

# COMPLIANCE ALERT

## Departments Issue Final Regulations to Help Plans Maintain Grandfathered Status

January 1, 2021

### QUICK FACTS

- Final regulations published on December 15, 2020 amend the requirements for preserving grandfathered plan status.
- The regulations provide that a grandfathered high-deductible health plan (HDHP) may increase fixed-amount cost-sharing requirements to the extent necessary to remain a qualifying HDHP.
- The regulations also permit grandfathered plans to use an alternative method of measuring increases in fixed-amount cost sharing without jeopardizing grandfathered plan status.
- The changes may be applied on or after June 15, 2021.

### SUMMARY

The U.S. Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments) on December 15, 2020, published final regulations that revise the requirements for grandfathered group health plans and grandfathered group health insurance coverage to preserve their grandfather status.

The amended final regulations include two key changes to final regulations issued in 2015. The final regulation provides 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 remain a qualifying HDHP without losing grandfathered status. This change ensures that participants and beneficiaries enrolled in that coverage remain eligible to contribute to a health savings account (HSA). Second, the regulation 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.

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In general, under the 2015 regulations, 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 grandfathered 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 grandfathered 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 grandfathered status in ways that would benefit employers, plan participants, and beneficiaries. In July 2020 the Departments issued proposed regulations that included changes in response to the feedback they received from interested stakeholders. The amended final regulations adopted the proposed regulations without substantive change.

## FINAL REGULATIONS

***Flexibility for High Deductible Health Plans (HDHP).*** The regulations provide that grandfathered HDHPs may make increases to fixed-amount cost-sharing requirements (such as deductibles) that would otherwise cause a loss of grandfathered status, but only to the extent those changes are necessary to comply with the requirements to maintain their status as an HDHP. This change ensures that participants and beneficiaries in these plans remain eligible to contribute to an HSA.

Although 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 grandfathered status, grandfathered HDHP plans fixed-amount cost-sharing requirements can now be increased to meet a future adjusted minimum annual deductible requirement without losing grandfathered 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. Alternatively, the final regulations allow increases that do not exceed the most recently published annual premium

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adjustment percentage, which is used to set the rate of increase for certain ACA parameters. This method provides more flexibility to make cost-sharing changes without loss of grandfathered status.

## EFFECTIVE DATE

The Departments initially proposed an effective date for the final regulations of January 14, 2021, which is 30 days after publication in the *Federal Register*. However, due to concerns of placing a greater financial burden on plan participants during the COVID-19 pandemic, the applicable date of the regulations is delayed for six months. Thus, the final regulations are applicable on June 15, 2021.

## CONCLUSION

Under the final regulations, grandfathered plan sponsors have more flexibility to adjust fixed-amount cost-sharing measures without jeopardizing their plans' grandfathered status. Plan sponsors should work with their benefit advisors to determine which changes they may wish to adopt, and the timing of any changes.

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