



# Update

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## How to keep grandfathered status under health care reform rules

While many health care reforms apply broadly under the Patient Protection and Affordable Care Act ([PPACA](#)), “grandfathered” group health plans that existed before the law’s March 23 enactment are exempt from certain cost-sharing and coverage mandates. A recently issued [interim final rule](#) details which insured and self-insured health plans have grandfathered status, what can eliminate that status and how grandfathered status affects compliance. The rule generally took effect June 14 but is open to comment until Aug. 16.

### Which group health plans are grandfathered?

Insured and self-insured plans with at least one enrollee as of March 23, 2010, are grandfathered. To retain grandfathered status, a plan must continue to cover at least one person and avoid certain changes outlined in the interim final rule. Grandfathered status is determined separately for each benefit package (a term not defined in the regulations). If one benefit package loses grandfathered status, the status of other plan benefit packages generally won’t be affected, even when they are all part of the same ERISA plan.

Insured plans established under collective bargaining agreements (CBAs) entered into before March 23, 2010, are grandfathered until all applicable CBAs expire. Grandfathered status after that date depends on whether disqualifying cost-sharing or coverage changes took place during the CBA term. If not, then grandfathered status continues until impermissible changes occur or the employer or union enters a new insurance policy, certificate or contract.

### Which health care reforms can grandfathered plans avoid?

The chart on page 2 shows which cost-sharing and coverage standards affect grandfathered plans and when plans must comply. Many other reforms – such as the shared-responsibility mandate, free-choice vouchers, new-hire auto-enrollment, W-2 reporting of employee health coverage and the excise tax on high-cost plans – apply to all plans, regardless of grandfathered status.

PPACA cost-sharing and coverage standards	Does standard cover grandfathered plans?
<b>Plan year starting on or after Sept. 23, 2010</b>	
Extended child coverage to age 26 ■ Until 2014, grandfathered plans may exclude children eligible for other employer coverage	Yes
No lifetime dollar limits	Yes
Restriction on annual dollar limits	Yes
No pre-existing condition exclusions for enrollees up to age 19	Yes
Ban on rescissions	Yes
Minimum medical-loss ratio (insured only)	Yes
Coverage of certain preventive services without cost-sharing	No
Designation rules for primary care physician	No
Emergency services coverage and cost-sharing limits	No
Internal and external appeals procedures and notice	No
Nondiscrimination rules (insured only)	No
Disclosure of plan data	No
Quality-of-care reporting and employee notice	No
<b>Plan years starting on or after Jan. 1, 2014</b>	
No waiting periods exceeding 90 days	Yes
No annual dollar limits	Yes
No pre-existing condition exclusions	Yes
Coverage of routine patient costs for clinical trials	No
Annual cost-sharing and deductible requirements	No
Provider nondiscrimination	No
No eligibility discrimination based on health status	No
<b>Other provisions</b>	
Uniform summary of benefits (by March 23, 2012)	Yes
Health insurance exchange notice (by March 1, 2013)	Yes

### How does a group health plan show its grandfathered status?

Group health plans do not have to file anything with regulators or obtain agency approval to have grandfathered status. However, grandfathered plans must retain all materials detailing terms in effect on March 23, 2010, such as plan documents and summary plan descriptions; insurance policies, contracts or certificates; and benefit schedules showing premiums, coverage costs or employee contribution rates. Sponsors must supply these materials on request to enrollees and federal (or state for insured plans) officials.

**Examples of fixed-dollar, cost-sharing increases permitted for 2011**

Coplay examples (using special \$5 rule)	
March 23, 2010	2011 maximum*
\$20	\$25.00
\$25	\$30.00
\$35	\$40.30
\$40	\$46.06
\$50	\$57.58
\$100	\$115.16
Deductible examples	
March 23, 2010	2011 maximum*
\$100	\$115.16
\$500	\$575.80
\$1,000	\$1,151.60
\$2,000	\$2,303.20
\$2,500	\$2,879.00
\$5,000	\$5,758.00

\* Based on 2010 CPI-U values for January through May; values for later months in 2010 may support higher 2011 maximums

In addition, all benefit materials must clearly state that the sponsor believes the health plan is grandfathered and exempt from certain health care reforms. Regulators have released [model language](#) and invited comments. Employers with plans likely to be grandfathered in 2011 may want to include the notice in open-enrollment materials.

