



## Grandfathered Plan Status

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## Background

- † December 24, 2009, the Senate passed the Patient Protection and Affordable Care Act (H.R. 3590) (the "Affordable Care Act")
- † March 21, 2010, the House of Representatives passed the Patient Protection and Affordable Care Act (H.R. 3590) and the Health Care and Education Affordability Reconciliation Act of 2010 (H.R. 4872) (the "Reconciliation Act")
- † March 25, 2010, the Reconciliation Act was passed by the Senate and, as revised by the Senate, passed by the House
- † March 23, 2010, President Obama signed the Affordable Care Act
- † March 30, 2010, President Obama signed the Reconciliation Act
- † June 14, 2010, the Departments of the Treasury, Labor and Health and Human Services issued interim final regulations regarding grandfathered health plan status

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## What is a Grandfathered Plan?

- † Section 1251(a) of the Affordable Care Act provides that there will be no changes required with respect to a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment (i.e., March 23, 2010)
- † Such plans are "grandfathered" and will continue to be treated as grandfathered plans even if coverage is renewed after March 23, 2010
- † New employees and new family members may be added to a grandfathered plan without it losing grandfathered status

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**Benefits of Being a Grandfathered Plan**

- ✦ Grandfathered plans are not subject to many of the requirements set forth in Subtitles A and C of the Affordable Care Act and are deemed to constitute “minimum essential coverage” under new Internal Revenue Code section 5000A
- ✦ However, pursuant to the provisions of the Reconciliation Act, certain requirements set forth in Subtitles A and C of the Affordable Care Act do apply to grandfathered plans

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**Provisions of Subtitles A and C Applicable to Grandfathered Plans**

- ✦ Effective first plan year beginning on or after September 23, 2010
  - > Coverage of adult children to age 26
  - > No preexisting condition exclusions can be imposed with respect to individuals under age 19
  - > No lifetime limits on “essential health benefits” (restricted annual limits until January 1, 2014)
  - > No rescission of coverage except in cases of fraud or intentional misrepresentation
- ✦ Effective beginning January 1, 2014
  - > No preexisting condition exclusions for anyone
  - > Waiting periods cannot exceed 90 days

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**Changes That Do Not Cause a Loss of Grandfathered Plan Status**

- ✦ Adding new employees and new family members to a grandfathered plan
  - > New employees means not only new hires but also employees of the employer not currently enrolled in a plan that was in effect on March 23, 2010
- ✦ Renewal of an existing insurance policy
- ✦ Changes in premiums
- ✦ Changes to comply with Federal or State legal requirements – including mandatory or voluntary changes to comply with the Affordable Care Act

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**Changes That Do Not Cause a Loss of Grandfathered Plan Status**

- ✦ Limited increases in fixed-amount (e.g., a deductible or out-of-pocket limit) cost-sharing
- ✦ Limited increases in copayments
- ✦ Limited decreases in the amount of employer contributions
- ✦ Also, the preamble to the interim final regulations provides that if a self-funded plan changes its third party administrator that, in and of itself, will not cause a loss of grandfathered status

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**Changes That Do Cause a Loss of Grandfathered Plan Status**

- ✦ Changing insurance carriers after March 23, 2010
  - > Except with respect to special rules for collectively bargained plans (discussed later)
- ✦ Eliminating all or substantially all of the benefits to diagnose or treat a particular condition
  - > For example, the interim final regulations provide that if a plan or policy provided benefits for counseling and prescription drugs to treat a mental health condition, and it eliminates the benefits for counseling, then the plan or policy will lose its grandfathered status

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**Changes That Do Cause a Loss of Grandfathered Plan Status**

- ✦ Increasing coinsurance or any other percentage cost-sharing requirement by any amount
- ✦ Increasing a fixed-amount cost-sharing requirement other than a copayment (e.g., a deductible or out-of-pocket limit) by more than the “maximum percentage increase”
- ✦ Increasing a fixed-amount copayment in effect on March 23, 2010 by more than the greater of:
  - > The “maximum percentage increase”; or
  - > \$5 increased by medical inflation

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**Changes That Do Cause a Loss of Grandfathered Plan Status**

- ✦ The "maximum percentage increase" is medical inflation plus 15 percentage points measured from March 23, 2010
- ✦ Medical inflation is defined with reference to the overall medical care component of the Consumer Price Index for All Urban Consumers, unadjusted, as published by the Department of Labor

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**Changes That Do Cause a Loss of Grandfathered Plan Status**

- ✦ There is a decrease in the amount of contributions made by an employer or employee organization with respect to any tier of coverage for any class of similarly situated individuals that exceeds 5% of the contribution rate that was in effect on March 23, 2010

