



Client Alert

June 23, 2010

Proposed Regulations On Grandfathered Plans Under New Health Care Law Issued

The Departments of Labor, Health and Human Services and the Treasury have proposed "interim final" regulations defining the circumstances under which an existing health care plan will lose its status as a "grandfathered plan" under the new health care law. The Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act imposes certain mandates on health care plans. Plans in existence on March 23, 2010, are exempted from some of these mandates, such as the requirement to offer preventive care without cost-sharing. These plans are known as "grandfathered plans."

The proposed rules specify that a plan cannot do **any** of the following and retain its grandfathered status:

- Change insurance companies if the plan is insured. It does not matter that there are no material changes in benefits.
- Cut or "significantly" reduce benefits to diagnose or treat a particular condition.
- Raise co-insurance charges. Co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20 percent of a hospital bill). Grandfathered plans cannot increase this percentage.
- Raise co-payment charges by more than a certain amount. Co-payments are fixed-dollar amounts such as a doctor's office visit and other services. 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 two years, it will lose its grandfathered status.
- Raise deductibles above a certain percentage. Grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15 percentage points.
- Lower employer contributions by more than a certain level. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than five percentage points (for example, decrease their own share and increase the workers' share of premium from 15 percent to 25 percent).
- Add or tighten annual limits on benefits.

A plan does not lose its grandfathered status merely because new participants join the plan. The proposed regulations, however, include provisions aimed at preventing a plan from claiming grandfathered status by merging into a grandfathered plan or by transferring participants from a non-grandfathered plan into a grandfathered plan.

If after March 23, 2010, but before June 14, 2010, a plan has made a change that would cause it to lose its grandfathered status under these rules, the plan will not lose its status if it revokes the change or modifies it so as not to violate these rules effective as of the first plan year beginning on or after September 23, 2010.

There are also special rules for *insured* collectively-bargained plans. Such a plan may retain its grandfathered status until the last of the collective bargaining agreements relating to the coverage in effect on March 23, 2010, expires even if the plan would otherwise lose its grandfathered status under these proposed regulations. Note the regulations take the position that this special grandfather rule does NOT apply to *self-funded* collectively-bargained plans.

Finally, grandfathered plans must include in plan materials a statement, acceptable to the government, that they are grandfathered. The proposed regulations contain a model statement. In addition, a plan must maintain and make available for inspection documentation demonstrating its grandfathered status.

We believe that preservation of an existing health care plan's grandfathered status will generally be beneficial. If you need assistance in analyzing how to do so, please contact one of the members of the Armstrong Teasdale Tax Department:

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