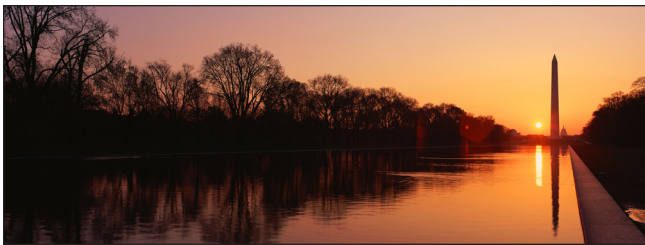




Healthcare Re-FORUM

Should My Plan Stay Grandfathered?

In past Re-Forum issues on grandfathering, we explained the different coverage changes groups or individuals may make without impacting the grandfathered status of a plan. In this issue, we look at the provisions that grandfathered plans are exempted from and the provisions with which they must comply.



Please Note: The Interim Final Rule (IFR) from the U.S. Departments of Treasury, Labor, and Health and Human Services (HHS) is still subject to amendment and elaboration after a 60-day public comment period that ends on August 16.

When Will Changes to Health Plans Occur?

Reforms take effect on a plan's first plan year beginning on or after September 23, 2010. The plan year is not necessarily when benefits change or when coverage renews. For many plans, the first plan year will be January 1, 2011. As noted in *Healthcare Re-Forum: Issue No. 12*, a grandfathered plan is one that was in existence on or before March 23, 2010.

Grandfathered Plans Are Exempt from the Following:

- The requirement that preventive services be covered without cost-sharing
- The prohibition of discrimination in favor of highly compensated individuals
- The requirement that plans provide their enrollees internal and external appeals of claims denials (many group health plans must already provide internal appeals under ERISA, and most states require that fully insured plans offer external review of denied claims)
- New HHS reporting requirements about plan efforts to improve participant health, safety and wellness, and quality-of-care improvement activities (effective 2010)

- New HHS reporting requirements about claim payment policies, enrollment/disenrollment, claim denials and cost-sharing (effective 2012)
- Coverage for adult children with other employment-based coverage available
- Patient protection requirements:
 - Mandating coverage of emergency services without prior approval and in-network requirements
 - Allowing the designation of a participating primary care provider and pediatrician
 - Prohibiting the required approval or referral to see an OB-GYN
- The requirement that individual and small group plans cover federally defined “essential health benefits” (effective 2014)
- The limit on out-of-pocket expenditures to the amounts now permitted for high-deductible health plans offered with a health savings account (\$5,950 for individual coverage and \$11,900 for family coverage) (effective 2014)
- The requirement that small group health plans limit deductibles to \$2,000 for single coverage and \$4,000 for family coverage (effective 2014)
- The requirement for coverage of certain clinical trials (including cancer clinical trials) (effective 2014)
- The restrictions on varying premiums charged for health plan coverage in the individual or small group market only by individual or family coverage, rating area, age and tobacco use, subject to certain restrictions (effective 2014)

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- Non-discrimination based on a provider who is acting within his/her license (e.g., if an OB-GYN is covered, a plan may also have to cover midwives under this provision) (effective 2014).

Provisions that Apply to Grandfathered Plans and New Plans

- Compliance with medical loss ratio requirements (fully insured plans only)
- The prohibition against waiting periods in excess of 90 days (effective 2014)
- The prohibition of lifetime limits
- The ban on rescissions except in the case of fraud
- The requirement that plans cover adult children up to age 26 (however, grandfathered group plans do not need to cover adult children if they are eligible for coverage under another employer-sponsored group health plan)
- Prohibition of pre-existing condition exclusions for those under age 19
- Elimination of restricted annual limits on essential benefits

The agencies responsible for the IFR on grandfathering estimate that about 66 percent of small employers (fewer than 100 employees) and 45 percent of large employers (100 or more employees) will relinquish grandfathered status by 2013. In the individual market, the agencies estimated that between 40 percent and 67 percent of health plans will relinquish grandfathered status by 2013.

Next Steps for Plan Sponsors

Plan sponsors should consider the following:

- Plan sponsors should evaluate their current plan to determine whether the benefits of maintaining grandfathered plan status outweigh the restrictions on plan design and cost-sharing changes imposed by the regulations.
- Plan sponsors may want to consider alternative combinations of changes that may effectively control costs while maintaining grandfathered status. For example, an increase in a deductible over the allowed amount may cause a loss of grandfathered status. However, a plan sponsor might consider increasing the deductible by a lesser amount and increasing the out-of-pocket maximums or co-payments, or decreasing the employer's share of the premium in a way that recognizes the prescribed limitations, but does not relinquish grandfathered status.
- Plan sponsors that decide to retain the grandfathered status of their group health plan should carefully document the plan in effect on the grandfather date (March 23, 2010) and include the notice about grandfathered status in plan materials distributed to participants. (A model notice is included as part of the IFR.)

Future Topics:

- Establishment of the Web Portal
- Review of Preventive Services (New IFR)
- Medical Loss Ratios
- New W-2 Reporting Requirements