**What can cause loss of grandfathered status?**

For fully insured plans, any change in insurance carriers, contracts or certificates after March 23, 2010, eliminates grandfathered status. In addition, a health plan or benefit package will lose grandfathered status if the sponsor makes any of these changes:

- Eliminates all or substantially all benefits or any element necessary to diagnose or treat a particular condition
- Transfers employees from a grandfathered benefit package that's being eliminated unless (i) a bona fide employment reason (such as a merger) triggered the transfer, and (ii) the eliminated package would have retained grandfathered status if changed to match the ongoing benefit package's terms
- Raises the coinsurance percentage or other percentage-based cost sharing, whether for in-network or out-of-network benefits
- Raises fixed-dollar, cost-sharing amounts – such as deductibles or out-of-pocket maximums – by more than 15 percentage points beyond the increase in the medical inflation rate (calculated using the medical care component of the Consumer Price Index–All Urban Consumers (CPI-U)) for any one month since March 2010) (see sidebar)
- Increases copayments beyond the greater of (i) 15 percentage points (adjusted for the increase in medical inflation from March 2010); or \$5 after adjustment for medical inflation (that is, \$5 times the increase in medical inflation from March 2010, plus \$5) (see sidebar)
- Cuts the employer (or union) contribution rate toward total coverage costs by more than 5 percentage points below its level as of March 23, 2010
- Lowers the annual dollar limit on benefits below the cap in effect on March 23, 2010
- Adopts an annual dollar limit for the first time after March 23, 2010, that is less than the overall lifetime dollar limit in effect on that date
- Imposes any annual dollar limit after March 23, 2010, under a plan that previously had neither an annual nor a lifetime dollar limit

Though implementing an overall annual dollar limit for the first time after March 23, 2010, will cause a plan to lose grandfathered status, the regulation doesn't appear to apply to annual dollar or other limits on specific benefits, such as an annual cap on physical therapy visits. So plans may be able to adjust annual limits on particular benefits without jeopardizing grandfathered status.



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### For more information

For additional information, please contact your Mercer consultant.

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## What plan changes won't jeopardize grandfathered status?

Plans generally must preserve the coverage in place on March 23, 2010, to keep grandfathered status. However, some limited changes won't adversely affect grandfathered status:

- Adding new enrollees after March 23, 2010, such as family members, new hires, employees who had opted out of coverage, and individuals previously enrolled in a different plan or benefit package (except in some situations, noted above, where a grandfathered benefit package is eliminated)
- Voluntarily increasing benefits or adopting health care reforms, such as adding coverage of hearing aids or allowing a participant to designate a pediatrician as a primary care doctor
- Conforming plans to state or federal laws (though it's unclear whether this permits otherwise disqualifying plan changes, such as cost-sharing adjustments to meet the Mental Health Parity and Addiction Equity Act)
- Switching third-party administrators without any change in plan coverage or insurance carriers, policies or contracts
- Losing some or all participants covered on March 23, 2010, as long as at least one person is covered at all times

**Special transition rules.** Plan changes taking effect after March 23, 2010, do not affect grandfathered status if the relevant plan amendment, binding contract or state insurance filing was in place before that date. A provision adopted after March 23, 2010, likewise does not affect grandfathered status if the otherwise-disqualifying change took effect or is treated as taking effect by June 14, 2010 (the initial release date of the grandfathered plan rules) but is revoked or modified to comply with health care reform by the first plan year on or after Sept. 23, 2010.