

Grandfathering Under the Patient Protection and Affordable Care Act (PPACA)

The federal Patient Protection and Affordable Care Act (PPACA) requires that insurers and plan sponsors (e.g. self insured employers) modify their coverage to comply with significant new insurance market reforms. Many of these are effective the first plan year on or after September 23, 2010 (*i.e.*, January 1, 2011 for calendar year plans). However, PPACA "grandfathers" certain plans that were in existence on the date of enactment from some of the insurance market reform requirements. Most notably, a grandfathered plan is exempt from the health reform law's limits on cost-sharing, requirements to offer preventive services without copays, and the requirement to establish an appeals process for disputed claims.

An "Interim Final Rule for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Plan under the Patient Protection and Affordable Care Act" was released on 6-14-10 by the Federal Department of Health & Human Services (HHS). Further clarifications were provided in November 2010.

Changes that will cause the loss of grandfather status include:

- Elimination of benefits to diagnose or treat a particular condition.
- Increase in coinsurance.
- Increase in deductible or out-of-pocket maximum by \geq than medical inflation plus 15 percent.
- Increase in copayment by \geq than \$5 or medical inflation plus 15 percent.
- Decrease in employer contribution by \geq than 5 percent of the rate on 3/23/10.
- Changes in annual limits (subject to several clarifiers).

Several questions were posed regarding what happens if the employer changes carrier or, in the case of a self insured employer, changes its administrator but does not change its benefits.

- HHS has clarified that if a company changes its carrier or its administrator but does not change its benefits beyond what is permitted under the grandfathering requirements, IT WILL NOT LOSE ITS GRANDFATHERING STATUS.

This is a departure from the original regulations which indicated that any insurance policy sold to new entities after March 23, 2010 would NOT be grandfathered, even if the product was offered in the market prior to March 23, 2010.

The purpose of the grandfathering protections is to honor President Obama's commitment that employers who like their current coverage will not be required to change it.

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The implication of this for tobacco cessation is that it no longer means that all new business written by carriers must offer cessation screening and services without cost sharing.

The practical reality is that it will make the decision to switch a little more confusing because of the calculations required to assess differences in premium and employee contributions. It might also end up providing health plans with more information on their competitor's pricing because of the need to help facilitate doing those calculations.

Changes that have not yet been determined in terms of impact on grandfather status include:

- Changes to plan structure (e.g. switch from insured to self-insured).
- Changes to provider network or drug formulary.
- Other substantial changes to overall benefit design.

HHS has estimated that nearly 66 percent of small employer plans and 45 percent of large employer plans would give up their grandfathered status by 2013. Other independent surveys projected that as much as 85 percent of companies would relinquish their grandfathered status (*Wall Street Journal*, 11/16/2010).

For general information regarding the Ohio Cessation Benefits Team and cost-effective options for supporting tobacco cessation in Ohio, please contact Mari-jean Siehl at 614-644-1113 or mari-jean.siehl@odh.ohio.gov.

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