



Health Reform Update – Interim Final Grandfather Rules Now Issued

First there was a leak, but now it is official....

Earlier today, June 14, 2010, the IRS issued final and proposed regulations for group health plans and health insurance coverage relating to grandfathered plan status under the Patient Protection and Affordable Care Act. The regulations were jointly issued with the Employee Benefits Security Administration and the Office of Consumer Information and Insurance Oversight in the Department of HHS. These rules will be published in the June 17 Federal Register. A copy of the Final Interim Grandfather Rules can be found on our website: [http://cdn.dreamingcode.com/public/109/Final Interim Grandfather Rules-109-951-1.pdf](http://cdn.dreamingcode.com/public/109/Final%20Interim%20Grandfather%20Rules-109-951-1.pdf).

Summary of Events that Trigger Loss of Grandfather Status

The interim final regulations provide that a group health plan or health insurance coverage no longer will be considered a grandfathered health plan if a plan sponsor or an issuer:

- Eliminates all or substantially all benefits to diagnose or treat a particular condition. The elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition;
- Increases a percentage cost-sharing requirement (such as coinsurance) above the level at which it was on March 23, 2010;
- Increases fixed-amount cost-sharing requirements other than copayments, such as a \$500 deductible or a \$2,500 out-of-pocket limit, by a total percentage measured from March 23, 2010 that is more than the sum of medical inflation and 15 percentage points.
- Increases copayments by an amount that exceeds the greater of: a total percentage measured from March 23, 2010 that is more than the sum of medical inflation plus 15 percentage points, or \$5 increased by medical inflation;
- For a group health plan or group health insurance coverage, an employer or employee organization decreases its contribution rate by more than five percentage points below the contribution rate on March 23, 2010; or

- With respect to annual limits (1) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, did not impose an overall annual or lifetime limit on the dollar value of all benefits imposes an overall annual limit on the dollar value of benefits; (2) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall lifetime limit on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010; or (3) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall annual limit on the dollar value of all benefits decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits).

Changing an insurance carrier or entering into a new insurance contract with the same carrier (not a renewal) after March 23, 2010 will be enough to lose grandfathered status. Changing an ASO vendor is OK and will not cause the loss of grandfathered status.

These rules apply separately to each benefit package made available under a group health plan or health insurance coverage.

Grandfathered Health Plan Document Retention and Disclosure Requirements

To maintain grandfathered health plan status under these interim final regulations, a plan or issuer must maintain records that document the plan or policy terms in connection with the coverage in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify its status as a grandfathered health plan. The records must be made available for examination by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

Plans or health insurance coverage that intend to be a grandfathered health plan, also must include a statement, in any plan materials provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, and that the plan or coverage is intended to be a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act. In these interim final regulations, the Departments provide a model statement plans and issuers may use to satisfy the disclosure requirement.

Here is the model statement as it appears in the draft regulation:

This [group health plan or health insurance issuer] believes this [plan or coverage] is a "grandfathered health plan" under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any

cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.

Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information]. [For ERISA plans, insert: You may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1-866-444-3272 or www.dol.gov/ebsa/healthreform. This website has a table summarizing which protections do and do not apply to grandfathered health plans.] [For individual market policies and nonfederal governmental plans, insert: You may also contact the U.S. Department of Health and Human Services at www.healthreform.gov.]

Please do not hesitate to contact your SBA consultant with any questions:
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Our special thanks to Rick Szczebak for writing this alert.

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