The Association ACA Primer: Grandfathered Health Care Plans

ASAE Position: With premiums paid for health care by associations rising 11% per year on average, ASAE is concerned that attempts by associations to continue to provide affordable and comprehensive coverage to employees could unintentionally drive up the cost of these plans even more. Associations that try to cost-shift or change insurance carriers to keep health care costs down could lose their "grandfathered plan" status, meaning their cost for complying with the new health care law could drive costs up even higher. ASAE has asked the Obama administration to grant a waiver to small and medium associations struggling to comply with the grandfathered plan rule until the state-based exchanges are created, as long as the associations continue to provide comparable coverage.

Background: When the federal government passed the 2010 Patient Protection and Affordable Care Act (PPACA), it created a whole list of new requirements to health care plans and coverage options for consumers. Some of the more well-known are the requirements that insurance plans cover people with preexisting conditions, eliminate lifetime caps on total benefit payments, allow access to preventative care without cost, and require insurance plans to cover hospital visits. A question created by the reform, however, was how the law would treat health care plans in existence prior to its passage; these are the types of plans employers have always provided to employees that would now be faced with a daunting new list of requirements.

The Obama administration addressed the issue of these so-called "grandfathered health care plans" (or "grandfathered plans" for short) in a June 14, 2010 interim final rule. Grandfathered plans were those health care plans in existence prior to March 23, 2010 (the date the PPACA was signed into law), and the administration exempted these plans from many of the new requirements put into place by the PPACA. The administration did this to allow consumers to "keep their health care plan if they like it" as well as prevent drastic rate increases or plan changes for many employer plans. If your association was offering insurance to employees prior to March 23, 2010 and continues to offer coverage to at least one employee continuously, that insurance plan is considered grandfathered.

The government, however, created triggers that would force a plan to lose its grandfathered status if it increased cost to employees above certain levels or reduced coverage. The interim final rule did this to prevent employers using their grandfathered status to circumvent the law's intent. These triggers, however, set the bar very high to maintain grandfathered status and designated many of the options associations and small employers use to keep health care costs low as ways to lose grandfathered status. Even the Obama administration acknowledged the struggle many companies would have in maintaining grandfathered plan status – in its fact sheet

it projected that by 2013 only 20% of small employers and 36% of large employers would be grandfathered.

The administration issued five FAQs to clarify questions surrounding the grandfathered plan regulations. This white paper includes the clarifications made by the Department of Health and Human Services (HHS) and notes it where necessary.

Q: Does having a grandfathered health care plan mean my insurance plan is exempt from PPACA's requirements?
Having a grandfathered health care plan means your insurance plan does not have to comply with *most* of the insurance and coverage requirements contained in the PPACA. All plans, however, must comply with the following provisions in the PPACA:

- Insurers cannot place lifetime limits on coverage for plans (i.e., plans cannot set a maximum they will cover on a person over the life of the insurance plan).
- Plans cannot deny coverage for a patient due to illness or unintentional mistakes on insurance applications.
- Dependents under 26 years of age who do not have insurance coverage can be included on the employer plan of their parent(s).
- Insurers cannot deny coverage to minors with pre-existing conditions.

All health care plans, regardless of grandfathered status, had to comply with these changes by September 23, 2010.

Q: What is the additional coverage my plan would need to add if it lost grandfathered plan status?
Among other requirements, non-grandfathered health care plans are required to:

- Provide coverage of recommended prevention services with no cost sharing. That means the plan would take on 100% of the in-network costs for diet counseling, alcohol abuse screenings, STI counseling and screenings, breast cancer exams, smoking cessation programs, and a list of other treatments and health care services.
- Guarantee access regardless of referral for pediatric, OB-GYN, and emergency services.
- Allow women (OB-GYN) and children (pediatrician) to list their specialty doctor as their primary care physician.
- Cover clinical trials and routine treatments related to clinical trials for cancer and other life-threatening conditions.
- Comply with a number of greater transparency and streamlined paperwork requirements.

