

COMPLIANCE ADVISOR

What every HR leader should know about compliance.



Proposed Rules on Grandfathered Group Health Plan Coverage

In response to the President's Executive Order 13765 "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal" issued on January 20, 2017, the Department of Health and Human Services (HHS), Department of Labor (DOL), and the Department of the Treasury (Treasury) (collectively, the Departments), issued [proposed rules](#) for grandfathered health plans that would make changes to certain types of cost-sharing requirements without causing a loss of grandfathered status. The DOL also released a [press release](#) and [frequently asked questions](#) regarding the proposed rules. The proposed rules only address the requirements for grandfathered group health plans and grandfathered group health insurance coverage and would not apply to grandfathered individual health insurance coverage. Also, the proposed rules would not provide an opportunity for a plan or coverage that has lost grandfathered status to regain that status.

Public comments on the proposed rules are due by August 14, 2020. The proposed rules would apply to grandfathered group health plans and grandfathered group health insurance coverage beginning 30 days after the publication of any final rules.

Background

Group health plans that were established on or before March 23, 2010, are exempt from some of the health care reform requirements under the Patient Protection and Affordable Care Act (ACA) as long as the plan maintains its status as a grandfathered health plan. For example, grandfathered health plans are exempt from the requirement to cover certain preventive services without cost sharing under section 2713 of the Public Health Service Act (PHS Act), and the annual limitation on cost sharing requirement set forth under section 1302(c) of the ACA and section 2707(b) of the PHS Act. If a plan loses its grandfathered status, it must comply with these requirements, in addition to several other requirements. Once grandfathered status is lost, there is no opportunity to regain it.

The Departments issued 2015 final rules and guidance in the form of frequently asked questions regarding maintaining a plan's grandfathered status. Under the 2015 final rules, a group health plan or group health insurance coverage is considered grandfathered if it has continuously provided coverage for someone (not necessarily the same person, but at all times at least one person) since March 23, 2010, and if the plan (or its sponsor) or issuer has not taken certain actions. Certain changes to a group health plan or coverage do not result in a loss of grandfathered status.

For example, new employees and their families may enroll in a group health plan or group health insurance coverage without causing a loss of grandfathered status. The 2015 final rules also specify when changes to the terms of a plan or coverage will cause the plan to lose its grandfathered status. The 2015 final rules outline certain changes to benefits, cost-sharing requirements, and contribution rates that will cause a plan or coverage to relinquish its grandfathered status. For more information on the 2015 final rules and the types of changes that can and cannot be made to a plan without losing grandfathered status, see UBA's Advisor "[Agencies Issue Final Rule on Grandfathered Health Plans and Other Initiatives](#)" and "[Frequently Asked Questions about Grandfathered Plans.](#)"

Special rule for grandfathered HDHPs

The proposed rules would clarify that grandfathered group health plans and grandfathered group health insurance coverage that are health savings account (HSA)-eligible high deductible health plans (HDHPs) may make changes to fixed-amount cost-sharing requirements without losing grandfathered status, but only to the extent that those changes are necessary to comply with the cost-of-living adjusted required minimum annual deductible and annual limit on out-of-pocket expenses for HSA-eligible HDHPs. The annual cost-of-living adjustment to the required minimum annual deductible for an HDHP has not yet exceeded the maximum percentage increase that would cause an HDHP to lose grandfathered status. However, the Departments are proposing this rule to provide assurance to grandfathered HDHPs that must increase their fixed-amount cost-sharing requirements to meet a future adjusted minimum annual deductible requirement, that such an increase will not cause the plan to lose grandfathered status even if the increase is greater than the maximum percentage increase allowed under the grandfathered health plan rules. The proposed rules provide the following example.

Example 11. Facts. A group health plan that is a grandfathered health plan and also a high deductible health plan within the meaning of section 223(c)(2) had a \$2,400 deductible for family coverage on March 23, 2010. The plan is subsequently amended after [effective date of final rule] to increase the deductible limit by the amount that is necessary to comply with the requirements for a plan to qualify as a high deductible health plan under section 223(c)(2)(A), but that exceeds the maximum percentage increase.

