

### **Feds Issue Health Insurance “Grandfather Rule”**

Federal authorities have issued rules for grandfathering of group health plans under the new health care law.<sup>1</sup> ***Plan sponsors MUST notify plan participants of grandfather status using the disclosure notice copied below.***

The rules outline when a group health plan will be a grandfathered plan, the steps required to maintain grandfathered status, and whether changes to a health plan will result in the loss of grandfathered status. ***Even a small, single policy change could alter grandfather status.***

#### **Establishing Grandfathered Status**

A group health plan with at least one individual enrolled in coverage on March 23, 2010 that continuously covers at least one person will be a grandfathered plan.

Grandfathered plans will retain their grandfathered status even if new employees (or their families) are enrolled after March 23, 2010, or if plan participants are transferred from one plan option to another.

#### **Maintaining Grandfathered Status – Disclosure Notice**

In order to maintain its status as a grandfathered health plan, a group health plan must include a statement to plan participants that the plan’s sponsor believes that the plan is a grandfathered plan under the health care law. This disclosure must also contain contact information on how to request additional information or to file a complaint about the plan.

**The U.S. Department of Labor issued the following notice that should be used to satisfy the disclosure requirement:**

*This [group health plan or health insurance issuer] believes this [plan or coverage] is a “grandfathered health plan” under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered health plan can preserve certain basic health coverage that was already in effect when that law was enacted. Being a grandfathered health plan means that your [plan or policy] may not include certain consumer protections of the Affordable Care Act that apply to other plans, for example, the requirement for the provision of preventive health services without any cost sharing. However, grandfathered health plans must comply with certain other consumer protections in the Affordable Care Act, for example, the elimination of lifetime limits on benefits.*

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<sup>1</sup> The rules were published in the *Federal Register* on June 17, 2010 as the “Interim Final Rules for Group Health Plans and Health Insurance Coverage to Status as a Grandfathered Plan under the Patient Protection and Affordable Healthcare Act” and are now effective.

*This NFIB alert does not constitute legal advice, and you should consider consulting an attorney about any laws and regulations that are applicable in your state, locality or particular type of business.*

*Questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status can be directed to the plan administrator at [insert contact information]. [For ERISA plans, insert: You may also contact the Employee Benefits Security Administration, U.S. Department of Labor at 1-866-444-3272 or [www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform). This website has a table summarizing which protections do and do not apply to grandfathered health plans.] [For individual market policies and nonfederal governmental plans, insert: You may also contact the U.S. Department of Health and Human Services at [www.healthreform.gov](http://www.healthreform.gov).]*

### **Losing Grandfathered Status**

If a grandfathered plan changes its terms, it may lose its grandfathered status and become immediately subject to the individual and group market reforms of the health care law. Changes that could affect grandfathered status include:

*Changes that **would** cause a plan to cease being a grandfathered plan:*

- **Changing Insurers** - If an employer offering a fully insured plan changes insurers, the plan will lose its grandfathered status.
- **Changes to Cost-Sharing Requirements** - A plan will lose its grandfathered status if it increases, from its March 23 amount, the fixed-amount cost-sharing for expenses other than co-payments (e.g., out-of-pocket-limits or deductibles) by a total percentage that is greater than the maximum percentage increase (i.e., medical inflation—from March 23, 2010—plus 15 percentage points). A plan will lose its grandfathered status if it increases, from its March 23 amount, the copayment (e.g., an office visit co-pay from \$30 to \$50) by an amount that exceeds the greater of (A) the maximum percentage increase or (B) \$5 increased by medical inflation.
- **Changes to Contribution Rates** - A plan will lose its grandfathered status if it decreases from its March 23 amount, its contribution rate by more than five percent below the contribution rate (e.g., adjusting the employer-employee contribution of 80-20 to 70-30).
- **Elimination of Benefits for Diagnosis and Treatment of Particular Conditions** - If a plan eliminates a benefit to diagnose or treat a particular condition (e.g., if a plan stops offering coverage of cystic fibrosis) this will cause a plan to lose its grandfathered status.

*These changes that **would not** cause a plan to cease being a grandfather plan:*

- **Adding New Employees**
- **Application of Rules to a Collective Bargaining Agreement (CBA)** - Collectively bargained agreements are permitted to change their plans up until the last CBA terminates without losing grandfathered status.

### **For Additional Questions**

NFIB members can call the NFIB Employment Law Hotline at (866) 678-NFIB or visit the [Affordable Care Act Implementation FAQs](#). Employers should also consult with their insurance agent/broker about requirements under the new health care law.

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