informed on reform

KEEPING YOU UP-TO-DATE ON THE PPACA

CIGNA

Interim Final Rule for Grandfathered Health Plan Provisions

Published on June 17th • Comment period open through August 15th

The Departments of Health & Human Services, Labor, and Treasury issued long-awaited interim final regulations that specify how **grandfathered status** will be defined and maintained. Regulators spelled out which actions or changes will (and will not) cause a plan to lose its grandfathered status.

The decision to retain or forfeit grandfathered status should be made by weighing all the facts, including the financial impact of adopting all PPACA provisions against the lost opportunity to make plan changes in order to retain grandfathered status. Your CIGNA Account Representative can provide the counsel to help make this important decision.

These are interim final rulings, which means final rules may differ. As clarification continues to be provided through the federal government's rule-making process, we'll share that information with you.

What's Inside

General Information and Definition of Grandfathered Plans

Overview

- A group fully insured health plan or group or individual health insurance coverage in which an individual was enrolled on March 23, 2010.
- Grandfathered plan rules apply separately to each benefit package made available under a group health plan or health insurance coverage.
- Grandfathered status applies to all plans, including ERISA and Non-ERISA, regardless of funding type (ASO and fully insured), unless otherwise stated below.
- Policies issued in the group or individual market to new entities or individuals after March 23, 2010, are not grandfathered plans for the new entities or individuals, *even if the products sold to those new subscribers were offered in the group or individual market before March 23, 2010.*
- The interim final regulations set forth administrative requirements (e.g., disclosure to consumers and record keeping responsibilities) for a plan to maintain its grandfathered status. Additional guidance will be provided by HHS.
- Employers and health insurance issuers are provided with a grace period within which they can revoke or modify any changes adopted prior to June 14, 2010 (the date the interim final regulations were made publicly available), where the changes might otherwise cause the plan or coverage to cease being a grandfathered plan. CIGNA is requesting further clarification on the specifics of the "grace period."
- Transitional rules are provided to permit grandfathering of plans that have coverage or plan changes that became effective after March 23, 2010, if those changes were the result of a binding contract, a filing with a state regulator or the adoption of plan amendments occurring before March 23, 2010.

Collectively Bargained Plans

- Fully insured health plans subject to collective bargaining agreements will be able to maintain their grandfathered status until the final collective bargaining agreement in effect on March 23, 2010 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. (Note: the exceptions that apply to grandfathered plans still apply to this group too.)

Retiree-Only Plans

- Retiree-only and "excepted health plans" such as stand-alone dental plans, long-term care insurance, or Medigap, generally are exempt from the PPACA insurance reforms.

PPACA MANDATES – APPLICABILITY TO PLANS WITH GRANDFATHERED STATUS

GRANDFATHERED PLANS	NON-GRANDFATHERED PLANS
For plan years beginning on or after September 23, 2010	
■ No annual limits on essential benefits for group health plans and non-grandfathered individual plans (Secretary may allow restricted annual limits on benefits through January 1, 2014)	
■ No lifetime limits on essential benefits	
■ No rescissions (except for fraud or misrepresentation)	
■ Must provide rebates if plan does not meet required medical loss ratio	
■ No preexisting condition exclusions for individuals under 19 years old (not applicable to grandfathered individual plans)	
■ Grandfathered and non-grandfathered individual – if the plan covers dependents, it must offer coverage to adult children of insured up to age 26	
■ **Grandfathered Group** - If the plan covers dependents, must offer coverage to adult children up to age 26 (until 2014, coverage is not required if the dependent is eligible for another employer-sponsored health plan other than that of a parent)	■ **Non-Grandfathered Group** - If the plan covers dependents, it must offer coverage to adult children of insured up to age 26
	■ No cost sharing for immunization or preventive care
	■ No discrimination in favor of highly compensated individuals
	■ Must provide appeal process for coverage determinations including external review
	■ Must allow individuals to choose pediatrician for child's primary care physician
	■ Must allow females to choose gynecologist or obstetrician without referral
	■ Must allow emergency services without preauthorization and treat as in-network
By March, 2012	
■ Must create summary documents using HHS uniform definitions	
	■ HHS will develop reporting requirement for plans with respect to coverage and benefit structures
Plan Year 2014	
■ No annual limits on essential benefits (where Secretary has allowed restricted annual limits)	
■ No preexisting condition exclusions (regardless of age)	
■ Waiting periods limited to 90 days	
	■ Must follow rating limitations for insured individual and small group (rating based on: tobacco use1.5:1, age 3:1, rating area, and coverage for individual versus family)
	■ Guaranteed issue (insured)
	■ Guaranteed renewability (insured)
	■ No discrimination against individual participating in clinical trial, and must cover routine costs for items or services furnished in connection with clinical trial
	■ No discrimination based on health status
	■ No discrimination on health care providers acting within the scope of their license
	■ Must cover essential benefits (only applies to insured individual and small group markets)
	■ Must follow cost sharing limits

