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7 Things To Know About The PPACA's Grandfather Provision

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Benefits Pro

The Patient Protection and Affordable Care Act requires health plans provide certain benefits but a "grandfather" provision preserves employer-sponsored health plans that existed on or before March 23, 2010, and excludes them from having to make significant changes.

As a result, tens of millions of Americans with health coverage through large employers should see no major changes to their plans. That said, grandfather status is intended to give plans some flexibility to make "normal" changes.

Here's a look at some of the finer details, with answers to seven questions to help HR managers determine their plan's status.

1. What is a grandfathered health plan?

A grandfathered plan is:

- one continuously in existence since March 23, 2010,
- with at least one person (need not be the same person) covered at all times, and
- not changed except as permitted.

Grandfathered plans are exempt from many, but not all, health reform rules, described in more detail below, as long as grandfather status is maintained, which can last indefinitely. A self-insured group plan, an insured group plan, and an individual insurance policy may each be grandfathered.

A plan that is grandfathered may permit employees to re-enroll and their family members to enroll after March 23, 2010. While new employees can join the plan, there are restrictions on whether new groups of employees can be transferred to the plan without tainting grandfathered status.

2. How can you determine if your company's plan is grandfathered under PPACA?

If the answer is "yes" to questions 1 and 2 below, the group health plan may be a grandfathered health plan. If the answer to any of questions 3-8 is "yes," the plan is not a grandfathered plan.

Question 1 – Did the plan exist with at least one individual enrolled on March 23, 2010? A grandfathered group health plan must have been in existence with an enrolled individual on March 23, 2010. Any plan that does not meet this requirement is not in grandfathered status.

Question 2 – Has the plan continuously covered someone (not necessarily the same person) since March 23, 2010? A group health plan will not relinquish its grandfather status merely because one or more (or all) individuals enrolled on March 23, 2010, cease to be covered. However, a grandfathered health plan must continuously cover someone (not necessarily the same person) since March 23, 2010, to maintain its status.

Question 3 – Has the plan eliminated all or substantially all benefits to diagnose or treat a particular condition? For the purpose of determining grandfather status, the elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition.

Question 4 – Has the plan increased a percentage cost-sharing requirement (such as an individual's coinsurance)? Any increase measured from March 23, 2010, in a percentage cost-sharing requirement causes a plan to relinquish grandfather status.

Question 5 – Has the plan increased a fixed-amount cost-sharing requirement other than a copayment (such as a deductible or out-of-pocket limit) such that the total percentage increase measured from March 23, 2010 exceeds the maximum percentage increase? The maximum percentage increase is medical inflation, expressed as a percentage, plus 15 percentage points. Medical inflation is the increase since March 2010, in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) (unadjusted) published by the Department of Labor using the 1982-1984 base of 100.

Question 6 – Has the plan increased a fixed-amount copayment such that the increase measured from March 23, 2010 exceeds the greater of: the maximum percentage increase, or an amount equal to \$5 plus medical inflation? The maximum percentage increase is medical inflation, expressed as a percentage, plus 15 percentage points. Medical inflation is the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) (unadjusted) published by the Department of Labor using the 1982-1984 base of 100.

Question 7 – Has there been a decrease in the contribution rate by the employer (or employee organization) toward the cost of any tier of coverage for any class of similarly situated individuals by more than 5 percentage points below the contribution rate for the coverage period that includes March 23, 2010? If the contribution rate is based on a formula, was the decrease in the contribution rate based on a formula by more than 5 percent below the contribution rate for the coverage period that includes March 23, 2010?

If a group health plan modifies the tiers of coverage it had on March 23, 2010 (for example, from self-only and family to a multi-tiered structure of self-only, self-plus-one, self-plus-two, and self-plus-three-or-more), the employer contribution for any new tier would be tested by comparison to the contribution rate for the corresponding tier on March 23, 2010.

In cases of a multiemployer plan that has either a fixed-dollar employee contribution or no employee contribution towards the cost of coverage, if the employer's contribution rate changes, provided any changes in the coverage terms would not otherwise cause the plan to cease to be grandfathered and there continues to be no employee contribution or no increase in the fixed-dollar employee contribution towards the cost of coverage, the change of the employer's contribution rate will not, in and of itself, cause a plan that is otherwise a grandfathered health plan to relinquish grandfather status.

Question 8 – Has the plan added or decreased an overall annual limit on benefits? A plan will relinquish its grandfathered status if it:

- Adds an overall annual limit on the dollar value of all benefits when it did not previously impose an overall annual limit;
- Previously imposed an overall lifetime limit on the dollar value of benefits (but no overall annual limit) and adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010; or
- Decreases the dollar value of the overall annual limit that was in place on March 23, 2010.