Q: How can my health care plan lose its grandfathered status?
The interim final rules listed six benefits changes that a grandfathered plan can make and lose its status. The second HHS FAQ in October reaffirmed that these six changes are the only ways an insurance plan can make benefits changes and lose its grandfathered status:

1. **An insurance plan cannot significantly cut or reduce benefits.** If your insurance plan provides coverage for treatment of a disease or condition like diabetes, cystic fibrosis or HIV/AIDS, and the insurer stops covering treatment or preventative care, the plan will lose its grandfathered status. There is no comprehensive list of conditions and diseases to which this would apply.
2. **An insurance plan cannot "significantly" raise co-payment charges above a certain amount**. That amount is the greater of (a) $5 or (b) a percentage equal to medical inflation plus 15 percent. The $5 is indexed for inflation. According to the Bureau of Labor Statistics, the medical inflation rate for 2010 was about 3%. If an

association decided to raise its co-pay for employees in 2011 from $15 to $25, it would lose grandfathered plan status.

3. **An insurance plan cannot raise co-insurance charges.** Insurance plans often require an employee to pay a fixed percentage of a bill; for example, an employee plan may require a patient to pay 20% of a hospital bill. **Any** increase in this co-insurance would cause a plan to lose grandfathered plan status.
4. **An insurance plan cannot "significantly" raise deductibles.** Many association plans require patients to pay a certain amount of money every year before the plan pays the remaining costs ("deductible"). A grandfathered plan cannot increase the deductible more than medical inflation plus 15%; using a 3% medical inflation number a plan with a $1,000 deductible that increased in 2011 to $1,200 would lose grandfathered plan status.
5. **An insurance plan cannot "significantly" lower an employer's contribution to an employee's plan.** In this situation, significant is defined as more than 5%. For example, association ABC pays 95% of their employees' health care premiums. Due to rising premiums and the need to negotiate lower costs, they shift the employees' contributions from 5% to 15%. This plan would lose grandfathered status.
6. **An insurance plan cannot add or tighten an annual limit on what the insurer pays.** If an insurance plan has a limit on how much it pays out for a covered service, it cannot reduce that amount and remain a grandfathered plan. If a plan does not have a cap at all, it cannot add one and remain a grandfathered plan.

There are other ways that a grandfathered plan can lose its status outside of making benefits changes. If an employer switches its employees from one grandfathered plan to another (e.g., switches its employees from a grandfathered PPO to a grandfathered HMO) and the new plan offers fewer benefits or higher employee cost, that new plan would lose its grandfathered status. If a grandfathered plan merges with another plan to avoid complying with the PPACA, it would lose grandfathered status.

Q: Can my association change insurance companies to retain grandfathered status?
Deceptively, the administration has said that employers can switch insurance companies and keep their grandfathered status. In the final rule released in November 2010, the administration said an employer could change insurers as long as the benefits to plan participants would not change in any way. The problem with this allowance is that it would require the new insurer and new plan to be virtually the same as the previous one, something that is nearly impossible in the current health care market. For most small to medium size employers, the time and expense to compare benefits between the old and new plan is an effective barrier to switching insurers.

Q: My association offers multiple benefits packages; if one of my benefits packages loses grandfathered status can the rest retain their grandfathered status?
Some associations offer multiple plans to employees, for example offering a choice between a Health Maintenance Organization (HMO) plan, Point of Service (POS) plan, and Preferred Provider Organization (PPO) plan. If an association offered these three plans, and the PPO plan relinquished grandfathered plan status, the HMO and POS would still remain grandfathered, as long as they did not trigger the six benefits changes.

Q: My association pays for my employees' entire health care costs. Should I be concerned with the grandfathered plan regulations?
Associations that cover all of the employees' health care expenses may be most penalized by the grandfathered plan rules. If your association's health care costs got too high, especially due to a one-year hike because of employee ill health or hiring an employee with

pre-existing conditions, your association could not make only limited cost shifts to employees and still be grandfathered.