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**Changes That Do Cause a Loss of Grandfathered Plan Status**

- ✦ This applies both to:
  - > Plans with contributions based on the cost of coverage, where the contribution rate is defined as the percentage of the total cost of coverage (determined in the same manner as the applicable premium is calculated for COBRA continuation coverage) that is contributed by the employer or employee organization; and
  - > Plans with contributions based on a formula such as hours worked or tons of coal mined

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**Changes That Do Cause a Loss of Grandfathered Plan Status**

- ✦ Imposition of new limits on the dollar value of benefits provided as follows:
  - > A plan or policy that did not have an overall annual or lifetime limit in effect on March 23, 2010, adopts an overall annual limit on the dollar value of health benefits
  - > A plan or policy that had an overall lifetime limit but no overall annual limit in effect on March 23, 2010, adopts an overall annual limit that is lower than the dollar value of the lifetime limit in effect on March 23, 2010
  - > A plan or policy that had an overall annual limit in effect on March 23, 2010, decreases the dollar value of the annual limit below the amount of the annual limit that was in effect on March 23, 2010

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**Anti-Abuse Rules**

- ✦ The interim final regulations also contain two “anti-abuse rules” and violation of these rules will cause a loss of grandfathered plan status
- ✦ The first anti-abuse rule is applicable to mergers and acquisitions
  - > The interim final regulations state: “If the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.”

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**Anti-Abuse Rules**

- ✦ The second anti-abuse rule applies when there is a change in eligibility
- ✦ The Regulations state that a group health plan or health insurance coverage ceases to be a grandfathered plan if:
  - > Employees are transferred into a plan or health insurance coverage from a plan or health insurance coverage under which the employees were covered on March 23, 2010;

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**Anti-Abuse Rules**

- > When comparing the terms of the transferee plan with those of the transferor plan (as in effect on March 23, 2010) and treating the transferee plan as if it were an amendment of the transferor plan, the transferor plan would lose grandfathered status; and
- > There was no bona fide employment-based reason to transfer the employees into the transferee plan.
  - For purposes of the last requirement, the Regulations state that “changing the terms or cost of coverage is not a bona fide employment-based reason”

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**Special Rules for Collectively Bargained Plans**

- ✦ The Affordable Care Act provides that with respect to health insurance coverage that is maintained pursuant to one or more collective bargaining agreements (“CBA”) that were ratified before March 23, 2010, the Affordable Care Act will not apply until the date that the last collective bargaining agreement expires
- ✦ The interim final regulations make several important clarifications with respect to such collectively bargained plans – including clarification that the above rule only applies to health insurance coverage

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**Special Rules for Collectively Bargained Plans**

- ✦ Self-funded health plan options provided by a collectively bargained plan are subject to the same rules that apply to non-collectively bargained plans
  - > Thus, any change to a collectively bargained plan’s self-funded health plan option that would cause it to lose grandfathered status under the interim final regulations would subject the self-funded health plan option to the other requirements of the Affordable Care Act
  - > Effective as of the date of the change that causes the loss of grandfathered status – not as of the date that the last CBA expires

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**Special Rules for Collectively Bargained Plans**

- ✦ Collectively bargained plans (both fully-insured and self-funded health plan options) must comply with the requirements of the Affordable Care Act that apply to grandfathered plans as of their general applicability date
  - > **i.e., no special delayed effective date applies with respect to these requirements**
- ✦ These include those provisions that become effective as of the first day of the first plan year that begins on or after September 23, 2010 and those additional requirements that apply to grandfathered plans beginning January 1, 2014

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**Special Rules for Collectively Bargained Plans**

- ✦ A special determination period applies for purposes of determining whether health insurance coverage that is maintained pursuant to one or more CBAs has lost its grandfathered status
  - > This period extends from March 23, 2010, to the date that the last CBA that provides for contributions to the plan expires

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**Special Rules for Collectively Bargained Plans**

- ✦ Subject to the exception noted below, if during this special determination period a fully-insured health plan option is changed in a way that would cause a plan to lose its grandfathered status, then that fully-insured health plan option loses its grandfathered status as of the date that the last CBA expires

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**Special Rules for Collectively Bargained Plans**

- ✦ A collectively bargained plan that provides insured health benefits may change health insurance issuers at any time during the special determination period and not lose its grandfathered status
  - > However, when the special determination period ends, the plan must look at all the other changes that have been made during the special determination period to determine if any of the other changes will cause that fully-insured health plan option to lose its grandfathered status as of the date that the last CBA expires

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