UBA PPACAAdvisor

Frequently Asked Questions about Grandfathered Plans

Updated October 2014

As employers determine their plan designs for the coming year, those with grandfathered status need to decide if maintaining grandfathered status is their best option. Following are some frequently asked questions, and answers, about grandfathering a group health plan.

Q1: May plans maintain grandfathered status after 2014?

A1: Yes, they may. There is no specific end date for grandfathered status.

Q2: What are the advantages of grandfathered status?

A2: Grandfathered plans are **not** required to meet these PPACA requirements:

- Coverage of preventive care without employee cost-sharing, including contraception for women
- Limitations on out-of-pocket maximums
- Essential health benefits and metal levels (these only apply to insured small group plans)
- Modified community rating (this only applies to insured small group plans)
- Guaranteed issue and renewal (this only applies to insured plans)
- Nondiscrimination rules for fully insured plans (this requirement has been delayed indefinitely)
- Expanded claims and appeal requirements
- Additional patient protections (right to choose a primary care provider designation, OB/GYN access without a referral, and coverage for out-of-network emergency department services)
- Coverage of routine costs associated with clinical trials
- Reporting to HHS on quality of care (requirement has been delayed indefinitely)

Q3: What PPACA requirements apply to grandfathered plans?

A3: Most PPACA requirements apply to grandfathered plans. This includes:

- Limits on eligibility waiting periods
- PCORI Fee
- Transitional Reinsurance Fee
- Summary of Benefits and Coverage
- Notice regarding the exchanges
- No rescissions of coverage except for fraud, misrepresentation, or non-payment
- Lifetime and annual dollar limit prohibitions on essential health benefits

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- Dependent child coverage to age 26 (an exception for grandfathered plans when other coverage is available expires at the start of the 2014 plan year)
- Elimination of pre-existing condition limitations
- W-2 reporting of health care coverage costs (this only applies if the employer provided more than 250 W-2s for the prior calendar year)
- Wellness program rules
- Minimum medical loss ratios (this only applies to fully insured plans)
- Employer shared responsibility ("play or pay") requirements (generally starting with the 2015 plan year)
- Employer reporting to IRS on coverage (starting in January 2016, based on the 2015 calendar year)
- Excise ("Cadillac") tax on high cost plans (starting in 2018)
- Automatic enrollment (this only will apply to employers with more than 200 full-time employees; this requirement has been delayed indefinitely)

Q4: What must a plan do to maintain grandfathered status?

A4: To maintain grandfathered status, a plan must look at its benefits and contribution levels as of March 23, 2010 and must not:

- Eliminate or substantially eliminate benefits for a particular condition

  For example, if a plan covered counseling and prescription drugs to treat certain mental and nervous disorders and eliminates coverage for counseling, the plan will lose grandfathered status.

- Increase cost-sharing percentages

  For example, if the plan had an 80% coinsurance rate in March 2010 and decreases the rate to 70%, the plan will lose grandfathered status.

- Increase co-pays by more than $5 or a percentage equal to medical inflation (currently approximately 12.6%*) plus 15%, whichever is greater

  For example, if the plan had an office visit copay of $30 in March 2010, it could increase it to $38.28 without losing grandfathered status.

- Raise fixed amount cost-sharing other than co-pays by more than medical inflation (currently approximately 12.6%*) plus 15%

  For example, if the plan had a deductible of $1,000 and an out-of-pocket maximum of $2,500 in March 2010, it could increase the deductible to $1,276 and the out-of-pocket limit to $3,190 without losing grandfathered status.

- Lower the employer contribution rate by more than 5% for any group of covered persons

  For example, if the employer contributed 80% of the cost of employee-only coverage and 60% of the cost of family coverage in March 2010, if the employer keeps its contribution percentage for employee-only coverage at 80% but reduces its contribution for family coverage to 50%, the plan will lose grandfathered status.

- Add or reduce an annual limit

  For example, a plan that had no limit on MRIs in March 2010 could not impose a $10,000 per year maximum on MRIs without losing grandfathered status.

The plan also must:

- Maintain records of its plan design and contribution levels as of March 23, 2010 and any changes since that date
- Include a notice about the plan's grandfathered status in significant participant communications, such as enrollment materials and summary plan descriptions. (The notice does not need to be included with the SBC or EOBs.) A model notice available at: www.dol.gov/ebsa/grandfatherregmodelnotice.doc

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Q5: How are changes measured?

