

LAW & POLICY GROUP GRIST

REGULATORS SEEK INPUT ON MAINTAINING ACA GRANDFATHERED HEALTH PLAN STATUS

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A new triagency [request for information](#) (RFI) seeks input on the challenges group health plans and issuers face in maintaining grandfathered status under the Affordable Care Act (ACA). Noting that a “significant number” of plans have retained that status in the nearly nine years since the ACA was enacted, the agencies — the departments of Labor (DOL) and Health and Human Services (HHS) and the IRS — are looking to “better understand” the issues related to these plans and estimate the impact of any potential changes to the grandfathering rules. Comments are due March 27, 2019.

BACKGROUND ON GRANDFATHERING RULES

Certain ACA standards apply only to group health plans that don't have grandfathered status. A plan may qualify as grandfathered if it covered at least one individual on March 23, 2010, and has continued to do so without significant change. Such changes include decreasing covered benefits or the rate of employer contributions, or increasing enrollees' cost sharing beyond permissible levels.

Plan exemptions. A plan that maintains grandfathered status remains exempt from providing certain ACA cost-sharing and coverage standards and certain reporting and disclosure obligations, including the following:

- Annual cost-sharing limits (annual maximum out-of-pocket costs for participants and beneficiaries)
- Mandated preventive services with no cost sharing
- Rules on out-of-network payment for emergency services benefits
- Enhanced internal and ACA-created external appeals procedures and notice
- Coverage of routine patient costs for clinical trial participants

Any materials describing a grandfathered plan's benefits must include a statement that the employer believes the plan is grandfathered and not subject to certain health care reform provisions.

Loss of status. Any decrease of more than 5 percentage points below an employer's contribution rate as of March 23, 2010, will cause a loss of grandfathered status, as will eliminating all or substantially all benefits — or any necessary element — to diagnose or treat a particular condition. In addition, coinsurance — and any other cost sharing expressed as a percentage — can't be increased without forfeiting the plan's

grandfathered status. A plan that wants to retain grandfathered status also faces restrictions on imposing new overall annual limits on benefits.

WHAT THE AGENCIES WANT TO KNOW

The RFI seeks feedback in two areas.

Maintaining (or relinquishing) grandfathered status. Eight questions ask for specifics on the following:

- What action could regulators take to assist sponsors and issuers to preserve grandfathered plans?
- What challenges relate to retaining grandfathered status? Are any requirements particularly burdensome, and if so, how could they be eased?
- Why are sponsors maintaining these plans? If sponsors are doing so to avoid ACA requirements, which ones?
- Why are participants still enrolled in these plans if other options are available?
- What factors are considered when deciding whether to maintain or relinquish grandfathered status?
- Is maintaining grandfathered status important to participants? If so, which benefit the most and which are hurt the most?
- What are the typical changes in plan provisions that cause plans to lose grandfathered status?
- Are the disclosure requirements adequate, and if not, how could they be improved?

Characteristics of grandfathered plans and sponsors. Additional questions seek more general information, including:

- What are the characteristics (for example, plan size, geographic areas, or industries) of plans that have chosen to retain grandfathered status?
- What are the typical differences in benefits, cost-sharing, and premiums between grandfathered and nongrandfathered coverage?

NEXT STEPS

Regulators cite President Trump's [Executive Order 13765](#), which ordered the agencies to ease the ACA's burdens, as the motivation for the RFI. The agencies say they're assessing how to help plans preserve grandfathered status and could implement rule changes to do so, but it's unclear what those changes, if any, might be. In the meantime, sponsors of grandfathered health plans should consider responding to the RFI by the March 27 deadline.

RELATED RESOURCES

Related government, trade group, association and other non-Mercer websites include:

- [Request for Information](#) (Federal Register, Feb. 25, 2019)
- [Executive Order 13765](#) (Federal Register, Jan. 20, 2017)
- [Annual Employer Health Benefits Survey](#) (Kaiser Family Foundation, Oct. 3, 2018)

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