

Legislative Brief

Health Care Reform: Transition Relief Available For Grandfathered Plans



EXECUTIVE SUMMARY

The health care reform law exempts “grandfathered” plans from certain health care reform requirements, such as no cost-sharing for preventive care and other patient protections. If your company sponsored a plan on March 23, 2010, it may be considered a grandfathered plan.

On June 14, 2010, the Departments of Health and Human Services (HHS), Labor and Treasury (the Departments) issued regulations regarding grandfathered plans and what changes can be made to these plans. The regulations include transition relief for certain changes made to plans prior to the regulations’ release date. In brief, the transition relief states that:

- Certain changes made prior to March 23, 2010, but not effective until afterward, will be considered part of the plan on March 23, 2010.
- Plans have a grace period to revoke or modify certain changes adopted before June 14, 2010.

The preamble to the regulations also suggests that changes to plans that are made in good faith and only modestly exceed the permissible level of changes may be disregarded for enforcement purposes if they were adopted before June 14, 2010.

This Midlands Financial Benefits, Inc. Legislative Brief summarizes the available transition relief. Please read below for more information.

BACKGROUND INFORMATION ON GRANDFATHERED PLANS

A grandfathered health plan is a group health plan or health insurance coverage in which an individual was enrolled on March 23, 2010, the date the health care reform law was passed. The law states that a grandfathered plan will retain its grandfathered status even if the covered individual renews the coverage after March 23, 2010, family members are allowed to enroll or new employees (and their families) are allowed to enroll.

The regulations regarding grandfathered plans essentially provide that plans will lose their grandfathered status if they choose to significantly cut benefits or increase out-of-pocket spending for consumers. Losing grandfathered status means that a plan would have to comply with additional health care reform requirements, such as first-dollar coverage of recommended prevention services and patient protections such as guaranteed access to OB-GYNs and pediatricians.

The starting point for analyzing whether a plan has lost grandfathered plan status is to consider the plan as it existed on March 23, 2010. The plan as it existed on that date will be the comparison for future plan changes. Changes made to the plan and effective before that date will not cause a plan to lose its grandfathered status because they are part of the plan on that date.

SUMMARY OF THE TRANSITION RELIEF

After the health care reform law was enacted, but before regulations were issued, plan sponsors had little information about what changes they could make to their plans and still maintain grandfathered status. The regulations provided needed information in this area, but many plan sponsors had to make decisions about their plans before the regulations were issued.

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The Departments recognized this uncertainty and acknowledged that plans may have needed to implement changes without knowing the rules. Accordingly, they have provided some transition relief, depending on when the changes were made.

Changes Made Prior to March 23, 2010

The regulations provide that if a group health plan (or health insurance issuer) makes certain changes to the terms of the plan or coverage, those changes will be considered part of the plan or coverage on March 23, 2010, even if they were not yet effective.

The specific changes are that may be made are:

- Changes effective after March 23, 2010 pursuant to a legally binding contract entered into on or before March 23, 2010.
- Changes effective after March 23, 2010 pursuant to a filing on or before March 23, 2010 with a state insurance department.
- Changes effective after March 23, 2010 pursuant to written amendments to the plan that were adopted on or before March 23, 2010.

Essentially, if a plan sponsor committed to making the changes, in a legally binding or documented way, before March 23, 2010, they are considered part of the plan on that date. Therefore, these changes will not cause a plan to lose grandfathered status.

Changes Made After March 23, 2010 and Before Regulations Issued

The regulations also provide transition relief for changes made to plans after the health care reform law was enacted on March 23, 2010 and before the regulations were available on June 14, 2010. If a group health plans or health insurance issuer made changes after March 23, 2010 that were adopted prior to June 14, 2010 and would cause the plan to lose grandfathered status, the plan has a grace period to revoke or modify the changes.

Under this rule, grandfathered status is preserved if the changes are revoked and the plan is modified, effective as of the first day of the first plan year beginning on or after **September 23, 2010**, to bring the terms of the plans within the limits for retaining grandfathered status.

For this purpose, changes are considered to be adopted before June 14, 2010 if the changes are effective before that date or if the changes are effective on or after that date pursuant to (a) a legally binding contract entered into before that date; (b) a filing before that date with a state insurance department; or (c) written amendments to a plan that were adopted before that date.

Modest Changes

As noted in the Executive Summary above, the preamble to the regulations also suggests that changes to plans that are made in good faith and only modestly exceed the permissible level of changes may be disregarded, for enforcement purposes, if they were adopted before June 14, 2010. The regulations give no further guidance on how it would be determined that changes only modestly exceed the permissible levels, so it would be difficult for plans to rely on this suggestion.

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