



Health Care Reform Update

What You Need to Know Now



Health Care Reform Bulletin - The “Grandfather” Clause – Updated 11/16/10

HCR News!

Banyan Consulting LLC is pleased to present our new Health Care Reform series.

Over the next months and years, employers will be faced with numerous changes, many of which require regulatory clarification. We'll use this venue to keep you up to date, and on target with decisions that affect your plans.

HCR Update

What You Need to Know Now About: The “Grandfather” Clause

Under the Health Care Reform law, existing, or “grandfathered” health plans are exempt from several consumer protections in the law that are going into effect for new plan years beginning after 9/23/2010. Congress included this grandfather clause in the bill to give employers and insurers time to transition to the new law. On 6/14/2010, The Department of Health and Human Services (HHS) issued guidance on what flexibilities exist for employers to maintain their grandfathered status.

1. Why did Congress enact the “Grandfather” Clause?

Primarily it was to give employers and insurers time to transition to the new law. It also addresses President Obama’s oft-repeated pledge, “Under health reform, Americans who like their health care can keep it.....”

2. What currently qualifies a plan as a grandfathered plan?

Grandfathered health plans are defined as an employer sponsored health plan, either fully-insured or self-funded, that was in place on 3/23/2010, the date the Health Care Reform Act was signed into law.

Collectively bargained multi-employer and single employer plans in effect on March 23, 2010 are not subject to the Reform Act rules until the date on which the last of the collective bargaining agreements relating to the coverage terminates. At that time, a collectively bargained plan is then subject to health care reform rules and, assuming it remains grandfathered (based on the rules then in effect), it would have to comply with the requirements for grandfathered plans. The Reform Act specifically provides, however, that a collectively bargained plan is permitted to be amended early for some or all of the Reform Act's rules. This voluntary amendment will not be treated as a termination of the collective bargaining agreement which might otherwise subject the plan to an earlier Reform Act compliance deadline.

3. What are the benefit plan decisions that I cannot make that would jeopardize losing the plan's grandfathered status?

On 6/14/2010, HHS issued guidance on this question. For all employer sponsored health plans regardless of size, the following rules apply:

"Grandfathered" plans <u>CANNOT</u>	Rules
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.
Raise Co-Insurance Charges	For example, if a plan requires a 20% participant coinsurance, plans cannot increase this percentage.
Significantly Raise Co-Pay Charges	<p>Can increase co-pays by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15%.</p> <p>For example, assuming medical inflation is 4% and your co-pay for 2010 is \$30:</p> <p>4% plus 15% equals 19% in 2010, then the co-pay cannot increase more than 19% or to a maximum of \$35 in 2011. Beginning in 2012, only medical inflation is added so assuming medical inflation is again 4%, then the 2012 percentage allowed is 23% (19% + 4%) above the 2010 co-pay for a maximum co-pay of \$37</p>
Significantly Raise Deductibles	Same percentage formula (medical inflation + 15%) as Co-Pay Charges applies.
Significantly Lower Employer Contributions	Plans cannot decrease the percent of premiums the employer pays by more than 5%.
Add or Tighten an Annual Limit on What the Insurer Pays	Plans cannot tighten any annual limits that are already in place. Plans can add annual limits, but, the annual limit must be at least as high as the lifetime limit.
Change Insurance Companies ***	Does not apply to self-insured employers that switch plan administrators, or to collective bargaining agreements.

***** Effective 11/17/2010, this rule has been amended and plan sponsors can change insurance companies without losing grandfathered status. Plan sponsors can also change their funding methodology for the plan from self-funded to fully-insured without losing grandfathered status. The DOL is still taking comments on whether changes in drug formularies, medical provider networks, or changing funding from fully-insured to self-funded will require plan sponsors to forfeit a plan's grandfathered status.**

4. A medical inflation trend of 4%? I have been seeing double-digit annual medical trends from my carrier(s) the past few years. Should I anticipate more than 4%?

