

FALL RIVER EMPLOYEE BENEFITS



Grandfathering

A grandfathered health plan is a group health plan that was in effect on March 23, 2010 and provides at least one person (does not have to be the same person) continuous coverage. For employers offering dual or triple options, grandfathering applies independently to each one. In other words, one plan could retain grandfather status while another relinquishes status. Grandfather status belongs to each group plan itself, not the employer or the insurance carrier. We've outlined below several key benefit areas and how they come into play with retaining grandfather status (or not).

Preventive Services must be covered 100% in-network effective with an employer's next renewal after September 23, 2010, but this will not apply if you choose to grandfather your plan. Many large employers, HDHP/HSA-compatible plans and several Colorado insurance carriers already provide this level (or near to it on many services) of benefit. However, depending on your geographic area and group needs, for some employers this may be a noteworthy consideration.

One of the biggest reasons to consider staying grandfathered is that fully-insured plans will NOT be subject to 105(h) discrimination rules. (Please note: Self-funded plans have always been and will continue to be subject to this ruling, grandfathered or not.) This means that a fully-insured plan can keep a management carve-out or otherwise "discriminatory" plan, as long as they follow all the other rules to stay grandfathered as listed below.

Additionally, you will NOT be required to:

- offer the same benefit level for emergency treatment both in and out of network.
- cover certain clinical trials.
- implement a specific appeals process, including an external review process.
- implement various health management activities and reporting to the Health and Human Services Department. This may be of particular benefit to small employers without the staff and time to dedicate to these requirements like non-grandfathered plans will be required to do.
- allow a pediatrician or OB to serve as a PCP. Depending on your specialty office visit costs, this may cost less out-of-pocket for your employees.

Record-keeping and documentation of premiums, contribution rates, plan summaries, etc. is required to "prove" grandfather status for those employers wishing to stay



grandfathered. The U.S. Department of Health and Human Services has stated specifically, “The amendment also provides that, to maintain status as a grandfathered health plan, a group health plan that enters into a new policy, certificate, or contract of insurance must provide to the new health insurance issuer (and the new health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health coverage sufficient to determine whether any change described in paragraph (g)(1) is being made. This documentation may include a copy of the policy or summary plan description. Additional specific verbiage must also spell out the employer’s intent to remain grandfathered to their employees covered on the plan. The U.S. Department of Health and Human Services has also provided model language for what this declaration should look like and we can also assist you with this information.

Additionally, if your plan changes any of the following, then it will cease to be grandfathered:

ELIMINATION OF BENEFITS

If all or most (any significant change) plan benefits are eliminated for a particular condition, the plan will cease to be grandfathered.

CO-INSURANCE

Cannot increase the percentage currently in place (percentage of cost-sharing requirement) or the plan will cease to be grandfathered.

CO-PAYMENTS

Cannot increase greater than \$5 (adjusted annually for inflation) or a percentage equal to medical inflation plus 15 percentage points or the plan will cease to be grandfathered.

DEDUCTIBLES AND OUT-OF-POCKET MAXIMUMS

Can only increase by a percentage equal to medical inflation plus 15 percentage points or the plan will cease to be grandfathered.

EMPLOYER CONTRIBUTION

Cannot decrease more than 5 percentage points from what it was on March 23, 2010 or the plan will cease to be grandfathered. For self-insured plans, the contribution is calculated by subtracting the employee contribution for total cost of coverage from the total cost of coverage.



INSURANCE COMPANY CHANGES

Under the initial passage of the law, if a self-insured or collective bargaining agreement employer plan changed administrators, the plan remained grandfathered, but if a fully-insured employer plan changed insurance companies, the plan ceased to be grandfathered. However, on November 17th, 2010 the U.S. Department of Health and Human Services announced an amendment allowing “all group health plans to switch insurance companies and shop for the same coverage at a lower cost while maintaining their grandfathered status, so long as the structure of the coverage doesn’t violate one of the other rules for maintaining grandfathered plan status.”

The HHS further stated, “The purpose of the grandfather regulation is to help people keep existing health plans that are working for them. This amendment furthers that goal by allowing employers to offer the same level of coverage through a new issuer and remain grandfathered, as long as the change in issuer does not result in significant cost increases, a reduction in benefits, or other changes described in the original grandfather rule.”

The amendment to this provision clearly states that this will only apply to plans with effective dates after the November announcement. This will not apply retroactively to any plan that made changes between March 23, 2010 and the November announcement date. In other words, if you changed insurance companies after March 23, 2010 but prior to this announcement, you still cannot claim grandfather status for your plan(s).

(Please note: A change of issuers in the individual market would still cause a person(s) to lose their grandfather status.)

Lastly, your plan can still remain grandfathered even if you:

- 🍁 Add/terminate employees on your group plan
- 🍁 Add dependents of an employee to your group plan
- 🍁 Voluntarily increase your plan benefits