CONNER STRONG

September 27, 2010

Grandfathered Plan Determination Chart

The new health reform law exempts "grandfathered health plans" from many of the new health care reform requirements. Thus, it is critical for employers and group health plan sponsors to determine whether their plans are grandfathered. If your plan is eligible for grandfathered status, you should determine whether to preserve this status.

If your health plan was in existence on March 23, 2010, it is generally eligible for grandfathered plan status.[1] Keep in mind that the determination of grandfathered status applies separately to each benefit package that you offer under a plan so that a plan may provide both grandfathered and non-grandfathered benefit packages.[2]

Generally, a grandfathered health plan will lose its grandfathered plan status if it reduces benefits or increases costs to participants.[3] Additionally, there are anti-abuse rules intended to prevent transactions seeking to retain grandfathered status by indirectly making prohibited changes to a plan.[4] The following chart provides examples of modifications that may be made to group health plans and the impact to grandfathered status. Note that these provisions apply to all group health plans, including collectively bargained plans, except that a delayed effective date applies for fully-insured collectively bargained plans.[5] Special transition rules also apply.[6]

Modification	Loss of Grand-fathered Status?	Explanation
Entering into a new policy, certificate or contract of insurance after March 23, 2010	Yes	A plan loses its grandfathered status if it enters into a new policy, certificate or contract of insurance (even if there is no change in plan design that would otherwise result in a loss of grandfathered status). If a fully-insured plan signs a new insurance policy (as opposed to renewing its current policy), the plan will lose its grandfathered status. (Note that the agencies will shortly address the circumstances under which a grandfathered health plan can change carriers without losing grandfathered status.)
Eliminating all or substantially all benefits to diagnose or treat a particular condition	Yes	A plan loses its grandfathered plan status if it eliminates all or substantially all benefits to diagnose or treat a specific condition, including the elimination of benefits for any necessary element to diagnose or treat a condition. For example, if a plan provides benefits for a particular mental health condition, the treatment for which is a combination of counseling and prescription drugs, an elimination of counseling benefits would cause the plan to lose its

Modification	Loss of Grand-fathered Status?	Explanation
		grandfathered status.
Increasing a percentage cost-sharing requirement above the March 23, 2010 level by any amount	Yes	A plan loses its grandfathered plan status if it increases the percentage of employee's coinsurance requirement or other percentage cost-sharing payment. No increase in the level of coinsurance is permitted because the amount paid by an individual would automatically rise with medical inflation. For example, a change in the level of coinsurance from 20% to 25% for inpatient hospital stays will result in the loss of grandfathered status.
Increasing a fixed-amount cost-sharing requirement (other than copayments) by too much	Yes	A plan loses its grandfathered plan status if it increases any fixed-amount cost-sharing requirement other than a copayment (for example, if the plan increases a deductible or out-of-pocket limit) by more than the sum of the medical care component of CPI-U (medical inflation) from March 23, 2010 plus 15 percentage points. For example, if a plan increases its $1,000 deductible to $1,200 (a 20% increase), and medical inflation measured from March 23, 2010 to the date of the modification is 22.69%, the plan will maintain grandfathered status since the plan is allowed to increase the deductible up to 37.69% (22.69% + 15%).
Increasing copayments by too much	Yes	A plan loses its grandfathered plan status if it increases a fixed-amount copayment by an amount that exceeds the greater of (i) five dollars ($5.00), increased by medical inflation, and (ii) the sum of the medical care component of CPI-U (medical inflation) plus 15 percentage points. The interim regulations contain mathematical examples of this calculation.
Decreasing the employer's contribution rate toward any tier of coverage for any class of similarly situated individuals by too much	Yes	A plan loses its grandfathered plan status if the employer sponsor decreases its contribution rate towards the cost of any tier of coverage for any class of similarly situated individuals by more than 5 percentage points below the contribution rate in effect on March 23, 2010. For example, grandfathered status will be lost, if the employer decreases its rate of contribution toward family coverage by too much, even if it maintains or increases its contribution toward employee-only coverage.
Increasing or decreasing certain overall annual dollar limits	Yes	A plan loses its grandfathered plan status if (i) it imposes an overall annual limit on the dollar value of benefits where the plan did not impose either an annual or lifetime limit on March 23, 2010, (ii) on March 23, 2010 the plan did not have an overall annual limit on the dollar value of benefits but thereafter imposes an annual dollar limit that is lower than the dollar value of the lifetime limit on March 23, 2010, or (iii) the plan decreases the dollar value of the annual limit where the plan imposed an annual limit on March 23, 2010. For example, a plan may not set an