No. HHS will be calculating the medical inflation based on the Consumer Price Index. Over the past few years, medical inflation has averaged increases between 4%-5%. The annual medical trends used by all insurance carriers factors in many components. One of these components is medical inflation, but, other components such as aging of the general population, increases in medical technology, geographic location, adverse selection, etc., also are factored in.

5. How does having a grandfathered plan impact the new Health Care Reform provisions for new plan years beginning after 9/23/2010?

There are certain Health Care Reform provisions that will impact plan sponsors with the next new plan year beginning 9/23/2010. Most involve changes in the benefit levels or eligibility. Some involve changes in reporting requirements. Most of these provisions are mandatory for all health plans, even grandfathered, but, there are several provisions that a grandfathered can choose not to implement.

The provisions for the start of the next new plan year beginning 9/23/2010 are:

Reform Type	Provision	Description	Applicable to Grandfathered Plans
Benefit/Eligibility	Non-discrimination testing	Coverage testing of highly compensated individuals (already applies to self-insured plans)	No
Benefit/Eligibility	Appeals and external reviews	Development of internal and external appeals process.	No
Benefit/Eligibility	Preventive Care	No required cost sharing for the participant.	No
Benefit/Eligibility	Emergency services	No prior authorization required, mandates coverage at the in-network level regardless of	No

		provider utilized.	
Benefit/Eligibility	Choice of Primary Care Physician	Permits participants to designate any participating physician as their PCP.	No
Benefit/Eligibility	OB/Gyn services	No authorization or referral required as long as services are provided by a participating physician.	No
Reporting	Annual reports to the Secretary of Health and Human Services	Report is related to healthcare quality and wellness programs. Report will be completed by insurance carrier, if appropriate.	No
Benefit/Eligibility	Dependent coverage to age 26	Effective for plan years after 9/23/2010, however, plan sponsors may adopt now.	Yes
Benefit/Eligibility	No pre-existing conditions	Effective for children under the age of 19 for plan years after 9/23/2010. Effective for all participants in 2014.	Yes
Benefit/Eligibility	Rescission of coverage	No rescission permitted except in cases of fraud or intentional misrepresentation of a material fact	Yes
Benefit/Eligibility	Coverage limitations	No lifetime limitations for plan years on or after 9/23/2010; no annual limits (except reasonable limits until 2013-defined by HHS) for plan years on or after 9/23/2010.	Yes
Reporting	W-2 reporting	Effective 1/1/2011. Employer reporting of "cost of benefits" provided to employee. Definition of "cost of benefits" not yet provided.	Yes

There are additional, future provisions that grandfathered plans may not be subject to such as:

Reform Type	Provision	Description	Applicable to Grandfathered Plans
Benefit/Eligibility	Essential benefits and cost sharing	Effective for plan years beginning on or after 1/1/2014. Limits the maximum out-of-pocket amounts to those of high-deductible health plans.	No
Benefit/Eligibility	Clinical trials	Coverage provided for participation in clinical trials. Still debate on when this provision	No

		will be effective. Most likely, not until 2014, but, may be sooner	
Reporting	Standardized benefit statements	HHS to develop standard by 3/23/2011; employers need to be compliant by 3/23/2012.	Yes
Reporting	Summary of Material Modifications	Provided to participants 60 days prior to effective date. Employers need to be compliant by 3/23/2012.	Yes
Benefit/Eligibility	Wellness programs	Applicable to plan years beginning on or after 1/1/2014. Programs that require satisfaction of a standard related to a health factor may provide premium reduction up to 30%.	Yes
Benefit/Eligibility	Limitations on waiting periods	Applicable to plan years beginning on or after 1/1/2014. Waiting periods may not exceed 90 days.	Yes
Benefit/Eligibility	Automatic enrollment	Effective date unclear. Assuming it will be 1/1/2014. Employers with 200+ employees must automatically enroll new full-time employees (subject to any waiting period) with proper notice. Employees may opt out if they have another source of coverage.	Yes
Reporting	Annual certification to IRS	Effective 2014. Certification will be used to enforce the individual mandate.	Yes
Reporting	Employer Notification to Employees of Exchanges	Effective beginning 3/1/2013.	Yes

6. Are there any Reporting & Disclosure requirements?

In the Department of Labor (DOL) interim final regulations released 6/14/2010, there are two disclosure steps a grandfathered health plan must complete. The first is a Record Keeping Requirement that mandates a plan sponsor:

- a) Maintain records documenting the terms of the plan or health insurance coverage in connection with the coverage in effect on 3/23/2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan; and
- b) Make such records available for examination upon request.

