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FAQs on Grandfathered Health Plans

A grandfathered group health plan is a plan in existence as of March 23, 2010 that has not made changes which significantly reduce benefits or increase out-of-pocket spending for individuals covered under the plan. If a plan loses its grandfathered status, it may no longer be exempt from certain requirements under Health Care Reform.

Q. The Departments' interim final grandfather regulations provide that, to maintain status as a grandfathered health plan, a group health plan or health insurance coverage must include a statement, in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan. Must a grandfathered health plan provide the disclosure statement every time it sends out a communication, such as an EOB (explanation of benefits), to a participant or beneficiary? If not, how does a grandfathered health plan comply with this disclosure requirement?

A. A grandfathered health plan will comply with this disclosure requirement if it includes the model disclosure language provided in the Departments' interim final grandfather regulations (or a similar statement) whenever a summary of the benefits under the plan is provided to participants and beneficiaries. For example, many plans distribute summary plan descriptions upon initial eligibility to receive benefits under the plan or coverage, during an open enrollment period, or upon other opportunities to enroll in, renew, or change coverage. While it is not necessary to include the disclosure statement with each plan or issuer communication to participants and beneficiaries (such as an EOB), the Departments encourage plan sponsors and issuers to identify other communications in which disclosure of grandfather status would be appropriate and consistent with the goal of providing participants and beneficiaries information necessary to understand and make informed choices regarding health coverage.

Q. Our company sponsors a group health plan for our employees that has been in effect since March 23, 2010. We and the issuer of the policy under the plan are considering whether we could make various changes to the plan without losing grandfathered status. If we avoid making any of the six specific changes described in paragraph (g)(1) of the interim final regulations relating to grandfathered health plans, are there other changes to our existing plan/ policy that we need to be concerned could cause it to relinquish grandfathered status?

A. No. Paragraph (g)(1) of the Departments' interim final grandfather regulations provides that any of six changes (measured from March 23, 2010) are considered to change a health plan so significantly that they will cause a group health plan or health insurance coverage to relinquish grandfather status. Briefly stated, these six changes are:

1. Elimination of all or substantially all benefits to diagnose or treat a particular condition.

2. Increase in a percentage cost-sharing requirement (e.g., raising an individual's coinsurance requirement from 20% to 25%).

3. Increase in a deductible or out-of-pocket maximum by an amount that exceeds medical inflation plus 15 percentage points.

4. Increase in a copayment by an amount that exceeds medical inflation plus 15 percentage points (or, if greater, $5 plus medical

inflation).

5. Decrease in an employer's contribution rate towards the cost of coverage by more than 5 percentage points.

6. Imposition of annual limits on the dollar value of all benefits below specified amounts.

For a plan that is continuing the same policy, these six changes are the only changes that would cause a cessation of grandfather status under the interim final regulations.

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Q. My plan terms include out-of-pocket spending limits that are based on a formula (a fixed percentage of an employee's prior year compensation). If the formula stays the same, but a change in earnings results in a change to the out-of-pocket limits such that the change exceeds the thresholds allowed under paragraph (g)(1) of the interim final regulations relating to grandfathered health plans, will my plan relinquish grandfather status?

A. No. The Departments have determined that if a plan or coverage has a fixed-amount cost-sharing requirement other than a co-payment (for example, a deductible or out-of-pocket limit) that is based on a percentage-of-compensation formula, that cost-sharing arrangement will not cause the plan or coverage to cease to be a grandfathered health plan as long as the formula remains the same as that which was in effect on March 23, 2010. Accordingly, if the percentage-of-compensation formula for determining an out-of pocket limit is unchanged and an employee's compensation increases, then the employee could face higher out-of-pocket limit, but that change would not cause the plan to relinquish grandfather status.

Q. For purposes of determining whether an insured group health plan is a grandfathered health plan, what steps should issuers and employer plan sponsors take to communicate regarding changes to the plan sponsor's contribution rate?

A. The Departments have determined that, until the issuance of final regulations, they will not treat an insured group health plan that is a grandfathered plan as having ceased to be a grandfathered health plan immediately based on a change in the employer contribution rate if the employer plan sponsor and issuer take the following steps:

- Upon renewal, an issuer requires a plan sponsor to make a representation regarding its contribution rate for the plan year covered by the renewal, as well as its contribution rate on March 23, 2010 (if the issuer does not already have it); and
- The issuer's policies, certificates, or contracts of insurance disclose in a prominent and effective manner that plan sponsors are required to notify the issuer if the contribution rate changes at any point during the plan year.

Q: A plan operating on a calendar plan year is considering an amendment to plan terms that will exceed the thresholds described in paragraph (g)(1) of the interim final regulations and cause it to relinquish grandfather status. If the plan sponsor decides to adopt this amendment on July 1, 2011, and the change becomes effective for the plan year beginning on January 1, 2012, at what point in time does the plan relinquish grandfather status?

A: A plan or coverage will cease to be a grandfathered health plan when an amendment to plan terms, which exceeds the thresholds described in paragraph (g)(1) of the interim final regulations, becomes effective – regardless of when the amendment is adopted. Therefore, in this example, the plan would cease to be a grandfathered health plan on January 1, 2012, the first day of the first plan year for which the change is effective.

Q: A plan operating on a calendar plan year is considering an amendment to plan terms that will cause it to relinquish grandfather status, but wants the amendment to become effective before the first day of the next plan year. If the plan sponsor decides to make this amendment effective on July 1, 2011, does the plan relinquish grandfather status in the middle of the plan year?

A: Yes. A plan or coverage will cease to be a grandfathered health plan when a plan amendment becomes effective. Therefore, if a plan sponsor chooses to make an amendment to plan terms effective in the middle of a plan year, the plan will cease to be a grandfathered health plan at that time. If a plan sponsor wishes to avoid relinquishing grandfathered status in the middle of a plan year, any changes that will cause a plan or coverage to relinquish grandfather status should be made effective the first day of a plan year that begins after the change is adopted.