

What you need to know about GRANDFATHERING your health plan

The phrase “the Secretary shall...” appears over 1,000 times in the healthcare reform act, often followed by a directive that requires the Secretary of Health and Human Services to develop specific regulations and guidance in order to implement the new law. This means that much of the nuts and bolts of healthcare reform was not included in the act. As the additional guidance and regulations are released, there is a lot to digest as it relates to this new law and what it means to you. What I will attempt to do on a regular basis is to grab the most pertinent information, boil it down, and provide helpful, practical information and advice.

What is grandfathering?

When the healthcare reform bill was being debated, President Obama promised, "If you like your health care plan, you can keep your health care plan." That's what “grandfathering” is all about – keeping your current health plan. The idea behind grandfathering is exempting plans from having to comply with certain provisions of the new law and allowing them to remain *generally* the same as they were prior to the enactment of the reform law. Grandfathering allows plans to avoid immediate application of some of the new rules; however, the exception does not apply to all of the new rules.

To grandfather or not to grandfather your current health plan?

The real questions are:

1. What types of changes will cause you to lose your grandfathered status?

A grandfathered plan is defined as one that was in existence on March 23, 2010, or the date the healthcare reform bill was passed. In order to maintain grandfathered status, a health plan cannot do any of the following:

- Reduce or eliminate benefits to diagnose or treat a particular condition (i.e. diabetes).
- Increase coinsurance rates (i.e. raising an individual's coinsurance requirement from 20% to 25%).
- Increase a deductible or out-of-pocket maximum by more than medical inflation (published by the DOL) plus 15%.
- Increase a copayment by more than medical inflation plus 15% (or, if greater, \$5 plus medical inflation).
- Decrease the employer's contribution rate towards the cost of coverage by more than 5%.
- Implement or reduce an annual limit on the dollar value of all benefits (unless you are replacing a lifetime dollar limit with an annual dollar limit at least as high as the lifetime limit).
- Force employees to move to a grandfathered plan with lesser benefits.

Please note: The Departments of Health and Human Services, Labor, and the Treasury are considering the impact of changes in plan structure (i.e. switching from fully insured to self-funded), changes in a provider network, and changes in a prescription drug formulary. Further regulatory guidance will specify if these changes will affect the grandfathered status of a plan.

2. Does it really make sense to stay grandfathered?

The short answer that most benefits professionals are giving is the following: Unless you have a discriminatory plan either in contributions or benefit levels and want to keep this discriminatory plan, you will most likely find it necessary to do one of the things above to keep the cost of your plan reasonable – thus becoming a non-grandfathered plan. Below please find a chart of the new coverage mandates effective for plan years beginning on or after September 23, 2010. As you will see, half of these mandates are applicable to grandfathered plans. The others are questionable as to whether their value is significant enough to make a group consider forgoing controlling their health care costs by implementing the strategies in the bullets above.

2010/2011 New Coverage Mandates

New Coverage Mandate	Applicable to Grandfathered Plans?
No pre-existing conditions for children under the age of 19	Yes
No lifetime or annual dollar limits on essential health benefits	Yes
Adult child coverage up to age 26	Yes*
No rescissions (except for fraud or misrepresentation)	Yes
First dollar preventive health care coverage	No
Internal and external appeals	No
Mandated patient protections	No
Non-discrimination rules extended to insured plans	No

* Until 2014, grandfathered plans are not required to offer coverage if the dependent is eligible for another employer-sponsored health plan other than that of a parent.

Summary

In order to control their healthcare costs, most employers will need to increase deductibles and co-insurances, and/or ask the employees to pay a little bit more of the cost of the health plan. Of course, now you know that each of these actions will put you in a non-grandfathered status, thus making you comply with all of the provisions of the new law as we know it today.