Modification	Loss of Grand-fathered Status?	Explanation
		overall annual limit on the dollar value of benefits if, as of March 23, 2010, it either did not impose overall annual or lifetime limits on the dollar value of all benefits, or imposed an overall lifetime limit on the dollar value of benefits but not an overall annual limit. A plan will also lose grandfathered status if it decreases the dollar value of the annual limit of benefits.
Eliminating an option and transferring employees to another option without a bona fide employment-related reason	Yes	For example, if the plan eliminates its PPO option and transfers covered employees to its existing HMO option, the existing HMO option will lose its grandfathered status (assuming there is no bona fide employment-related reason for the change).
Eliminating an option and transferring employees to another option due to a bona fide employment-related reason	No	For example, the plan has a PPO option that covers only employees at a particular location. If the location is closed, that PPO option is eliminated, and covered employees are transferred to a different PPO option, the different PPO option will not lose its grandfathered status.
Change to third party administrator	No	A plan may change third party administrators without any change in plan coverage or insurance carriers, policies or contracts without losing its grandfathered plan status.
Changes to comply with Federal or state law requirements, including the Act	No	There is no loss of grandfathered status if a plan is modified to comply with the Act. A plan may make voluntary changes to comply with the provisions of the Act, including the early implementation of the required reforms, without losing its grandfathered plan status. A plan may also make changes required to comply with other federal or state law without losing its grandfathered plan status.
Changes to premiums within limits	No	A plan generally may increase a plan participant's contribution rate towards the cost of any tier of coverage for any class of similarly situated individuals by less than 5 percentage points from the cost in effect on March 23, 2010 without losing the plan's grandfathered status. As long as the change in premium will not result in a decrease in employer contributions that is more than the maximum permitted amount (discussed above), there is no loss of grandfathered status.
Enrolling new employees and their family members	No	If the grandfathered options of the plan do not change, but employees elect a different grandfathered option during open enrollment than they elected the previous year, there is no impact to grandfathered status.

Modification	Loss of Grand-fathered Status?	Explanation
Increase in benefits or employer contributions	No	A plan may increase the amount of benefits provided to plan participants or increase the amount of the employer's contributions for participant coverage without losing the plan's grandfathered status.
Changes to plan funding	Unknown	The impact to grandfathered status is currently unknown if the plan switches from a fully-insured product to a self-insured product, or switches from a health reimbursement arrangement to major medical coverage. Comments have been requested by the agencies.*
Changes in a network plan's provider network	Unknown	Comments have been requested by the agencies, specifically as to what magnitude of changes would have to be made to cause a plan to lose its grandfathered status.*
Changes to a prescription drug formulary	Unknown	Comments have been requested by the agencies, specifically as to what magnitude of changes would have to be made to cause a plan to lose its grandfathered status.*
Other substantial change to the overall benefit design	Unknown	Comments have been requested by the agencies.*

*The regulations provide that any new standards published in the final regulations that are more restrictive would only apply prospectively to changes to plans after the publication of the final rules.

[1] A grandfathered health plan is a group health plan, insured or self-insured, in which an individual was enrolled on March 23, 2010. The grandfathered status of a group health plan does not depend upon the continued coverage of any particular individual. The loss of coverage by individuals who were covered on March 23, 2010 and the addition of newly covered individuals after that date does not cause a loss of grandfathered status as long as the plan continuously covers someone (not necessarily the same individual) on and after March 23, 2010.

[2] The grandfathered health plan rules apply separately to each benefit package made available under a group health plan. Although the Regulations do not define "benefit package," it is reasonably clear that an HMO is a separate benefit package from a PPO but that single-only coverage and family coverage within the same type of coverage are not separate benefit packages. Applying the rules separately to each benefit package enables an employer with a self-insured PPO to change the PPO within the parameters of the Regulations, thereby preserving the PPO's grandfathered status, even though an HMO offered under the employer's plan changes in ways that cause the HMO to lose its grandfathered status.

[3] For requirements that have an implementation deadline in the statute of "the first plan year on or after September 23, 2010," such as the requirement to provide free preventative services or the age 26 mandate, that design change would need to go into effect with the first plan year on or after September 23, 2010. For example, if an employer with a July 1 plan year makes changes to the plan design effective October 1, 2010 which causes a loss of grandfathered status, the plan is subject to all group market reforms applicable to non-grandfathered plans as of July 1, 2011 (first plan year after 9/23/10). Once health reform is effective for a grandfathered plan (after the the first plan year on or after September 23, 201), if the plan makes subsequent changes resulting in loss of grandfathered status, the loss of grandfathered status appears to be immediate, subject to any further regulatory guidance. Therefore, the plan will immediately become subject to all of the group market reforms applicable to non-grandfathered plans.

[4] The Regulations provide two exceptions to the above general rule to prevent abuse of the grandfathered plan rules. Under the first anti-abuse rule, a plan loses its grandfathered status if the principal purpose of a merger, acquisition or similar business restructuring is to cover new individuals under a grandfathered health plan. The second anti-abuse rule provides that a plan will lose its grandfathered status if (i) employees who are covered by a grandfathered health plan (the transferor plan) are transferred to another grandfathered plan (the transferee plan), (ii) the transferee plan would lose its grandfathered status if the differences between the transferor plan and the transferee plan were treated as an amendment to the transferee plan, and (iii) there is no bona fide employment-based reason for the transfer. The Regulations specifically provide that reducing the cost of coverage is not a bona fide employment-based reason.

[5] This rule does not apply to health insurance maintained pursuant to one or more collective bargaining agreements, at least until the date on which the last collective bargaining agreement terminates. Thereafter, the determination of whether an insured collectively bargained plan is a grandfathered plan will be made by comparing the terms of the health insurance coverage on the date of the last collective bargaining agreement's termination with the plan terms in effect on March 23, 2010. In the event that a collectively bargained plan enters into a new policy, certificate or contract of insurance before the plan's delayed effective date, the plan would not lose its grandfathered status even though the new policy, certificate or contract remains in effect after the delayed effective date.

[6] 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.