Plans

Fully-insured health plans subject to collective bargaining agreements will be able to maintain their grandfathered status until their agreement terminates. After that point, they are subject to the same rules as other health plans; in other words, they will lose their grandfathered status if they make any of the substantial changes described above.

Documentation Requirements

The regulations released also included specific documentation requirements that grandfathered plans must provide and maintain in order to keep their status.

- All grandfathered plans must provide a specific notice in plan materials describing the benefits provided under the plan to the effect that the plan believes it is a grandfathered health plan. Additionally, the statement must provide contact information for questions or complaints regarding the plan's grandfathered status. A model notice has been released by the government and can be found by clicking on the following link. [Model Notice](#)
- Documents must be maintained documenting the terms of the plan or health insurance coverage as in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan.

At this time, it is unclear as to whether or not the insurance carriers will be responsible for the documentation or if the responsibility will be put upon the plan sponsor. As more details become available, Unison will keep you informed and your Benefit Consultant will be working with you directly to ensure that your documentation requirements are fulfilled.

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What happens when you lose Grandfathered Status?

The benefit of retaining a health plan with grandfathered status will vary from plan to plan and employer to employer. Some employers will find it to be beneficial to keep a grandfathered status as long as possible, while other employers may find little benefit or feel more restricted keeping the status rather than not. It will be important to carefully examine your company's specific health plan, the details of the grandfathered plan regulations and measure the costs and benefits of retaining the status as it pertains to your company. Your Unison Benefit Consultant will work directly with you to analyze how a grandfathered status will help or hinder your company's employee benefit goals.

The following are *some* of the key provisions of the health care reform that apply **ONLY** if grandfathered status is lost:

- **Age 26 Exclusions.** All plans regardless of grandfathered status are now required to cover dependents up to age 26. However, a grandfathered plan is not required to offer this coverage if the dependent is eligible for another employer-sponsored health plan.
- **First Dollar Preventive Care.** Without grandfathered status, plans are required to provide certain preventive care services with no cost sharing.
- **Provider Choice.** Without grandfathered status, plans must allow participants to choose their primary care provider including OB-GYNs and pediatricians.
- **Emergency Services.** Without grandfathered status, plans must cover emergency services without prior authorization and without out-of-network surcharges. Note that in Minnesota, most plans already cover this and it may not result in any change for your plan.
- **Highly Compensated Individuals.** All fully-insured group health plans without grandfathered status will be subject to the Internal Revenue Code Section 105(h) prohibiting the discrimination of benefits provided in favor of highly compensated individuals.