

Grandfathered Status Under the Affordable Care Act: A Negotiator's Guide

Introduction

President Obama promised that “if you have insurance that you like, then you will be able to keep that insurance.” In the spirit of that promise, health insurance plans that were in effect before March 23, 2010, the date that the Patient Protection and Affordable Care Act was signed into law, are exempted from many—but not all—of the changes that the law requires. However, certain actions can cause plans to lose that exempt, “grandfathered” status.

How to Lose Grandfathered Status

- Significantly cut or reduce benefits (for example, by no longer covering certain diseases or conditions).
- Raise co-insurance charges (the percentage you pay of a hospital bill or other charge).
- Significantly raise co-payments:
 - “Significantly” here means the greater of \$5 (adjusted annually for medical inflation) OR a percentage equal to medical inflation plus 15 percentage points. Medical inflation has generally risen between 4% and 5% in recent years. Assuming medical inflation trends continue, this would mean an increase of 19% to 20% between 2010 and 2011.
 - Example: If your co-pay was \$20 in 2010, but rose to \$26 in 2011, your plan would lose grandfathered status.
- Raise deductibles more than medical inflation plus 15 percentage points:
 - If medical inflation trends continue, your deductible can't rise more than 20% between 2010 and 2011.
- Lower the employer's percentage of the premium by more than 5%:
 - Example: Right now, your employer pays 80% of your premium, and you pay 20%. If your employer's contribution is lowered to 74% of the premium while employees pay 26%, the plan loses grandfathered status.
- Impose a new annual coverage limit, or lower an existing annual limit.

Changes That Do Not Cause the Loss of Grandfathered Status

- Enrolling new members;
- Changing premiums;
- Switching to a new insurance company; or
- Voluntarily complying with the new healthcare law.

Benefits and Drawbacks of Keeping Grandfathered Status

There are pros and cons of each for both unions and employers:

Why would unions want to <u>keep</u> grandfathered status?	... <u>lose</u> grandfathered status?
	<p>—To keep co-insurance charges the same.</p> <p>—To keep co-pays and deductibles from going up “significantly.”</p> <p>—To keep the employer’s premium contribution from decreasing more than 5%.</p> <p>These factors are even more compelling if the employee’s current healthcare plan already covers free preventive services and offers unfettered access to emergency and OB-GYN care.</p>	<p>To gain access to the benefits the Act provides, including:</p> <p>—Preventive services for free, with no co-pays;</p> <p>—Guaranteed coverage of out-of-network emergency services without preapproval or penalty; and</p> <p>—No referral requirement for OB-GYN visits.</p>
Why would employers want to <u>keep</u> grandfathered status?	... <u>lose</u> grandfathered status?
	<p>Because it could help them control their costs. Grandfathered plans are not obligated to provide all the benefits mandated by the Act.</p>	<p>Because then they could:</p> <p>—raise co-insurance charges, - significantly raise co-pays , and</p> <p>—decrease their contribution to the premium by more than 5%.</p>

Requirements of All Plans, Including Grandfathered Plans

- Cover children up to age 26;
- Abolish lifetime limits on coverage; restrict annual limits until they are abolished in 2014;
- Cover pre-existing conditions (for children up to age 19 in 2010; for everyone in 2014);
- Prohibit the cancellation of coverage when people become sick.
- Changes are effective for plan years beginning on or after September 23, 2010.

Bottom line

Losing grandfathered status is not necessarily bad for members, because it means that they will benefit from all the healthcare reform provisions. However, if employers want to stay grandfathered, they have an incentive not to propose significant increases to co-pays or employee contributions. Knowing the ins and outs of grandfathering will help you be more confident and knowledgeable at the bargaining table.

Sources: Health Insurance Reform Reality Check, www.whitehouse.gov/realitycheck/3; Federal Register Vol. 75 No. 116; U.S. Department of Health & Human Services website www.healthcare.gov; The Henry K. Kaiser Family Foundation, www.kff.org.