

PPACA Grandfathering

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If there was one thing we repeatedly heard during the health care debate, it was, “If you like your health plan, you can keep it.” Although *technically* that statement may be true, as in many things political, it’s not quite that simple.

When President Obama made the statement that health care reform wasn’t going to interfere with American’s existing health insurance coverage, he was referring to the “grandfathering” provisions of H.R. 3590, the law that has come to be known as the Patient Protection and Affordable Care Act (“PPACA”). These grandfathering provisions provide that plans that existed prior to March 23, 2010, the date of enactment of the law, are exempt from certain, but not all, provisions of PPACA, as long as the plan doesn’t lose its fragile status as a grandfathered plan.

The value of grandfather status is a matter of great debate and to a large extent, it will be different for every company. In many cases, the employer will control whether they maintain or lose grandfather status, and some employers may choose to voluntarily relinquish their grandfather status in order to receive more of the PPACA benefits and protections (albeit it at an increased cost). One thing that’s certain, however, is that once a plan loses its grandfathered status, it is lost forever. That means any employer who sponsors a health plan that is currently grandfathered should be very careful to preserve that status for as long as the employer desires.

Please note, this outline is not intended to provide legal advice or an exhaustive overview of the grandfather provisions of the PPACA law. That law, along with its many components, is extremely complicated and unclear. Instead, this article is written to help employers gain a basic understanding of the value of grandfathered status and to assess whether that status is worth preserving and at what cost.

Which PPACA provisions apply to grandfathered plans? Although many of the provisions of PPACA apply to all plans regardless of grandfather status, there are several provisions that do not apply to a grandfathered plan.

- Fully-insured grandfathered plans remain exempt from IRC §105(h), the federal law that prohibits health plans from discriminating in favor of highly-compensated employees. (Self-funded and partially self-funded plans are already subject to this law.) For employers who provide health benefits to senior employees but not lower-level employees, or who provide reduced benefits to lower-level employees, this could be a very important issue both operationally and financially.

- Grandfathered plans are allowed to impose cost sharing requirements on plan participants who receive preventive care. In contrast, new plans and plans that lose grandfathered status must pay the full cost of certain preventive care with no member cost sharing.
- Grandfathered plans are allowed to impose more restrictive requirements for dependent eligibility, such as a requirement that the dependents be unmarried or that they not have access to their own insurance through their own employer (*see below*).
- Although new plans and non-grandfathered plans will be prohibited from imposing annual out-of-pocket cost-sharing limits that exceed the limits that are applicable to health savings accounts (“HSAs”) (\$5,950 for individuals and \$11,900 for families in 2010), grandfathered plans will be allowed to continue imposing cost sharing requirements in excess of the applicable HSA amounts.
- Grandfathered plans remain exempt from the new internal and external appeals requirements, choice of provider requirements, clinical trial coverage mandates, and requirements that out-of-network emergency services be paid at the in-network benefit percentage.

Which provisions apply to all plans, regardless of grandfather status?

- For plan years starting or renewing on or after September 23, 2010, lifetime limits on the dollar value of benefits are prohibited. Additionally, there can be no annual dollar limits on “essential benefits” as defined by the Department of Health and Human Services. After January 1, 2014, annual limits are prohibited entirely.
- For employer-sponsored plans starting or renewing on or after September 23, 2010, no preexisting condition exclusion can be applied to children under age 19.
- For plan years starting on or after September 23, 2010, dependent status limiting age is increased to age 26. Although children and spouses of dependents are not eligible, dependents are allowed to enroll in the plan regardless of their residency or their marital, student, financial or employment status. (For plan years prior to January 1, 2014, this provision only applies to grandfathered plans if the dependent is ineligible for coverage under other employer-sponsored health insurance).
- For plan years beginning on or after January 1, 2014, there can be no waiting periods greater than 90 days.
- For plan years starting on or after September 23, 2010, there can be no rescission of health plan coverage except for fraud or intentional misrepresentation.
- All fully-insured group policies with 100 lives or less must abide by strict modified community rating as of January 1, 2014. Experience rating is prohibited, but premium can be varied for age (3:1), tobacco use (1.5:1) family composition and geographic region.

What must a grandfathered plan do to preserve its grandfather status?

- The plan is allowed to continue enrolling new employees or new family members.
- The plan cannot change insurance companies, even if the benefits remain the same. Premium increases or decreases and third party administrator (“TPA”) changes are permissible.
- Coinsurance levels paid by the insured cannot be increased (at all). Reasonable changes to deductibles, out-of-pocket maximums and copayments are allowed to keep up with medical inflation.
- Employer contributions toward premiums cannot be reduced by more than 5%.
- The plan cannot add or decrease annual and/or lifetime limits.
- The plan may make routine changes such as cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, voluntarily adopting PPACA provisions, or making changes to comply with state or federal laws.
- The plan may not eliminate or substantially reduce benefits.
- The plan must maintain records of grandfathered status and notify participants of that status through printed materials.

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