What Changes **Will** Result in the Loss of Grandfathered Status

Compared to policies in effect on March 23, 2010, grandfathered plans:

★ **Cannot Significantly Cut or Reduce Benefits.** For example, a plan can't eliminate coverage for a particular condition e.g. diabetes, cystic fibrosis or HIV/AIDS.

★ **Cannot Raise Coinsurance Charges.** Grandfathered plans cannot increase coinsurance percentages.

★ **Cannot Significantly Raise Copay Charges.** Compared with the copays in effect on March 23, 2010, grandfathered plans will be able to increase those copays by no more than the greater of $5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points.

★ **Cannot Significantly Raise Deductibles and Out-of-Pocket.** Compared with the deductible and out-of-pocket in effect on March 23, 2010, grandfathered plans can only increase these deductibles and out-of-pocket by a percentage equal to medical inflation plus 15 percentage points.

★ **Cannot Significantly Lower Employer Contributions.** Compared with the employer's share of premiums paid on March 23, 2010, 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 percent).

★ **Cannot Add or Tighten an Annual Limit on What the Insurer Pays.** Plans 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).

★ **Cannot Restructure the Company.** Employers cannot conduct a merger, acquisition, or similar business restructuring, **if the principal purpose** of the action is to cover new individuals under the grandfathered plan.

★ **Cannot Move Employees to a Plan with Lesser Benefits.** Cannot force employees to switch to another grandfathered plan that has less benefits or higher cost sharing unless there is a bona fide employment-based reason for the change.

★ **Cannot Switch Carriers under an Insured Plan.** While employers are able to switch administrators of self-insured plans, it appears that switching carriers on an insured plan will result in the plan losing grandfathered status (unless the insured plan is covered by a collective bargaining agreement). There is some inconsistency between the preamble and the regulations, but the intent appears to be to not allow changes of carriers without losing grandfathered status.

General content source: www.healthcarereform.gov, June 14, 2010

What Changes **Will Not** Result in the Loss of Grandfathered Status

There is no change to grandfathered status provided the change is made without exceeding the standards described above. Other allowable changes include:

★ Addition of family members of an individual who is enrolled in a grandfathered plan and addition of new employees (whether newly hired or enrolled) in a grandfathered plan.

★ Disenrollment of one or more individuals enrolled on March 23, 2010 (provided that the plan or coverage has continuously covered someone since March 23, 2010).

★ Changes in premiums.

★ Changes required to conform to federal and state laws and regulations.

★ Voluntary adoption of PPACA consumer protections.

★ Changing third-party administrators (TPAs).

Summary

Given that these are interim final regulations, we are entering an important commentary phase in the regulatory process. And, as you would expect, there are many outstanding questions and clarifications that are required. Questions on items that may trigger loss of grandfathered status include changes in:

Networks ★ Formularies ★ Funding

Answers to these questions could have significant bearing on the value of retaining grandfathered status.

Employers will need to decide if it's in their companies' best interest to retain grandfathered status or keep the flexibility to make benefit plan changes. The factors will be different for every employer so the analysis has to be done on a plan-by-plan basis. We're prepared to help clients assess their unique situation so you can make the best choices and decisions for your organization.

MORE >

CIGNA will be monitoring these issues closely. Please continue to visit our Health Care Reform website through www.cigna.com or click directly through www.informedonreform.com. We will post any new developments to this site.

CIGNA®