

Grandfathered Plans

Grandfathered health plans are exempt from certain requirements under the Affordable Care Act (ACA). A plan loses its grandfathered plan status if it makes certain changes to reduce its benefits or increase the participant's out-of-pocket costs.

Quick Facts:

A group health plan is grandfathered if it was in existence as of **March 23, 2010** and since then it has not made any of the following changes:

- Eliminate all, or substantially all, benefits to diagnose or treat a particular condition.
- Increase a percentage-based cost-sharing requirement (e.g., increase the participant's co-insurance from 20 percent to 25 percent).
- Increase a deductible or out-of-pocket maximum by an amount that exceeds medical inflation plus 15 percentage points.
- Increase a co-pay by an amount that exceeds medical inflation plus 15 percentage points (or, if greater, \$5 plus medical inflation).
- Decrease the employer's share of the coverage cost by more than 5 percentage points.
- Impose annual dollar limits on benefits.

Grandfathered plans are not subject to the following ACA requirements:

- 100 percent coverage for specific preventive care services.
- Nondiscrimination requirements for insured health plans.
- Limits on out-of-pocket maximums.
- Coverage for participants in clinical trials.
- "Small group" insurance reforms (i.e., adjusted community rating; coverage of all "essential health benefits").

Grandfathered plans must notify participants that the plan is grandfathered. Plans that lose grandfathered status immediately become subject to the ACA's requirements for nongrandfathered plans.

Details:

Plans that were in existence on March 23, 2010 were grandfathered under the Affordable Care Act (ACA). The plans may maintain grandfathered status as long as they do not make changes that reduce benefits for participants and/or increase the participant's out-of-pocket costs. Federal regulations set forth six types of changes that result in immediate loss of grandfathered plan status. Plan changes that are not one of the following six prohibited types of changes do not affect the plan's grandfathered status.

- **Eliminating benefits to diagnose or treat a particular condition.** The plan loses grandfathered status if the plan eliminates all, or substantially all, benefits to diagnose or treat a particular condition. For example, terminating or reducing the plan's coverage for diabetes, cystic fibrosis or HIV/AIDS would result in immediate loss of grandfathered plan status.
- **Increasing percentage-based cost-sharing (co-insurance).** Any increase in the participant's required co-insurance is a change resulting in loss of grandfathered status. For instance, if the plan (as of March 23, 2010) paid 90 percent of in-network hospital expenses, the participant's required co-insurance was 10 percent. Any change to reduce the plan's benefit percentage, thus increasing

the participant's cost-sharing or co-insurance, is a prohibited change under the grandfathering rules.

- **Increasing deductibles or out-of-pocket maximums.** A significant increase in the plan's deductible or out-of-pocket maximum amounts will cause loss of grandfathered status. However, the plan may increase its deductible(s) and out-of-pocket maximum(s) by a percentage equal to medical inflation plus 15 percentage points without losing grandfathered status. Increases are measured from March 23, 2010 on a cumulative basis and not on an annual basis.
- **Increasing co-pays.** Co-pays typically are fixed-dollar amounts, such as a \$25 co-pay per office visit. The plan may increase its fixed-dollar co-pays by no more than the greater of \$5 (adjusted annually for inflation) or a percentage equal to medical inflation plus 15 percentage points. The starting point for measuring plan changes always is March 23, 2010. Plans that increase their co-pays in excess of the allowable margins will lose grandfathered status.
- **Reducing Employer Contributions.** A plan does not lose grandfathered status simply because the employee contribution (payroll deduction) increases from year to year. Instead, the grandfathering rules require analyzing the **employer's** contribution toward the plan's cost.

Determine the employer's contribution as a percentage of plan cost (that is, the premium or COBRA rate without admin fee) as of March 23, 2010. Each coverage level or rate tier is analyzed separately. To maintain grandfathered status, the employer's contribution (as a percentage) must not decrease by more than 5 percentage points for any tier of coverage.