A5: Changes are measured cumulatively since March 2010. So, for example, if an employer contributed 70% of the cost in March 2010, and reduced its share to 68% in January 2012, it could again reduce its share, to 65%, in January 2015 without losing grandfathered status.

Or, if the deductible was $500 in March 2010 and it was increased to $550 in October 2011, it could be increased to $638 in October 2014 without losing grandfathered status.

Q6: Will violating just one of the requirements forfeit grandfathered status?

A6: Yes.

Q7: What changes may a plan make and keep grandfathered status?

A7: A plan will not lose grandfathered status if it:

- Changes insurers (on or after November 15, 2010) or third party administrators, as long as benefits do not change
- Moves between self-funded and insured status, as long as benefits don't change
- Makes changes required by law
- Increases benefits
- Makes any change other than a prohibited change (for example, a change to eligibility rules is probably allowed)
- Moves drugs to a different copay tier because the drugs have become generic
- Changes networks
- Passes along premium increases (as long as the increase is essentially shared pro rata)
- Adds new employees or family members to the plan

Q8: If an employer offers several plan options, can it keep grandfathered status for some plans even if it has lost it for others?

A8: Yes, it can. So, for instance, an employer could have a grandfathered PPO option and a non-grandfathered HMO option.

Q9: Can an employer add tiers without losing grandfathered status?

A9: Yes it can, as long as it maintains its contribution level for all tiers at the required level. For example, if the employer offered a two-tier plan and paid 90% of the cost of employee-only coverage and 75% of the cost of family coverage in March 2010, it could move to four tiers in January 2015 without losing grandfathered status as long as it paid at least 85% of the cost of employee-only coverage and at least 70% of the cost of employee plus spouse, employee plus children and family coverage.

Q10: Can an employer add a wellness program without losing grandfathered status?

A10: An employer can add a wellness program without losing grandfathered status, but needs to take care to make sure it maintains contributions and benefits at the needed levels. (Wellness plans do not have special rules that would give them extra latitude.)

Q11: Can an employer impose a spousal surcharge or carve-out without losing grandfathered status?

A11: An employer can impose a spousal surcharge without losing grandfathered status, but it must keep its contribution for spousal coverage within 5% of its contribution rate for spousal coverage in March 2010, even for spouses who must pay the surcharge.

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It appears that spouses with other coverage may be completely excluded without jeopardizing grandfathered status.

Q12: If an employer loses grandfathered status, can it get it back?

A12: With the exception of a transition period in 2010, a plan that loses grandfathered status, even inadvertently, cannot get it back. This seems to include losing status because the required notice was not provided.

Q13: What happens if a plan loses grandfathered status?

A13: The plan must comply with all of the requirements that apply to non-grandfathered plans as of the effective date of the change that caused the loss of status. So, for example, if the plan is amended to increase the coinsurance level effective January 1, 2015, but the amendment isn't signed until February 6, 2015, grandfathered status is lost as of January 1, 2015.

Q14: Are there special rules for bargained plans?

A14: A fully-insured plan maintained under one or more collective bargaining agreements ratified before March 23, 2010, may remain a grandfathered plan at least until the date on which the last agreement relating to the coverage that was in effect on March 23, 2010, terminates. (Self-insured plans maintained under a collective bargaining agreement are not eligible for this collectively bargained exception.) After the date on which the last of the collective bargaining agreements terminates, the usual rules for maintaining grandfather status apply – the current terms of the plan are compared to the terms that were in effect on March 23, 2010.

Q15: Should a plan keep grandfathered status for 2015?

A15: Whether to keep grandfathered status for 2015 is the plan sponsor's decision. Typically, the employers most interested in maintaining grandfathered status are those who:

- Want to retain an out-of-pocket limit above the limit ($6,600 single and $13,200 family for 2015)
- Have religious objections to covering contraception
- Have carve-out plans for executives
- Are in the small group market and wish to avoid the insurance market changes (essential health benefits, cost-sharing limits, metal levels and modified community rating)

* Medical inflation is measured by the increase since March 2010 in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI-U).

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