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FINAL RULES AFFECTING GRANDFATHERED PLANS

The Affordable Care Act (ACA) allowed certain plans in place on March 23, 2010, to delay the effective date for meeting certain requirements. The effective dates for the following provisions could be delayed if the plan was grandfathered:

- Certain preventive care services covered with no copayment
- Extending Section 105(h) non-discrimination rules to insured plans (currently delayed for all insured plans)
- Rules for emergency room coverage
- Primary care physician rules
- Requirement to cover clinical trials
- New claim appeal procedures and rules
- Increase to HIPAA non-discrimination rules when rewarding achievement of health factor
- Out-of-pocket maximum limits

Plans remain grandfathered so long as they do not make certain changes. At this point, the following changes would cause a plan to lose its grandfathered status:

- Eliminating benefits to treat a specific condition
- Increasing a percentage cost share (coinsurance)
- Increasing from March 23, 2010, fixed cost-sharing by a total percentage that is more than medical inflation plus 15 percent
- Increasing a flat copay from the March 23, 2010, amount by an amount that exceeds the greater of:
  - Medical inflation plus 15 percent
  - $5 increased by medical inflation

- Decreasing the contribution rate by more than five percentage points from the March 23, 2010, rate:
  - Based on cost of coverage
  - Applies per coverage tier
- Imposing annual limits on the dollar value of all benefits for group health plans and insurance coverage that did not have such limits before March 23, 2010

Making any of these changes would cause your plan to lose its grandfathered status. For that reason, if you have a grandfathered plan, you need to monitor plan changes carefully. You also need to document these evaluations in case of a Department of Labor audit.

Most health plans are no longer grandfathered. If you still have a grandfathered plan and wish to keep it, these final rules allow you more flexibility to make plan changes.

FINAL GRANDFATHERED PLAN RULE CHANGES

These regulations became effective January 14, 2021. However, they apply to grandfathered plans beginning June 15, 2021. The delay is due to concern over the ongoing COVID-19 pandemic and concern over a greater financial burden these changes may cause. They apply to self-funded and fully-insured grandfathered plans.

These final rules allow grandfathered plans more flexibility to make changes:

1. Grandfathered high deductible health plans (HDHPs) will be allowed to change fixed-amount cost-sharing requirements that would normally have caused them to lose grandfathered status if those changes are necessary to remain a qualified HDHP. For example, if the minimum deductible required for an HDHP increases and the plan then increases the deductible to be considered an HDHP, then the plan would not lose its grandfathered status. However, the plan can make changes only to meet the HDHP requirements.
2. The rules redefine "maximum percentage increase" which is another way to determine the amount based on the premium adjustment percentage. The premium adjustment percentage is generally a higher percentage than medical inflation. That percentage will be disclosed annually in the HHS Notice of Benefit and Payment parameters.

The HDHP changes are self-explanatory. Remember, however, the only change that will not cause your plan to lose its grandfathered status is a change made to meet the annually indexed HDHP requirements. Any other change will be evaluated to determine whether it is significant enough to cause your plan to lose its grandfathered status.

The revised definition of "maximum percentage increase" is a bit more complicated. It concerns changes in grandfathered health plans effective on or after the effective date of the final rule. Plans would no longer be grandfathered if the total percentage increase in fixed cost-sharing requirements measured from March 23, 2010, is more than the greater of:

1. Medical inflation expressed as a percentage, plus 15 percentage points
2. The portion of the premium adjustment percentage that reflects the relative change between 2013 and the calendar year before the effective date of the increase (that is the premium adjustment percentage minus 1) expressed as a percentage, plus 15 percentage points.

The examples below demonstrate how these final rules may affect changes in grandfathered plans.

Example 1. *Facts.* On March 23, 2010, a grandfathered group health plan requires a $30 office visit copay for specialists. The plan is later amended to increase that copayment to $40 (this change is effective before June 15, 2021).

- Within the 12-month period before the $40 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 475.
- The increase in the copayment from $30 to $40 is 33.33% (40−30 = 10; 10 ÷ 30 = 0.3333; 0.3333 = 33.33%). Medical inflation from March 2010 is 0.2269 (475−387.142 = 87.858; 87.858 ÷ 387.142 = 0.2269). The maximum percentage increase permitted is 37.69% (0.2269 = 22.69%; 22.69% + 15% = 37.69%). Because the change is less than 37.69%, the plan is still grandfathered.

Example 2. *Facts.* Same facts as Example 1, except the grandfathered group health plan then increases the $40 copayment requirement to $45 for a later plan year, (this change is effective before June 15, 2021).

- Within the 12 months before the $45 copayment takes effect, the greatest value of the overall medical care component of the CPI-U (unadjusted) is 485.
- The increase in the copayment from $30 (the copayment that was in effect on March 23, 2010) to $45, expressed as a percentage, is 50% (45−30 = 15; 15 ÷ 30 = 0.5; 0.5 = 50%). Medical inflation from March 2010 is 0.2527 (485−387.142 = 97.858; 97.858 ÷ 387.142 = 0.2527).
- The increase to $45 would cause a plan to lose its grandfathered status because the 50% increase in specialist copay from March 2010 is greater than the maximum percentage increase of 40.27% (25.27% + 15% = 40.27%), or $6.26 (5 × 0.2527 = $1.26; $1.26 + $5 = $6.26).

Example 3. Same facts as Example 2, except the grandfathered group health plan increases the copayment requirement to $45, effective after June 15, 2021, and that changes the calculations for loss of grandfather status.

- The greatest value of the overall medical care component of the CPI-U (unadjusted) in the preceding 12-month period is still 485. In the calendar year that includes the effective date of the increase, the applicable portion of the premium adjustment percentage is 36%.
- The grandfathered health plan may increase the copayment by the greater of medical inflation, expressed as a percentage, plus 15 percentage points; or the applicable portion of the premium adjustment percentage for the calendar year that includes the effective date of the increase, plus 15 percentage points.
- Using the applicable portion of premium adjustment allows this change to not prompt a loss of grandfathered plan status. The rule allows a 51% increase in the office visit copay (36% + 15% = 51%). The change from a $30 specialist copay to $45 was a 50% increase, lower than the 51% allowed.

After June 15, 2021, employers will have more options to make plans changes and keep their grandfathered group health plan status.

CONCLUDING THOUGHTS

Employers with grandfathered group health plans will still need to evaluate any plan changes made since March 23, 2010, to determine whether those plans retain that status or if they need to adopt any delayed grandfathered provisions. After June 15, 2021, employers will have more options to determine whether changes to fixed cost-sharing will prompt a loss of grandfathered status.

These rules do not affect plans that lost their grandfathered status before June 15, 2021.