

Corporate & Financial Weekly Digest

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Health Care Reform: Guidance Issued Regarding "Grandfathered" Plan Status

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Certain provisions of the Patient Protection and Affordable Care Act (PPACA), as amended by the Health Care and Education Reconciliation Act of 2010, do not apply to "grandfathered" group health plans, or have a delayed effective date for such plans. A grandfathered group plan is generally a plan in which an individual was enrolled on March 23, 2010 (the date of PPACA's enactment). However, PPACA did not offer any insight on what would cause a plan to lose its grandfathered status, leading many employers to be hesitant to make any changes to their plans for fear of losing such status.

On June 14, the federal government issued guidance (Guidance) on grandfathered plan status, which, among other things, provides the reasons a plan in existence on March 23, 2010, will nonetheless lose its grandfathered status. Specifically, this status may be lost if:

- the plan eliminates all or substantially all benefits to diagnose or treat a particular condition;
- the plan increases a percentage cost-sharing requirement (e.g., coinsurance requirement);
- the plan increases a fixed-amount cost sharing requirement (e.g., deductible, out-of-pocket limit) other than a co-pay more than 15 percentage points over the medical inflation rate (e.g., a 36% deductible increase if medical inflation is 20%);
- the plan increases a fixed-amount co-pay more than certain thresholds over the medical inflation rate;
- the employer decreases its contribution rate more than five percentage points below its contribution rate as of March 23, 2010;
- the plan adds or decreases certain annual or lifetime limits; or
- the plan is not a collectively-bargained plan and enters into a new insurance policy, even if the new policy provides the same coverage and cost-sharing as the old insurance policy (policy renewal is not considered entering into a new policy).

Because the changes above are the only changes that may cause a plan to lose its grandfathered status, a grandfathered plan may generally modify its provisions to comply with federal/state law or voluntarily comply with PPACA, or change its third-party administrator.

In addition, the Guidance imposes disclosure and recordkeeping requirements on a plan in order to maintain its grandfathered status. All plan materials provided to plan participants describing the plan's benefits must include a statement that the plan is grandfathered and list contact information for questions and complaints (the Guidance provides model language). To comply with the recordkeeping requirement, the plan must maintain records documenting the terms of the plan's coverage as of March 23, 2010 (as well as any other supporting documentation) and make those records available for examination upon request.

The Guidance can be found [here](#).