BenefitMall

Legislative Alert: Grandfathering Question & Answers

As a byproduct of The Patient Protection and Affordable Care Act (PPACA), one of the chief issues has been the “Grandfather” regulations that were originally issued in June and updated in mid-November by the federal government. On November 17, an amendment to the original “Grandfather Regulations” was released concerning how employers can maintain grandfathered health plan status. Here is a recap of both regulations in a “question” and “answer” (QA) format.

What is a grandfathered plan?

“Grandfathered health plan coverage means the coverage provided by a group health plan, or a health insurance insurer, in which an individual was enrolled on March 23, 2010” and “as long as (the plan) maintains the status under the rules.”[1] It allows a plan to keep most of the design elements and benefit structures that were in place prior to PPACA’s enactment. Some exceptions apply as discussed below.

What is the intent behind the grandfather regulations?

Federal regulators note that PPACA “balances the objective of preserving the ability of individuals to maintain their existing coverage with the goals of ensuring access to affordable essential coverage and improving the quality of coverage.”[2] Federal regulators elaborate further, “Decisions about the value of retaining or relinquishing status as a grandfathered health plan are complex, and the wide array of factors affecting insurers, plan sponsors, and enrollees poses difficult challenges…”[3]

How does a health plan become grandfathered?

Plan sponsors must decide if they wish to continue to offer the plan or coverage they had in effect on March 23, 2010 with only limited changes as described in this update. They also must meet various requirements to maintain grandfathered status pursuant to the federal regulations. In addition, the plan sponsor must provide its covered members with notice of grandfathered status and maintain key plan documents to verify that status.

What are grandfathered plans NOT exempt from?

A plan that maintains grandfather status is still required to comply with a number of the federal regulatory provisions that were issued on June 17 and updated in November. As of September 23, 2010, grandfathered plans must:

- Prohibit pre-existing condition exclusions for individuals under age 19 (and all individuals for plan years beginning on or after January 1, 2014)
- Prohibit lifetime limits on essential health benefits
- Restrict annual limits before plan years beginning on or after January 1, 2014, and prohibit all annual limits for plan years beginning on or after January 1, 2014
- Prohibit rescissions other than for fraud or intentional misrepresentation of material fact
- Extend dependent child coverage to age 26, unless the dependent has other eligible employer-sponsored health coverage available
- Provide uniform explanation of coverage documents.

What are grandfathered plans EXEMPT from?

A plan that maintains grandfather status is exempt from several provisions of the health care reform legislation. Grandfathered plans do not have to:

- Eliminate cost-sharing for certain preventive services
- Prohibit discrimination based on salary for coverage or premiums
- Provide choice/direct access requirements allowing members to designate any participating primary care physician or pediatrician they choose
- Eliminate certain prior authorization or additional cost-sharing requirements that were reduced or eliminated under PPACA including a prohibition against pre-authorization requirements for OB/GYN and emergency services
- Implement the new internal appeals/external reviews process in place for coverage determinations and claims decisions
- Comply with certain HHS reporting requirements.

What changes CAN grandfathered plans make?

Grandfathered plans are still able to make routine changes while maintaining continued grandfather status. Some of the routine changes include the ability to:

- Raise premiums to reasonably keep pace with health care costs provided the change does not cause the plan to exceed other applicable limits
- Increase deductibles and other out-of-pocket costs “within limits”
- Continue to enroll new employees and new family members, subject to an anti-abuse rule
- Make changes to comply with new federal and state regulations provided such changes do not cause the plan to exceed applicable limits
- Increase benefits or voluntarily comply with provisions of PPACA, provided such change does not cause the plan to exceed applicable limits
- Make changes to a plan’s provider network and prescription drug formulary
- Make changes to accommodate mergers and acquisitions
- Changing a third-party administrator or a broker/agent/navigator.

Note: Many of these examples are not part of the official regulations, so additional regulatory guidance may be required.

Can plans switch insurance companies and maintain grandfather status?

The November 17 amendment “allows all group health plans to switch insurance companies and shop for the same coverage at a lower cost while maintaining their grandfathered status, so long as the structure of the coverage doesn’t violate one of the other rules for maintaining grandfathered plan status.”[4]

The HHS website states further:

“The purpose of the grandfather regulation is to help people keep existing health plans that are working for them. This amendment furthers that goal by allowing employers to offer the same level of coverage through a new issuer and remain grandfathered, as long as the change in issuer does not result in significant cost increases, a reduction in benefits, or other changes described in the original grandfather rule.”

HHS notes that “the original regulation only allowed self-funded plans to change third-party administrators without necessarily losing their grandfathered plan status.” The revised regulation impacts “insured group health plans” but not the “individual market.” HHS elaborates that “(u)nder this amendment, all employers have the flexibility to keep their grandfathered plan but change insurance company or third-party administrator.” The regulation was motivated in part to allow employers to shop for better-priced insurance.

Can plans offer incentives for wellness programs?

Group health plans may continue to provide incentives for wellness programs by providing premium discounts or additional benefits to encourage healthy behaviors by rewarding high-quality providers and incorporating evidence-based treatments into benefit plans as permitted under other applicable laws. However, penalties such as cost-sharing surcharges may violate the limits applicable to grandfathered plans, and should be carefully considered prior to implementation.

What notifications must grandfathered plans provide to your clients?

