



The Vita Viewpoint Important Information for Decision Makers

“Grandfathered” Health Plans Under The Patient Protection and Affordable Care Act

Overview

Today the U.S. Departments of Health and Human Services (HHS), Labor, and Treasury issued [interim final regulations](#) implementing the rules for group health plans and health insurance coverage under provisions of the Patient Protection and Affordable Care Act, regarding the status of a “grandfathered” health plan. This is important as “grandfathered” plans are exempt from some of the new requirements put forth in the Patient Protection and Affordable Care Act. To be a “grandfathered” health plan, a group health plan must have been in effect on March 23, 2010, the date of enactment.

The Details

Provisions not required of a “grandfathered” plan:

- Grandfathered plans do not have to provide the specified preventive care that other group health plans must provide. These preventive care services include immunizations and screenings that must be provided with no cost-sharing to the participant.
- Grandfathered plans do not have to provide emergency services without prior certification and do not have to allow out-of-network expenses under the same cost structure applicable to in-network emergency services.
- Grandfathered plans are not required to provide an individual with the choice of a primary care physician, do not need to permit an individual to choose a pediatrician as a primary care physician, and do not need to permit women direct access to an obstetrician or gynecologist.
- Grandfathered plans that are insured plans will not be subject to the nondiscrimination rules of Internal Revenue Code Section 105(h). These rules prohibit plans from discriminating in favor of highly compensated employees as to eligibility to participate or benefits provided. Previously, Code Section 105(h) applied only to self-funded health plans, but now the Act expands the application of these rules to include all insured plans that are not “grandfathered.”
- Grandfathered plans are exempt from the requirement that group health plans must establish and maintain a claims and appeal process that includes external review.
- Grandfathered plans can continue to exclude coverage for a treatment due to it’s being part of a clinical trial.
- Grandfathered plans will not need to provide annual reports to the Secretary of Health and Human Services regarding health care quality and wellness programs.

Losing “Grandfathered” Status

If significant changes are made to a grandfathered plan, the health plan's grandfathered status will be lost and the plan will be subject to all of the provisions listed above. In order to maintain its grandfathered status, grandfathered plans:

- **Cannot Significantly Cut or Reduce Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Cannot Increase Co-Insurance.** Co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this co-insurance percentage.
- **Cannot Significantly Raise Co-Payment Charges.** Compared with the copayments in effect on March 23, 2010, grandfathered plans will be able to increase those co-payments by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raises its copayment from \$30 to \$50 over the next 2 years, it will lose its grandfathered status.
- **Cannot Significantly Raise Deductibles.** Many plans require patients to pay the first \$250, \$500, \$1,000, etc., of expenses incurred in a calendar year. Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase their deductibles by a percentage equal to medical inflation plus 15 percentage points. For example, assuming medical costs have increased on average 4% to 5%, this formula would allow deductibles to increase by 19% to 20% between 2010 and 2011, or by 23% to 25% between 2010 and 2012.
- **Cannot Significantly Lower Employer Contributions.** Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points.
- **Cannot Add or Decrease the Annual Limit on What the Insurer Pays.** Plans cannot decrease any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit.
- **Cannot Change Insurance Companies.** If an employer decides to buy insurance for its workers from a different insurance company, the new plan will not be considered a grandfathered plan. This does not apply when employers that are self-funded switch plan administrators or to employers who have collective bargaining agreements.

How Employers Will Be Impacted

A large portion of employers (especially those with rich plans and low employee contributions) will find it hard to maintain their grandfathered status as they look for ways to decrease their overall health insurance costs. Employers looking to reduce costs by making plan or carrier changes will find themselves needing to adopt a product with a higher baseline cost (the non-grandfathered variety). Then, any changes in copays, deductibles, coinsurance, and/or contributions will be applied to that more expensive plan design

***For questions or additional information, please contact
Vita Benefits Group at (650) 968-8811.***