



# Special Bulletin

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## Health Care Reform Grandfathered Plan Guidance Interim Final Rules Published

A key concept of health care reform is to allow employers to keep most aspects of their existing benefit plans. The reform legislation exempts these "grandfathered" plans from immediate implementation of certain reform provisions. However, many of the major reform provisions apply to all plans, regardless of grandfathered status. For example, all plans must remove lifetime and annual dollar limits and pre-existing condition exclusions for children. Non-grandfathered plans must also cover preventive care at 100% and will not be allowed to provide more generous eligibility or benefits to highly compensated employees. To review which provisions apply based upon grandfathered status, funding, and employer size, [click here](#).

On 6/17/10, the enforcing government agencies released the much anticipated guidance on what constitutes a "grandfathered" plan in order to allow employers to make informed decisions for their first plan year starting on or after 9/23/10.

### **What is a Grandfathered Plan?**

A "grandfathered" plan must have been in existence on 3/23/2010. Grandfathered status is determined separately for each benefit option. If your health plan includes two or more benefit options (e.g. PPO & HMO), it is possible for one benefit option to be grandfathered and the other not. Plans are permitted to make certain changes while still retaining their grandfathered status.

### **Changes that Allow Plan to Stay Grandfathered**

- Enroll new hires and new enrollees
- Increase premiums
- Enhance benefits
- Implement health care reform mandates early
- Change third party administrators (TPAs)
- Certain changes made prior to 6/17/2010 (see Transitional Rules for more details)

At this time, the following plan changes do not cause a plan to lose grandfathered status, pending additional regulations:

- Change plan funding (e.g. switching from fully-insured to self-insured)
- Change provider network
- Change prescription drug formulary

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### Changes that Cause Loss of Grandfathering

- Change carrier, if fully-insured
- Increase employee coinsurance percentage
- Increase deductible and out of pocket maximums by more than the maximum allowed percentage\*
- Increase co-pays by more than the greater of \$5 or the maximum allowed percentage\*
- Decrease employer contribution for any tier of coverage by more than 5% of the cost of coverage
- Add a new or lower an existing overall annual dollar limit (before first plan year after 9/23/2010)
- Eliminate benefits to diagnose or treat a particular condition
- Transfer employees from one plan to another outside of a bona fide merger and acquisition

*\*The "maximum allowed percentage" is based upon the medical care component of the consumer price index (CPI) plus 15%.*

### Transitional Rules

For plans that made plan changes after 3/23/2010 but prior to the release of regulations, the transitional rules provide options for retaining or reinstating your plan's grandfathered status.

If your plan adopted changes prior to 3/23/2010, those changes will not cause a loss of grandfathered status, even if the changes went into effect after 3/23/2010.

If your plan adopted changes after 3/23/2010 but prior to 6/17/2010, the plan may retain grandfather status if your changes "only modestly exceed" the regulations, which is not yet defined. For more significant plan changes, the plan can only be grandfathered if you revoke the plan changes or modify your plan no later than the first plan year after 9/23/2010.

### Documentation & Notice Requirements

Grandfathered plans must disclose on all plan participant materials that due to the plan's grandfathering, the plan may not include certain consumer protections that would apply to other health plans. The disclosure directs plan participant questions to the plan administrator and the Department of Labor. The interim final rule provides a model statement for employers to use.

In addition, grandfathered plans must retain documentation of the plan terms and conditions in effect on 3/23/2010 and make those documents available for review by plan participants as well as federal and state regulators.

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### Collectively Bargained Plans - Special Grandfathering

Fully-insured plans that are subject to a collective bargaining agreement (CBA) on 3/23/2010 are considered grandfathered until the expiration of the agreement. However, these plans must still implement all of the grandfathered plan reform changes even while the plan is covered under the original CBA. Self-insured collectively bargained plans do not receive any special grandfathering protections solely because they are subject to a CBA.

### What Next?

You and your Keller consultant will need to review the relative value of grandfathered status to your plans. You may determine that the value of plan design changes or change in insurance carriers that your company wishes to implement at renewal outweigh any advantages of maintaining grandfathered status at that time. As your renewal approaches, your Keller consultant will provide you with the necessary information to make informed decisions and to strategically plan for implementation of health care reform.

If you have any questions at this time, please do not hesitate to contact your Keller consultant. As always, we will continue to keep you updated as the regulatory process unfolds.