To maintain grandfathered status, a plan must include a statement in any plan materials provided to beneficiaries describing the benefits provided under the plan. The statement must indicate that the plan believes it is a grandfathered health plan within the meaning of PPACA and provide contact information for clients to ask questions or make comments. Although the grandfather regulation does not state when this notice must be provided, issuers are presuming that it must be provided in plan materials upon renewal for plan years beginning on or after
September 23, 2010. A grandfathered plan also must maintain records documenting the terms of the plan or coverage in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify its status as a grandfathered plan.[5]

What changes cause loss of grandfather status?

Compared to the coverage in effect on March 23, 2010, grandfathered plans cannot:

- Eliminate all or substantially all benefits to diagnosis or treat a particular condition
- Increase the cost-sharing requirement (such as co-insurance)
- Substantially increase deductibles or out-of-pocket limits (i.e.; more than the sum of medical inflation plus 15 points)
- Decrease its contribution by more than five percentage points below the average contribution rate by the employer who sponsors the plan.[6]
- Impose a lifetime limit on the dollar value of the benefits for the first time.[7]

Can employers offering coverage with multiple plan designs change one and stay grandfathered?

If an employer offers several plan options or benefit packages and only makes changes to one or a subset of the offerings, the packages that have not been amended (or are amended within limits allowed under the grandfather regulations) can retain their grandfathered status. The grandfathering determination is made separately with respect to each plan offering or benefit package available under group health plan or health coverage or to each plan.[8]

Can employers offering coverage eliminate one of several plans and stay grandfathered?

An employer could lose grandfathered status by eliminating one of several plan offerings or benefit packages. Although employees may voluntarily switch plans or benefit packages as permitted, an anti-abuse rule under the grandfather regulation applies to situations where an employer eliminates a plan option or benefit package.

Under the anti-abuse rule, the remaining plan offering/benefit package will lose grandfather status if:

- Employees are transferred into the remaining plan offering/benefit package; and
- Hypothetically amending the eliminated plan offering/benefit package (in effect on March 23, 2010) to match the remaining plan offering/benefit package would cause the eliminated offering /package to lose grandfather status, and there is no bona fide employment-based reason to transfer the employees into the remaining plan offering/ benefit package (changing the terms or cost of coverage is not a legitimate employment-based reason).[9]

My plan offers three benefit package options – a PPO, a POS arrangement, and an HMO. If the HMO relinquishes grandfather status, does that mean that the PPO and POS arrangement must also relinquish grandfather status?

No. The grandfather analysis applies on a benefit-package-by-benefit-package basis. In this situation, it is permissible to treat the PPO, POS arrangement, and HMO as separate benefit packages. Accordingly, if any benefit package ceases grandfather status, it does not affect the grandfather status of the other benefit packages.

What about HSAs and changing deductibles?

Although not specifically addressed in the June regulations, one can assume that a Health Savings Account (HSA) may lose grandfathered status if the employer increases the plan's deductible, even though the employee's share of the deductible does not change from the amount on March 23, 2010. Plan sponsors should seek legal advice before making any substantive modification to a HSA.

If a plan loses grandfather status, can the plan regain it?

Generally, once a plan loses grandfather status, it must implement all applicable PPACA requirements and cannot reclaim its grandfathered status.

How does grandfathering apply to collective bargaining agreements?

Insured plans maintained in accordance with one or more collective bargaining agreements ratified prior to March 23, 2010 can maintain grandfathered status at least until the date the last collective bargaining agreement in effect March 23, 2010 terminates. After that point, these plans are subject to the same rules as other health plans.[10] They will lose their grandfathered status if they have made or make any of the substantial changes described above. Collectively bargained grandfathered plans (insured and self-funded) are subject to the same requirements (including effective date requirements) under PPACA as other grandfathered plans. This means that collectively bargained health plans do not have the benefit of a delayed effective date for purposes of implementing applicable provisions. Retiree-only and “excepted health plans,” such as dental plans, long-term care insurance or Medigap, are exempt from the insurance reforms.

BenefitMall will keep you updated on any additional changes to the “grandfather” provisions issued from the federal government or the National Association of Insurance Commissioners (NAIC).

* * * * *

As more information becomes available, BenefitMall is committed to keeping you up-to-date in a timely manner. Visit www.BenefitMall.com to view past Legislative Alerts in the “Newsroom” section. Or, you may visit www.HealthcareExchange.com for blog posts, polls, surveys and numerous resources. If you have any questions, please contact your local BenefitMall Sales Team and they will be happy to assist you. Thank you for taking the time to read through this important notification.

Sincerely,

Michael Gomes
Executive Vice President

The views expressed in this legislative alert do not necessarily reflect the official policy, position, or opinions of BenefitMall. This update is provided for informational purposes. Please consult with a licensed accountant or attorney regarding any legal and tax matters discussed herein.

1 Federal Register vol. 75, no. 116, June 17, 2010, pg. 34562.

2 Idbid. pg. 34540.

3 Idbid. pg. 34549.

4 The updated announcement is posted at the U.S. Department of Health and Human Services website at http://www.hhs.gov/ociio/regulations/grandfather/factsheet.html. See also Federal Register vol. 75, no. 221, Nov. 17, 2010, pgs. 70114-70122.

5 Idbid. pg. 34554.

6 As noted in the regulations: “if the contribution rate is based on the cost of coverage, a group health plan or group health insurance coverage ceases to be a grandfathered health plan if the employer or employee organization decreases its contribution rate towards the cost of any tier of coverage for any class of similarly situated individuals by more than 5 percentage points below the contribution rate on March 23, 2010” Idbid. 34543.

7 Idbid. pgs. 34547 & 34560.

8 Idbid. pgs. 34541 and 34558.

9 Idbid. pgs. 34558-34559.

10 Idbid. pg. 34559.

www.benefitmall.com