

EMBARGOED UNTIL 4:15 P.M. TODAY

Amendment to Regulation on “Grandfathered” Health Plans under the Affordable Care Act

On June 17th, the Departments of Health and Human Services, Labor, and the Treasury (the Departments) issued the “grandfather” regulation which, by addressing how health plans can retain a “grandfathered” exemption from certain new requirements, helps protect Americans’ ability to keep their current plan if they like it. At the same time, Americans in grandfathered plans will receive many of the added benefits that the new law provides. The regulation also minimizes market disruption and helps put us on a path toward the competitive, patient-centered market of the future.

The grandfather regulation includes a number of rules for determining when changes to a health plan cause the plan to lose its grandfathered status. For example, plans could lose their grandfather status if they choose to make certain significant changes that reduce benefits or increase costs to consumers. This amendment modifies one aspect of the original regulation.

Previously, one of the ways an employer group health plan could lose its grandfather status was if the employer changed issuers – switching from one insurance company to another. The original regulation only allowed self-funded plans to change third-party administrators without necessarily losing their grandfathered plan status. Today’s amendment allows all group health plans to switch insurance companies and shop for the same coverage at a lower cost while maintaining their grandfathered status, so long as the structure of the coverage doesn’t violate one of the other rules for maintaining grandfathered plan status..

What does this mean for you?

The purpose of the grandfather regulation is to help people keep existing health plans that are working for them. This amendment furthers that goal by allowing employers to offer the same level of coverage through a new issuer and remain grandfathered, as long as the change in issuer does not result in significant cost increases, a reduction in benefits, or other changes described in the original grandfather rule.

Why did HHS, Labor and Treasury make this change?

The Departments received many comments on the provision in the original grandfather rule stating that a group health plan would relinquish grandfather status if it changed issuers or policies. This change was made in response to those comments for the following reasons:

1. There are circumstances where a group health plan may need to make administrative changes that don’t affect the benefits or costs of a plan. For example, an insurer may stop offering coverage in a market. Or a company may

change hands. In those cases, the employer can maintain grandfathered status for their employee's plan under this amendment.

2. Comments expressed concern that the original provision could have the inadvertent effect of interfering with health care cost containment. If an employer has to stay with the same insurance company to keep the benefits of having a grandfathered plan, the insurance company has undue and unfair leverage in negotiating the price of coverage renewals. Allowing employers to shop around can help keep costs down while ensuring individuals can keep the coverage they have.
3. Some employers buy coverage from insurance companies; others "self-insure," meaning that they pay claims themselves but usually hire a third-party administrator (TPA) to handle the paperwork. Usually only large companies can self-insure. Before this amendment, self-insured plans could change the company hired to handle the paperwork without losing grandfathered status as long as the benefits and costs of the plan stayed the same, while an employer that just changed insurance companies while maintaining the same benefits under their plan could not do so. Under this amendment, all employers have the flexibility to keep their grandfathered plan but change insurance company or third-party administrator.

What types of plans does this affect?

The amendment affects insured group health plans.

A change of issuers in the individual market would still result in the loss of grandfathered status.

How many plans will this affect?

The Departments expect that this amendment will result in a small increase in the number of plans retaining their grandfathered status relative to the estimates made in the grandfathering regulation.

The Departments did not produce a range of estimates for the number of affected entities given considerable uncertainty about the response to this amendment.