For instance, assume that the employer's contribution was 75 percent of the premium for each tier as of March 23, 2010. The carrier's premium rates have increased every year upon renewal. As of January 1, 2014, the employer's contribution is 70 percent of current premium rate for each tier. Although the employees' payroll deductions have increased quite a bit, due to insurance renewal increases and the employer shifting more costs to the employees, these changes have not caused the plan to lose grandfathered status. The employer in this example has not decreased its contribution, as a percentage of plan cost, by more than 5 percentage points as measured from March 23, 2010 to the current date.

- **Imposing Annual Dollar Limits on Benefits.** Plans that did not impose an annual dollar limit on benefits as of March 23, 2010 and later added limits, or plans that reduced the limits after March 23, 2010, lost grandfathered status at the time of the change.

Frequently Asked Questions

Does loss of grandfathered status for one plan affect other plans offered by the same employer?

No. Each benefit package is analyzed separately for grandfathered plan status. For instance, if the employer offers three medical plan options (HMO, PPO and POS), each one's status is determined separately even if all three are provided through a single ERISA plan and/or group insurance contract.

Does a change in carrier cause the plan to lose grandfathered status?

If the carrier change took effect after March 23, 2010 but before November 15, 2010, the plan lost grandfathered status as of the date of the change.

Carrier changes that took effect on or after November 15, 2010 do not affect the plan's grandfathered status as long as the plan had existed in March 2010 and none of the "prohibited" changes had been made. The new carrier will request documentation from the employer to confirm that the plan had maintained grandfathered status.

If the employer contribution structure changes from two tiers to four tiers, does the plan lose grandfathered status?

Employer contributions must be analyzed on a tier-by-tier basis. 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 is tested by comparing it to the contribution rate for the corresponding tier on March 23, 2010.

For instance, if the employer contribution rate for family coverage was 50 percent on March 23, 2010, the employer contribution rate for any new tier of coverage other than self-only (i.e., self-plus-one, self-plus-two, self-plus-three or more) must be within 5 percentage points of 50 percent (i.e., at least 45 percent).

On the other hand, if the plan adds one or more new coverage tiers without eliminating or modifying any previous tiers, and the new coverage tiers cover employees that were not covered previously under the plan, there is no need to analyze the new tiers. For example, if a plan with only a self-only coverage tier added a family coverage tier, the level of employer contribution toward the family coverage would not cause the plan to lose grandfather status.

Do any plan changes other than the five types of prohibited changes affect the plan's grandfathered status?

No. Plan changes do not affect the plan's status as long as the plan does not make any of the specific prohibited changes, measuring from March 23, 2010.

How is medical inflation determined?

Medical inflation is the increase in the overall medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) (unadjusted) published by the U.S. Department of Labor (DOL). To calculate medical inflation for the purposes of the grandfathering rules, the increase in the overall medical care component is computed by subtracting 387.142 (the component published by the DOL for March 2010) from the index amount for any month in the 12 months before the plan change is to take effect and then divide it by 387.142.

To find the CPI-U values, go to the Bureau of Labor Statistics website at www.bls.gov/cpi/tables.htm.

Are there special notice requirements for grandfathered plans?

Yes. Grandfathered plans are required to notify plan participants that the plan considers itself grandfathered. The plan sponsor (employer) or the carrier may provide this notice to participants. The DOL has published a model notice for this purpose, which is available at www.dol.gov/ebsa/grandfatherregmodelnotice.doc.

Important: Failure to provide the grandfathered plan notice to participants will result in loss of grandfathered plan status.

Additionally, the employer or carrier must maintain records documenting the terms of the plan or policy in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered plan. Documents may include prior and current plan documents, health insurance policies, certificates or contracts, summary plan descriptions, and records of premiums, coverage costs, and employee contribution requirements. Plan participants or state or federal agencies may request to inspect the documents.

Official Guidance:

“Grandfathered Plans ...under the Affordable Care Act; Final Rules” (11/18/2015): [click here](#).

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