The second disclosure requirement is to issue a Grandfathered Health Plan Disclosure statement. This statement must be included 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 within the meaning of section 1251 of the Patient Protection and Affordable Care Act and must provide contact information for questions and complaints.

The DOL issued sample language for grandfathered health plan sponsors use. It is required that this statement be added to the health plan Summary Plan Description (SPD).

“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 of and do not apply to grandfathered health plans.]”

7. How is the DOL going to enforce the Grandfathered Clause? Will there be some type of annual reporting to the DOL to document any plan design changes made and to confirm that a grandfathered health plan has not lost its grandfathered status?

The DOL regulations do not specify any type of annual reporting requirements in order to enforce the Grandfathered Clause. The expectation is that, as with COBRA, violations of the clause will be handled through participant complaints.

8. My health plan renewed on 5/1/2010 so I will not have to implement the health care reform provisions until 5/1/2011. However, for the 5/1/2010 plan year we changed the coinsurance from paying 100% to paying 90% of the costs. Is the plan still grandfathered?

No. Although the DOL regulations were not issued until 6/14/2010, they clearly state that the plan design must be the same that was in effect 3/23/2010 with any changes limited to the ones noted in question #3. For collectively bargained plans, the effective date is the end of the current agreement instead of the 3/23/2010 date.

However, the DOL regulations also clearly state that for any changes that were made prior to the issuance of the interim final regulations on 6/14/2010 that a grace period is being provided to revoke or modify any changes adopted prior to 6/14/2010. To preserve grandfather status changes must be revoked, and the plan or health insurance coverage is modified, effective as of the first day of the first plan or policy year beginning on or after 9/23/2010 to bring the terms within the limits for retaining grandfather status as spelled out in the interim final regulations.

9. Are there any other potential limits on what a plan sponsor can do without jeopardizing the plan's grandfathered status?

Currently, the DOL is taking comments on 4 additional topics that might be regulated and may cause a plan to lose its grandfathered status. These are (1) changes in plan structure such as changing plan funding from fully-insured to self-insured, (2) changes in provider network, (3) changes in a prescription drug formulary, and (4) any other substantial plan design changes.

No timeline or deadline has been set for receipt of comments on these topics or on a final determination.

10. What do I need to do now?

- Assuming you qualify for the Grandfather Clause, prepare to implement the new rules that apply to you at the start of your next new plan year after 9/23/2010.
- Even if you are protected by the Grandfather Clause, you need to be aware of the Health Care Reform provisions that are not mandatory for

- you and you need to know how many of these will impact you if you lose your Grandfather status.
- Proceed with preparing for your next plan year like you have in the past, but, remain cognizant of the mandatory and non-mandatory provisions of the Grandfather Clause. HHS fully expects that, over time, most grandfathered employer sponsor health plans will lose their status. HHS is estimating that by 2013 (in advance of the establishment of the competitive Exchanges) that, at most, 66% of large employers (100+ participants) and 51% of small employers (<100 participants) will still have their grandfather status.
 - Health care reform is a constantly evolving topic that we are monitoring daily. HHS and the DOL are still in the process of developing structure to all the reforms signed into law on 3/23/2010. We cannot predict with complete certainty what the future may hold for health care reform in the form of new provisions or revisions. Please be aware that if you choose to relinquish your plan's grandfathered status, that you may be exposing the plan to future changes.

If you have any questions on this or any new health care reform regulation, please consult with your Banyan Consulting representative.