



PPACA Compliance Reminder Series - Grandfathered Plans and Adult Dependents

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This is the first in a series of Compliance Reminders concerning the Patient Protection and Affordable Care Act ("PPACA") and the steps needed for compliance. This alert covers the subjects of Grandfathered Plans and Adult Dependents.

GRANDFATHERED PLANS

Grandfathered plans are exempt from a number of PPACA's requirements, at least until 2014. Immediate determination of grandfathered status is important because most of PPACA's requirements are effective for plan years beginning on or after September 23, 2010 (January 1, 2011 for calendar year plans).

What is a grandfathered plan?

Generally, it is a health plan that was in effect on March 23, 2010. Grandfather status applies separately to each benefit package.

Why is grandfathered status important?

There are plan design and cost implications, the most notable of which include:

- Grandfathered health plans are not required to provide first-dollar coverage for preventive health services.
- The requirement to cover adult children to age 26 does not apply to grandfathered plans until 2014 if the adult child is eligible for other employer-sponsored health plan coverage.
- The new claims and appeals procedures do not apply.
- An exemption from the patient protection rules.

What rules do apply to grandfathered plans?

All plans must provide certain new protections including:

- No lifetime limits;
- No rescissions of coverage except in the case of intentional misrepresentations or omissions;
- Extension of parents' coverage to adult dependents up to age 26.

What do grandfathered health plans need to do and when?

Grandfathered plans have notice and record-keeping obligations:

- Required Notice. They must include a statement in any plan materials provided to participants or beneficiaries **at open enrollment** that the plan believes it is a grandfathered plan and must provide contact information for questions and complaints. A model notice, issued by the Department of Labor, is available here. No notice is required for plans that are not grandfathered.
- Recordkeeping. They must maintain records (e.g., plan documents, summary plan descriptions, health insurance policies and certificates of coverage) that document plan terms in effect on March 23, 2010 and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan. These records are subject to inspection by participants, beneficiaries, and government officials.
- There is no specific government enforcement mechanism, but the concern is claims or challenges by participants and beneficiaries.

What if the plan is not grandfathered?

Effective for plan years beginning on or after September 23, 2010 (January 1, 2011 for calendar year plans), non-grandfathered plans:

- May not impose cost-sharing requirements (e.g., co-pay, co-insurance or deductibles) on certain in-network preventive health services as defined in regulations. A list of preventive services covered under PPACA is available here.
- Must comply with new internal claims and appeals procedures (in addition to the requirements already in effect under Department of Labor regulations) and with new external review procedures.
- Must comply with the patient protection rules.
- May not exclude an adult child who has not reached age 26 where the child is eligible for an employer-sponsored plan other than that of his or her parents.

Can a plan lose grandfathered status?

Yes, upon the occurrence of any of the following events:

- Entering into a new insurance contract (other than a renewal) after March 23, 2010 (even if the benefits and coverage are similar or even identical).
- Elimination of benefits for a particular condition.
- Any increase in a percentage cost sharing requirement.
- Any increase after March 23, 2010 in fixed-amount cost-sharing other than copayments, such as deductibles and out of pocket maximums that are greater than medical inflation + 15 percentage points.
- Any increase after March 23, 2010 in fixed-amount copayments.

- Decrease in employer contribution rate by more than 5% points below the rate in effect as of March 23, 2010.
- Certain changes to annual or lifetime limits.

How is "medical inflation" calculated?

Medical inflation is calculated by subtracting the medical component of the BLS All Urban consumer price increase for March 2010 from that for the date in question.

Won't most grandfathered plans lose their grandfathered status by 2014?

Yes.

ADULT DEPENDENTS

PPACA requires that plans which offer dependent coverage for children make such coverage available to children up to the attainment of age 26, regardless of whether the child was previously covered and regardless of the child's financial dependency, residency, student status, employment, or marital status. The rule is effective for plan years beginning on and after September 23, 2010 (January 1, 2011 for calendar year plans).

Special Enrollment Rights

Children who qualify must be given enrollment rights, even if they were not previously covered under the plan, and they must be given **at least 30 days** to enroll at any time during the plan year beginning after September 23, 2010, not just at open enrollment. At open enrollment, the full 30 days must be given. Many plans provide for a two week open enrollment period, which is not in compliance, and qualifying children must be given a full 30 days to enroll, notwithstanding any shorter open enrollment period.

Notice of Special Enrollment Right

Plans must give notice of special enrollment rights on the effective date of coverage (January 1, 2011 for calendar year plans). The Department of Labor has published a model notice, a copy of which is available [here](#).

California Rule

California has implemented PPACA's changes by incorporation into the Knox-Keene Health Care Service Plan Act of 1975 and the California Insurance Code of the rule prohibiting that the limiting age for dependent children covered by health care service plan contracts and health insurance policies from being less than 26 years of age with respect to plan or policy years beginning on and after September 23, 2010. These California laws also require covered health plans and covered insurers to provide the special enrollment rights as provided under PPACA.

Special Rule For Grandfathered Plans

For plan years beginning before January 1, 2014, a grandfathered plan may exclude an adult child who has not reached age 26 if the dependent is able to enroll in an employer sponsored health plan other than one sponsored by a parent's employer.

Tax Benefit Continues Beyond Coverage Requirement

Although Coverage up to age 26 is required, the value of the employer-provided health coverage is excluded from the employee's income for the entire taxable year in which the child reaches age 26. This tax benefit is designed to facilitate those employers choosing to extend coverage beyond age 26 and also for compliance with state laws that require coverage past age 26.

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