

## **Grandfathered Group Plan Status Overview**

*Details on what constitutes a grandfathered group plan as it relates to health care reform*

Federal health care reform establishes criteria for “grandfathered” plans, which are not required to adopt some of the provisions of health care reform for as long as they retain their grandfathered status. The Interim Final Regulation on grandfathered plans was released in June 2010 and amended in November 2010 to clarify what constitutes a grandfathered plan and how a plan or policy can retain its “grandfathered status”.

### **Q: What is a grandfathered plan?**

A: A grandfathered plan is a plan that was in effect on March 23, 2010 (the date health care reform was enacted). For plan sponsors who offered group health coverage to their employees as of March 23, that coverage is considered grandfathered. Plan sponsors that first began to offer coverage after that date are not grandfathered.

### **Q: What requirements does a plan have to meet to retain grandfathered status?**

A: First, a plan sponsor must carefully document their plan design that was in place on March 23, 2010. This documentation should include benefits and contribution formula(s) and should be retained for possible audit by federal regulators.

Generally, the following plan design changes can be made without affecting their grandfathered status:

- Changes that increase coverage or employer contribution\*
- Changes that slightly decrease the coverage or contribution\* level
- Change of health insurance carrier or third-party administrator
- Changes made to comply with state or federal law

\*The contribution refers to the percentage of premiums or premium equivalents paid by the employer

These guidelines apply to each benefit package that is offered. It is possible that a plan sponsor that offers more than one benefit package to have a mix of grandfathered and non-grandfathered packages.

For as long as the plan retains grandfathered status, a consumer notice must be prominently displayed on all materials describing plan benefits, which declares the plan to be grandfathered and therefore exempt from certain patient protections (see the model notice on page five).

### **Q: What changes would eliminate a plan’s grandfathered status?**

A: Any of the following changes made after March 23, 2010 eliminates a plan’s grandfathered status:

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- Any of the following changes to coverage (either in-network or out-of-network) or contribution\* from March 23, 2010 forward:
  - More than a five percent decrease in employer contribution\*
  - Any increase in coinsurance on any benefit
  - Increases in copays, deductible or out-of-pocket limits greater than 15 percent plus medical inflation
    - For flat dollar copays, the above test or \$5 plus medical inflation
  - Eliminating all or substantially all benefits for diagnosing or treating a particular condition

\*The contribution refers to the percentage of premiums or premium equivalents paid by the employer

**All of these changes are measured as cumulative**, meaning that in order to keep grandfathered status the plan cannot make any changes outside of these guidelines for the life of the plan.

**Q: Why would a plan choose to keep grandfathered status?**

A: A grandfathered plan is exempt from certain provisions of health care reform. For a list of the health care reform provisions grandfathered groups are exempt from, please review this table on the Department of Labor's website: <http://www.dol.gov/ebsa/pdf/grandfatherregtable.pdf>. There is also a summary of exemptions on [healthpartners.com/employer](http://healthpartners.com/employer).

**Q: Does a change in carriers for fully insured plans cause the plan to lose grandfathered status?**

A: Under the original rules, an employer could not switch fully insured plans and keep their plan's grandfathered status. However, in November 2010 these rules were amended to allow fully insured employers who change health insurance carriers to keep grandfathered status as long as there are not additional changes that violate the other requirements for maintaining grandfathered status, such as increasing cost sharing, reducing benefits, etc.

These rules do not apply retroactively. That means if a fully insured employer switched health insurance carriers from June 14 to November 15, 2010 that employer cannot consider its plan grandfathered. In addition, employers who switch health insurance carriers must provide documentation of their prior health plan to the new carrier. This documentation may include a copy of the policy or summary plan description.

**Q: What steps should a fully insured employer take with respect to communicating its contribution rate to HealthPartners upon renewal to ensure that the plan maintains its grandfathered status?**

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A: You must provide HealthPartners a written representation of what your contribution rate was on March 23, 2010 as well as the contribution rate for the plan year covered by your renewal. In addition, your master group contract with HealthPartners will include a requirement that you notify HealthPartners if your contribution rate changes at any point during the plan year. Please contact your HealthPartners sales representative for more information.

**Q: What about plans subject to a collective bargaining agreement (CBA)?**

A: For fully insured plans subject to a collective bargaining agreement, there is the ability to “reach back” for grandfathered status. For these plans, union contracts ratified prior to March 23, 2010 are deemed to be grandfathered (for the plan changes made pursuant to the CBA) until termination of the last collective bargaining agreement relating to the coverage that was in effect on March 23. Plans must still follow all remaining grandfathered rules for any new changes with the exception that a change in fully insured carriers will not destroy grandfathered status. For self-insured collectively bargained plans, there is no special treatment.