Question 9 – Did the plan change issuers after March 23, 2010? If the answer to question 9 is "yes," if the group health plan changed issuers after March 23, 2010, and the change in issuer was effective on or after November 15, 2010, the plan will continue to be a grandfathered plan provided no other changes that would relinquish grandfather status are made.

If a group health plan changed issuers after March 23, 2010, and the change was effective prior to November 15, 2010, the plan will have relinquished grandfather status. The operative date is the effective date of the new contract, not the date the new contract was entered into. Special rules apply for collectively bargained plans.

Question 10 – Did the plan change from self-insured to fully-insured after March 23, 2010? If the group health plan was self-insured and changed to fully insured after March 23, 2010, and the change was effective on or after November 15, 2010, the plan will continue to be a grandfathered plan provided no other changes are made that would relinquish grandfather status. Proceed to question 11. If a group health plan was self-insured and changed to fully-insured after March 23, 2010, and the change was effective prior to November 15, 2010, the plan will have relinquished grandfather status.

Question 11 – If the group health plan changed issuers (including a plan that was self-insured and changed to fully insured) and has maintained grandfather status did the plan provide documentation to the new issuer of the plan terms under the prior health coverage sufficient to determine whether any other change was made that would relinquish grandfather status? To maintain status as a grandfathered health plan, the plan must provide to the new issuer (and the new issuer must require) documentation of plan terms (including benefits, cost sharing, employer

contributions, and annual limits) under the prior health coverage sufficient to determine whether any other change is being made that would relinquish grandfathered status.

Question 12 – Does the plan include a statement that it believes it is a grandfathered health plan in any plan materials provided to participants and beneficiaries that describe the benefits provided under the plan? To maintain status as a grandfathered group health plan, the plan must include a statement, in any plan materials provided to a participant or beneficiary describing the benefits under the plan, that the plan believes it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act and must provide contact information for questions and complaints. Model language is available.

Question 13 – Is the plan maintaining records documenting the terms of the plan in connection with the coverage in effect on March 23, 2010, and are these records made available upon request? To maintain status as a grandfathered group health plan the plan must maintain records documenting the terms of the plan in connection with the coverage that was in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. These records must be maintained for as long as the plan takes the position that it is grandfathered, and must be available for examination upon request.

3. Can an insured plan change insurance companies?

The initial regulations provided that if an employer entered into a new policy, certificate, or contract of insurance after March 23, 2010, the new policy, certificate, or contract would not be grandfathered health coverage. This provoked a firestorm of protest because plan sponsors could not improve their plans or decrease costs (in permitted ways) by changing insurers without losing grandfather status. Revised regulations changed this result, but only for changes on or after November 15, 2010. A change entered into prior to November 15, 2010, that is effective thereafter is permitted.

For changes of insurer between March 23, 2010, and June 14, 2010 (when the initial grandfather regulations were issued), changes to group health insurance coverage on or after March 23, 2010, but before June 14, 2010 (the date the regulations were made publicly available), the agencies' enforcement safe harbor remains in effect for good faith efforts to comply with a reasonable interpretation of the statute. If no prohibited change in costs or coverage was made, such a plan should retain its grandfather status because the regulations, as amended, allow such a change.

The amendment to the regulations applies only to group health plans, not to insurers in the individual market.

4. What other changes can be made to a grandfathered self-insured plan without losing grandfather status?

A self-insured plan can change its third party administrator without losing grandfather status.

A self-insured plan also should be able to change its stop-loss insurance without losing grandfather status because it is not health insurance when maintained by a self-insured plan.

5. May enhancements or additions to a grandfathered health plan be made?

Yes. Additions to a grandfathered plan generally will not result in loss of grandfathered status. They are not prohibited changes. Thus, adding domestic partner benefits or a new health coverage option (such as an HMO where employer now only offers a PPO), is allowed, as these are two "benefit packages" and each is analyzed on its own to determine whether it is grandfathered. Thus, the existing PPO option would remain grandfathered.

6. Can new enrollees, including new hires and family members, enroll in a grandfathered health plan?

Yes. An individual who was enrolled in a grandfathered health plan on March 23, 2010, may enroll his or her family members in the grandfathered health plan after March 23, 2010. Additionally, new and existing employees and family members may enroll in a grandfathered health plan. Employees not covered in a grandfathered plan option may move into a grandfathered option at open enrollment without jeopardizing its grandfathered status.

7. Can employees transfer from one grandfathered plan to another?

Yes, and when this is voluntary, no change in the grandfathered status occurs. This is like a newly hired employee enrolling in a grandfathered plan.

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