

Subject: Departments Release Final Regulations Allowing More Flexibility to Change Grandfathered Group Health Plans

Friends and Clients:

The U.S. Departments of Labor, Health and Human Services, and Treasury have released a [final rule](#) amending ACA rules for grandfathered group health plans, including rules affecting a plan's ability to maintain grandfathered status. Under the ACA, grandfathered group health plans—plans that existed as of the law's enactment and have complied with the requirements to keep its grandfathered status—are subject to some of the ACA's requirements, such as the prohibition on preexisting condition exclusions, but are exempt from certain other requirements.

Generally speaking, the final rule provides more flexibility with regard to the changes grandfathered group health plans may make while still preserving their grandfathered status. Specifically, the final rule clarifies that grandfathered group health coverage that is a high deductible health plan may increase fixed-amount cost-sharing requirements, such as deductibles, to the extent necessary to maintain its status as a HDHP without losing grandfathered status. According to the DOL, this change ensures that participants and beneficiaries enrolled in grandfathered HDHP coverage remain eligible to contribute to a health savings account.

The final rule also provides an alternative method of measuring permitted increases in fixed-amount cost sharing that allows plans to better account for changes in the costs of health coverage over time. Under the existing rules, the maximum percentage increase allowed for fixed-amount cost sharing without losing grandfathered status is medical inflation, plus 15 percentage points. Under the final rule, for increases made effective on or after June 15, 2021, in addition to the current maximum percentage increase standard, plans may also evaluate the increases in fixed-amount cost sharing using the premium adjustment percentage minus (a figure published by HHS that represents the percentage (if any) by which the average per capita premium for health insurance coverage for the preceding calendar year exceeds such average per capita premium for health insurance for 2013).

The amendments in the final rule should provide employers wishing to maintain their plans' grandfathered status with clarity and increased flexibility to adapt their plans to changing health care costs without losing grandfathered status.

Matthew Cannova

Shareholder | Employee Benefits & Executive Compensation
P: 205.254.1193 | C: 205.601.0731 | F: 205.254.1999
mcannova@maynardcooper.com | [V-card](#)

1901 Sixth Ave N, Suite 1700
Birmingham, AL 35203



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