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Grandfathered Plans

A "grandfathered plan" is a group health plan in existence as of March 23, 2010 (the date Health Care Reform was signed into law) that has not made certain significant changes that either reduce benefits or increase out-of-pocket costs for individuals covered under the plan. (The date a particular employee joins a plan does not necessarily reflect the date the plan was created. New employees and new family members can be added to grandfathered group plans after March 23, 2010.)

Why is Grandfathered Status Significant?
Grandfathered plans do not have to comply with certain requirements under Health Care Reform. However, a plan may lose its "grandfathered" status if it makes certain significant changes. If a plan loses its grandfathered status, it will need to come into compliance with those requirements from which it was previously exempt.
A health plan must disclose in its plan materials whether it considers itself to be a grandfathered plan and provide certain other information in the Disclosure of Grandfathered Status.

Requirements for Grandfathered Plans

Key Requirements That DO Apply to Grandfathered Plans
Many of the changes under Health Care Reform apply to all plans, regardless of grandfathered status. Key requirements that grandfathered group health plans must comply with include:

- **90-Day Limit on Waiting Periods.** In plan years beginning on or after January 1, 2014, group health plans may not apply any waiting period that exceeds 90 days. A waiting period is the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of the plan can become effective.
- **Dependent Coverage to Age 26.** Grandfathered group health plans that offer dependent coverage must continue to make the coverage available until a child reaches the age of 26, unless the adult child has another offer of employer-based coverage (such as through his or her job). Beginning in 2014, a child up to age 26 can stay on the parent's plan even if the adult child is eligible to enroll in another employer-sponsored health plan.
- **Elimination of Preexisting Condition Exclusions.** Group health plans cannot limit or deny benefits or deny coverage for a child younger than age 19 on the basis of a preexisting condition (a health problem that developed before the child applied to join the plan). Effective for plan years beginning on or after January 1, 2014, this rule applies to both children and adults.
- **Medical Loss Ratio (MLR) Rebates.** Employers who sponsor group health plans and receive rebates, as a result of insurance companies not meeting specific standards related to how premium dollars are spent, may be responsible for distributing the rebates to eligible plan enrollees annually.
- **No Lifetime or Annual Limits.** Group health plans may not impose lifetime limits on coverage of "essential health benefits." Annual limits on essential health benefits are prohibited for plans issued or renewed beginning January 1, 2014. Until then, annual limits are being phased out according to the limits set by law.
- **Prohibition on Rescission of Coverage.** Group health plans are not permitted to rescind health coverage (meaning declare the coverage invalid from the time of enrollment), except in the case of fraud or intentional misrepresentation by a person covered under the plan.
- **Summary of Benefits and Coverage (SBC).** Effective for plan years and open enrollment periods beginning on or after September 23, 2012, group health plans and health insurance issuers offering group coverage are required to provide participants and beneficiaries with a summary of benefits and coverage at several points during the enrollment process and upon request.

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Key Requirements That DO NOT Apply to Grandfathered Plans
Grandfathered group health plans are not required to comply with certain changes under Health Care Reform, including requirements relating to:

- Coverage of Preventive Services Without Cost-Sharing
- Essential Health Benefits Coverage
- Guaranteed Availability and Renewability of Coverage and Limits on Premium Variations
- Providing Certain Internal Appeals and External Review Rights
- Selection of Health Care Providers and Access to Emergency Care

Maintaining Grandfathered Status

Employers and group health plans are allowed to make "routine" changes without losing grandfathered status, such as cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, or making changes to comply with state or other federal laws. Note that **premium changes are not taken into account** when determining whether or not a plan is grandfathered. Plans may lose "grandfathered" status if they make significant changes that **reduce benefits or increase costs** for those enrolled in the plan. In order to maintain grandfathered status, group health 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 Raise Co-Insurance Charges.** Typically, 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 percentage.
- **Cannot Significantly Raise Co-Payment Charges.** Frequently, plans require patients to pay a fixed-dollar amount for doctor's office visits and other services. Compared with the copayments in effect on March 23, 2010, grandfathered plans will be able to increase those co-pays 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 bills they receive each year (for example, the first $500, $1,000, or $1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points.
- **Cannot Significantly Lower Employer Contributions.** Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).
- **Cannot Add or Tighten an Annual Limit on What the Insurer Pays.** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten 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 (which is more protective of high-cost enrollees).

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» **May Change Insurance Companies.** An employer with a group health plan can switch plan administrators as well as buy insurance from a different insurance company without losing grandfathered status—provided the plan does not make any of the prohibited changes to its cost or benefits structure.

Additional Requirements to Maintain Grandfathered Status—Disclosure and Recordkeeping
To maintain status as a grandfathered health plan, a group health plan must include a statement indicating the plan believes it is a grandfathered plan, along with contact information for questions and complaints, in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan. **The U.S. Department of Labor provides a model notice that may be used to satisfy this requirement.**

In addition, to maintain status as a grandfathered health plan, a plan must maintain records documenting the terms of the plan that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. Such documents could include plan documents, certificates or contracts of insurance, summary plan descriptions (SPDs), documentation of premiums or the cost of coverage, and documentation of required employee contribution rates. These records must be maintained for as long as the plan takes the position that it is a grandfathered health plan.