

May 25, 2010

Health Reform: 2011 Design Considerations

Many employers are already planning revisions to their medical plans for 2011. However, under health reform, if “grandfathered plans” (generally plans with at least one participant on March 23, 2010) make changes in their benefit structure, they may lose “grandfathered” status. Thus, employers are asking:

What are the advantages of grandfathered status?

Grandfathered plans do NOT have to comply with the following otherwise applicable requirements:

Effective January 1, 2011:

- coverage of certain preventive care services without cost-sharing (some of which may be currently billed on a bundled basis with other services),
- coverage of adult children eligible for other employer-sponsored coverage,
- transparency reporting and quality of care reporting,
- non-discrimination regarding highly compensated employees in insured plans,
- certain appeals processes, and
- requirements relating to access to primary care physicians, emergency services, pediatric care, and ob/gyn services.

Effective January 1, 2014:

- nondiscrimination based on health status,
- no discrimination against providers,
- restricted annual out-of-pocket limits,
- dependents covered without regard to whether they have coverage available through their own employment, and
- coverage of clinical trials.

What changes will cause a plan to lose grandfathered status?

There is as yet no guidance on what will cause a plan to lose grandfathered status. We do know, however, that the following will not cause a plan to lose its grandfathered status:

- renewal of coverage or enrollment of family members by an individual who was enrolled in the plan on March 23, 2010 (if the plan provided dependant coverage on that date) or
- enrollment by new employees (and their families).

What are the consequences of losing grandfathered status?

Again, there is as yet no guidance. If a plan loses its grandfathered status, it will have to comply with the requirements described above, presumably beginning when grandfathered status is lost.

What if our health plan is subject to collective bargaining?

Health benefits that are the subject of a collective bargaining process have an effective date delay and generally will need to worry about being grandfathered only if grandfathered status can be preserved for a longer period than the collective bargaining delayed effective date.

In some cases, collective-bargaining agreements may require that changes for non-bargained employees be applied to bargained employees as well. Employers with both bargained and non-bargained employees will need to be especially attentive to health reform's varying effective dates, the terms and termination dates of their various collective bargaining agreements and the effect of grandfathered status.

For more information, please feel free to contact any [lawyer](#) in the [Employee Benefits Group](#).