**Q: Are HealthPartners small group and EZ plans grandfathered?**

A: No, due to the few advantages and the significant limitations on plan design flexibility and ability to manage health care costs, HealthPartners has chosen to waive grandfathered status on its small group and EZ plans.

**Q: What should an employer do if they to decide to keep a grandfathered plan?**

*Small employer plans (2 to 50 members):*

- HealthPartners small employer and EZ plans are not maintaining grandfathered status. Technically, because the plans were filed with state regulators before March 23, 2010, HealthPartners could choose to maintain grandfathered status. However, because of the few advantages and limited flexibility of grandfathered plans to modify benefits and manage health care costs, HealthPartners chose to waive this status.

*Large employer plans:*

- Notify your HealthPartners sales representative of the intent to maintain grandfathered status.
- Before making benefit or contribution changes, employers should carefully consider the short and long term implications of retaining or dropping grandfathered status. Grandfathered status appears to have few advantages and it severely limits employers’ flexibility and ability to manage health care costs.
- HealthPartners will document that a plan considers itself grandfathered for purposes of complying with the member notification requirements.

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- Additionally, the employer needs to retain an auditable record of the grandfathered plan details as of March 23, 2010. To ensure that plan sponsors do not attempt to abuse the grandfathering status rules, recent federal guidance has put in place “anti-abuse” provisions to catch sham mergers/transfers of employees between plans.
- You must provide HealthPartners a written representation of what your contribution rate was on March 23, 2010 as well as the contribution rate for the plan year covered by your renewal. In addition, your master group contract with HealthPartners will include a requirement that you notify HealthPartners if your contribution rate changes at any point during the plan year. Please contact your HealthPartners sales representative for more information.

**Q: What if a plan has changed since March 23, 2010 and has already lost grandfathered status?**

A: The regulations establish the following special opportunities to help plans that may have unintentionally relinquished their grandfathered status before the Interim Final Rule was issued:

1. There is a grace period where plan sponsors that made changes between March 23 and June 14, 2010 (the date the Interim Final Rule was issued) that would destroy grandfathered status can revoke the changes in favor of no changes or changes that do not cause the plan to lose grandfathered status at the next renewal. At that time, the employer needs to tell HealthPartners what benefits they had on March 23, 2010 and would like to revert back to and that they should be considered a grandfathered plan going forward. This is referred to as the “claw back” option.
2. There is also a provision that provides an opportunity to maintain grandfathered status if the plan changes were filed with an appropriate state regulatory body prior to March 23, 2010. Even if the plan wasn’t approved or implemented by that date, the filed plan has grandfathered status in regards to those particular changes. Plans can choose to relinquish this grandfathered status or maintain grandfathered status and follow all the other grandfathering rules. This is referred to as the “reach back” option.
3. According to the regulations, “Good faith efforts to comply with reasonable interpretations” which only “modestly exceeded” guidance will not be subject to enforcement.

**Q: What if a group wants to make changes in the grace period and still retain grandfathered status?**

A: Only groups with renewals between March 23 and June 14, 2010 have this option. If the employer would like to “claw back” to its March 23, 2010 benefits, we will work with them to revert back to the benefits they had on March 23, 2010 and document that the plan should be considered grandfathered.

**Q: What notice must be provided to employees by a grandfathered plan?**

A: For grandfathered plans, the regulations require that the following notice must be included on all plan materials that disclose benefit information to enrollees:

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.

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 866-444-3272 or [dol.gov/ebsa/healthreform](http://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 non-federal governmental plans, insert: You may also contact the U.S. Department of Health and Human Services at [healthreform.gov](http://healthreform.gov).]

**Q: Who is responsible for ensuring that a plan does not unintentionally lose grandfathered status?**

A: It is the employer’s responsibility to track and maintain grandfathered status. HealthPartners will document an employer’s grandfathered status for purposes of complying with the member notice requirements. HealthPartners will include the model notice on all plan materials that disclose benefit information to enrollees, including the Summary of Benefits and Summary Plan Description. If an employer or broker provides materials with benefit information to its employees, the notice must be included on those materials as well.

**Q: Who is responsible for tracking and documenting a plan’s grandfathered status?**

A: Once an employer communicates to us its intent to maintain grandfathered status, HealthPartners will document that decision. However, HealthPartners will not retain the documentation a plan sponsor must produce and retain for regulatory audit purposes (specifically, the status of the plan on March 23, 2010 and that all changes in regards to contribution and benefit design are in compliance with the grandfathering regulations).