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DEPARTMENTS PROPOSE RULE TO HELP PLANS MAINTAIN GRANDFATHERED STATUS

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The U.S. Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) today issued a proposed rule to amend the requirements for grandfathered group health plans and grandfathered group health insurance coverage to preserve their grandfather status.

First, the proposed rule would clarify that grandfathered group health coverage that is a high-deductible health plan (HDHP) may increase fixed-amount cost-sharing requirements, such as deductibles, to the extent necessary to maintain their status as an HDHP without losing grandfather status. This change would ensure that participants and beneficiaries enrolled in that coverage remain eligible to contribute to a health savings account (HSA). Second, the proposed rule provides an alternative method of measuring permitted increases in fixed-amount cost sharing that would allow plans and issuers to better account for changes in the costs of health coverage over time.

Background

The Patient Protection and Affordable Care Act (ACA) provides that certain group health plans and health insurance coverage that existed as of the law's enactment on March 23, 2010, are treated as grandfathered health plans. Grandfathered group health plans are subject to some of ACA's requirements, such as the prohibition on preexisting condition exclusions, but are exempt from many others.

In general, under final regulations issued in 2015, 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.

Under those original rules, certain changes to a group health plan or coverage do not result in a loss of grandfather 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 grandfather status. Further, changing insurance carriers under a fully insured group health plan will not cause a plan to lose grandfathered status.

On the other hand, other types of changes, including increases in cost-sharing above certain thresholds, decreases in employer contributions, and eliminating substantially all benefits to diagnose or treat a condition, would cause a plan to lose its grandfathered status.

On February 25, 2019, the Departments sought input from the public to determine whether there are opportunities to help plans and issuers preserve grandfather status in ways that would benefit employers, plan participants, and beneficiaries. The Departments have taken action in response to the feedback they received from interested stakeholders.

Proposed Rule

Flexibility for High Deductible Health Plans (HDHP). The proposed rule provides that grandfathered HDHPs may make increases to fixed-amount cost-sharing requirements (such as deductibles) that would otherwise cause a loss of grandfather status without losing grandfather status, but only to the extent those changes are necessary to comply with the requirements to maintain their status as an HDHP. This change would ensure that participants and beneficiaries in these plans are able to remain eligible to contribute to an HSA.

The Departments acknowledge that, to date, the annual cost-of-living adjustment to the required minimum deductible for an HDHP has not yet exceeded the maximum percentage increase that would cause an HDHP to lose grandfather status. However, the Departments seek to assure grandfathered HDHP plans that if they increase fixed-amount cost-sharing requirements to meet a future adjusted minimum annual deductible requirement greater than the increase permitted under the ACA and 2015 regulations, such an increase would not cause a loss of grandfather status.

***Alternative inflation adjustment for fixed-amount cost-sharing increases*.** The 2015 regulations permit increases in fixed-amount cost-sharing requirements (such as copayments, deductibles, and out-of-pocket maximums) that do not exceed certain thresholds, determined by reference to a Consumer Price Index (CPI) measure of medical inflation. Commenters noted that the premium adjustment percentage that HHS publishes each year in its annual notice of benefit and payment parameters (NBPP) may be a more appropriate measurement of changes in healthcare costs over time than medical inflation based on CPI.

The Departments acknowledge these comments and state that the NBPP premium adjustment percentage is the best existing measure to reflect the increase in underlying costs for grandfathered group health plans and grandfathered group health insurance coverage. Additionally, the Departments believe using a measure with which plans and issuers are already familiar would simplify administration.

The proposed rule will allow plan sponsors to implement fixed-cost cost-sharing increases using either the CPI medical inflation measure in the 2015 regulations or by reference to the most recently published NBPP premium adjustment percentage, whichever is greater. These alternatives will apply only to increases occurring on or after the effective date of final regulations.

Conclusion

The Departments have requested public comments to be submitted no later than August 14, 2020. Changes based on these new flexibilities will be permissible only on or after the effective date of any final regulation.

Grandfathered plan sponsors will need to monitor developments but should expect to have more flexibility to adjust fixed-amount cost-sharing measures without jeopardizing their plans' grandfathered status.

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