



The Affordable Care Act: Grandfathered Group Health Plans

What is a Grandfathered Health Plan?

Generally, a group health plan, and health insurance coverage, in which at least one individual was enrolled on March 23, 2010, is a **grandfathered health plan** under the Affordable Care Act.* Grandfathered health plans are not subject to some of the provisions of the Affordable Care Act.

Affordable Care Act regulations permit group health plans to make certain changes and still maintain their grandfathered health plan status. However, a number of plan changes could result in a health plan losing its grandfathered health plan status.

What Causes a Plan to Lose Grandfathered Health Plan Status?

Among other changes, a group health plan will lose its grandfathered status if any of the following changes are made after March 23, 2010:*

Elimination of Benefits. The elimination of all or substantially all benefits to diagnose or treat a particular condition or any necessary element to diagnose or treat a condition. For example, a plan eliminates all benefits to treat diabetes, cystic fibrosis or HIV/AIDS.

Coinsurance Changes. Any increase in a percentage cost sharing requirement. For example, if a plan's coinsurance percentage is increased from 10 percent to 20 percent of covered charges, a plan would lose its grandfathered status.

Copayment Changes. An increase in a fixed amount copayment if the total increase in the copayment exceeds the greater of \$5 (increased by medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For instance, if a plan increases its fixed-dollar copayment amount for a doctor's office visit (e.g., \$10 per office visit) by more than the greater of the two amounts, a plan would lose its grandfathered status.

Deductible Increases. An increase in a fixed amount, cost-sharing requirement other than a copayment (e.g., deductibles or out-of-pocket limits) if the total

percentage increases in the cost sharing requirement exceeds medical inflation plus 15 percentage points. As an example, if applicable medical inflation amount is 4 percent, a deductible increase of 20 percent would cause a plan to lose grandfathered status.

Decrease in Employer Contributions. A decrease in the rate of employer contributions by more than 5 percentage points for any coverage tier. For example, an employer changes its contribution rate for employee only coverage from 65 percent to 50 percent.

Annual Dollar Limits Added or Tightened. A plan that: (1) does not have an overall annual or lifetime dollar limit on all benefits adopts an overall annual dollar limit on benefits; (2) has an overall lifetime dollar limit on all benefits (but no overall annual dollar limit) adopts an overall annual dollar limit that is lower than the lifetime dollar limit; or (3) has an annual dollar limit on all benefits decreases the value of the annual dollar limit.

Zero Enrollment. In addition, the Affordable Care Act regulations also address plans that have had enrollment fall to zero members at any time since March 23, 2010. A plan or coverage has to have continuously covered someone since March 23, 2010. If a plan falls to zero members after March 23, 2010, the plan will lose grandfathered status.

Transition Rules. Affordable Care Act regulations include some transition rules for group health plans and health insurance coverage.

If a plan or insurer makes any of the following changes to the terms of the plan or coverage that are effective after March 23, 2010, the plan or coverage will not lose its grandfathered status:

- Changes effective after March 23, 2010 due to a legal binding contract entered into on or before March 23, 2010;
- Changes effective after March 23, 2010 due to a filing on or before March 23, 2010 with a state insurance department; or
- Changes effective after March 23, 2010 due to written plan amendments that were adopted on or before March 23, 2010.

If, after March 23, 2010, a plan or insurer made changes to the terms of the plan or coverage and the changes were adopted before June 14, 2010, the changes will not cause a loss of grandfathered status if the changes are modified or revoked effective as of the first day of the first plan year beginning on or after September 23, 2010, and the plan or coverage, as modified, would not cause the plan or coverage to lose grandfathered status under Affordable Care Act regulations. Changes are considered adopted before June 14, 2010 if:

- The changes were effective before that date;
- The changes are effective on or after that date due to a legally binding contract entered into before that date;
- The changes are effective on or after that date, due to a filing before that date with a state insurance department; or
- The changes are effective on or after that date due to written plan amendments that were adopted before that date.

Changing Third Party Administrators.

A change in third party administrators by a self-insured group health plan will not cause the plan to lose grandfathered status provided the change in administrators does not result in other changes that would cause a loss of grandfathered status under Affordable Care Act regulations.

Changing Health Insurance Coverage.

A group health plan may change health insurance coverage (i.e., enter into a new policy, certificate or contract of insurance) after March 23, 2010 without losing grandfathered status provided that such a change does not result in other changes that would cause a loss of grandfathered status under Affordable Care Act regulations and certain additional regulatory requirements are satisfied.

Abuse of the Rules

The Affordable Care Act provides that new employees (newly hired or enrolled) and their family members can be added to coverage after March 23 without causing the plan to lose its grandfathered plan status. However, Affordable Care Act regulations add two anti-abuse rules.

To prevent abuse of this opportunity, grandfathered status can be lost if:

- The principal purpose of a merger, acquisition or similar business restructuring is to cover new individuals under the grandfathered plan. In that instance, the plan that provides coverage for those individuals would lose grandfathered health plan status; or

- The following occur:

- (a) Employees are transferred into a plan or coverage (transferee plan) from another plan or coverage covering the employees on March 23, 2010 (transferor plan);
- (b) The transferee plan is treated as an amendment of the transferor plan; and
- (c) There was no bona fide employment-based reason for the transfer. Changing the terms or cost of coverage are specifically not bona fide employment-based reasons.

Documentation Requirements

To maintain grandfathered status, Affordable Care Act regulations require that a group health plan and health insurance coverage (for as long as the plan or coverage claims grandfathered status):

- Maintain records documenting plan/policy terms that were in effect on March 23, 2010 (and any other documents needed to verify, explain or clarify grandfathered status); and
- Make such records available for examination upon request.

Disclosure Requirements

To maintain grandfathered status, Affordable Care Act regulations require that a group health plan, and health insurance coverage, include a statement in any plan materials provided to a participant or beneficiary that describes the benefits provided under the plan, that the plan or coverage believes it is a grandfathered plan under the Affordable Care Act, and provide contact information for questions and complaints.

BCBSIL requires plan sponsors to determine whether their group health plan(s) qualify as grandfathered health plan(s).

* The rules in the Affordable Care Act regulations on grandfathered plans apply separately to each benefit package available under a group health plan or health insurance coverage.

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