Conclusion. In this Example 11, the increase in the deductible at that time does not cause the plan to cease to be a grandfathered health plan because the increase was necessary for the plan to continue to satisfy the definition of a high deductible health plan under section 223(c)(2)(A).

Maximum percentage increase for fixed-amount cost-sharing requirements

Under the 2015 final rules, increases in fixed-amount cost-sharing (such as deductibles or out-of-pocket limits) are prohibited beyond an inflationary adjustment (referred to as the “maximum percentage increase”) of up to 15% above medical inflation (from March 23, 2010) in order to maintain grandfathered status. For fixed-amount copayments, a plan or coverage loses its grandfathered status if there is an increase, since March 23, 2010, in the copayment that exceeds the greater of 1) the maximum percentage increase or 2) \$5.00 increased by medical inflation.

The proposed rules would revise the definition of “maximum percentage increase” to provide an alternative method of determining the maximum percentage increase allowed for fixed-amount cost-sharing requirements for grandfathered health plans based on the premium adjustment percentage published by HHS instead of medical inflation. *(continued)*

Proposed Rules (continued)

This alternative method would only be available for grandfathered group health plans and grandfathered group health insurance coverage with changes that are effective on or after the effective date of a final rule. The maximum percentage increase based on the premium adjustment percentage would only apply if it yields a greater maximum percentage increase than when using medical inflation. Until the proposed rules are finalized, the maximum percentage increase must be determined using the medical inflation percentage.

Therefore, under the proposed rules, increases to fixed-amount cost-sharing requirements for grandfathered group health plans and grandfathered group health insurance coverage that are made effective on or after the effective date of a final rule would cause the plan or coverage to lose grandfathered status if the total percentage increase in the cost-sharing requirement measured from March 23, 2010, exceeds the greater of: 1) medical inflation, expressed as a percentage, plus 15 percentage points; or 2) the portion of the premium adjustment percentage (adjusted annually), as defined in 45 CFR 156.130(e), that reflects the relative change between 2013 and the calendar year prior to the effective date of the increase (that is, the premium adjustment percentage minus one), expressed as a percentage, plus 15 percentage points.

The proposed rules provide the following example (note the medical inflation and premium adjustment percentages used in the example are hypothetical and do not relate to any specific time period).

Example 5. Facts. Same facts as Example 4, except the grandfathered group health plan increases the copayment requirement to \$45 [increased from \$30], effective after [effective date of final rule]. The greatest value of the overall medical care component of the CPI-U (unadjusted) in the preceding 12-month period is still 485. In the calendar year that includes the effective date of the increase, the applicable portion of the premium adjustment percentage is 36%.

Conclusion. In this Example 5, the grandfathered health plan may increase the copayment by the greater of: medical inflation, expressed as a percentage, plus 15 percentage points; or the applicable portion of the premium adjustment percentage for the calendar year that includes the effective date of the increase, plus 15 percentage points. The latter amount is greater because it results in a 51% maximum percentage increase ($36\% + 15\% = 51\%$) and, as demonstrated in Example 4, determining the maximum percentage increase using medical inflation yields a result of 40.27% [$485 - 387.142 = 97.858$; $97.858 \div 387.142 = 0.2527$, $25.27\% + 15\% = 40.27\%$]. The increase in the copayment, expressed as a percentage, is 50% ($45 - 30 = 15$; $15 \div 30 = 0.5$; $0.5 = 50\%$). Because the 50% increase in the copayment is less than the 51% maximum percentage increase, the change in the copayment requirement at that time does not cause the plan to cease to be a grandfathered health plan.

7/15/2020



This information is general and provided for educational purposes only by United Benefit Advisors (UBA). It reflects UBA's understanding of the available guidance as of the date shown and is subject to change. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.

As a UBA Partner Firm affiliate, SSG has access to Compliance Advisor resources that can assist companies in remaining compliant and informed now and into the future.