



Agencies To Provide More Flexibility for Grandfathered Group Health Plans

The Department of Labor, Department of Health and Human Services (“HHS”), and the IRS (collectively, the “Agencies”) have issued proposed regulations that would provide greater flexibility for plan sponsors that wish to retain their group health plans’ “grandfathered” status under the Affordable Care Act (“ACA”).

Law

The ACA contains many provisions affecting group health plan design and operation. However, some of these provisions do not apply to group health plans while they are in grandfathered status. (Generally, this term applies to plans that were in existence when the ACA was enacted and have not experienced certain specified events.) Among other things, grandfathered health plans are not subject to the ACA requirement to cover certain preventive services without cost sharing or to the annual limitation on cost sharing.

Grandfathered status can be lost if certain changes occur. These changes include: (i) increases in cost-sharing above specified thresholds; (ii) decreases in employer contributions; and (iii) elimination of substantially all benefits to diagnose or treat a condition.

Proposed Regulations

To provide additional flexibility to plan sponsors of grandfathered health plans, the proposed regulation would clarify that grandfathered group health plan coverage that is also 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 grandfathered status. This change would ensure that participants and beneficiaries enrolled in that HDHP coverage remain eligible to make tax-exempt contributions to a health savings account.

In addition, the proposed regulations provide an alternative method of measuring permitted increases in cost sharing. Current 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 measure of medical inflation. Under the proposal, permitted increases would be determined by reference to this measure or by reference to the most recently published “premium adjustment percentage”, whichever is greater. The premium adjustment percentage is published annually by HHS and reflects the cumulative, historic growth from 2013 through the preceding calendar year

in premiums for private health insurance, excluding Medigap and property and casualty insurance. According to the Agencies, "This alternate inflation measure would better account for changes in the costs of health coverage over time."

The proposed regulations can be found at: <https://www.federalregister.gov/documents/2020/07/15/2020-14895/grandfathered-group-health-plans-and-grandfathered-group-health-insurance-coverage>

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 [@wagner-law-group](https://www.linkedin.com/company/wagner-law-group)

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Boston:

99 Summer Street, 13th Floor
Boston, MA 02110
Tel: (617) 357-5200

 [@wagnerlawgroup](https://twitter.com/wagnerlawgroup)

 [@wagnerlawgroup](https://www.youtube.com/wagnerlawgroup)

Boynton Beach:

1880 N. Congress Avenue, Suite 200
Boynton Beach, FL 33426
Tel: (561) 293-3590

Chicago:

180 N. LaSalle Street, Suite 3200
Chicago, IL 60601
Tel: (847) 990-9034

Lincoln, MA:

55 Old Bedford Road, Suite 303
Lincoln, MA 01773
Tel: (617) 532-8080

New York:

200 Park Avenue, Suite 1700
New York, NY 10166
Tel: (212) 338-5159

San Diego:

8677 Villa La Jolla Drive, Suite 888
San Diego, CA 92037
Tel: (619) 232-8702

San Francisco:

315 Montgomery Street, Suite 900
San Francisco, CA 94104
Tel: (415) 625-0002

St. Louis:

1099 Milwaukee Street, Suite 140
St. Louis, MO 63122
Tel: (314) 236-0065

Tampa:

101 East Kennedy Boulevard, Suite 2140
Tampa, FL 33602
Tel: (813) 603-2959

Washington, D.C.:

800 Connecticut Avenue, N.W., Suite 810
Washington, D.C. 20006
Tel: (202) 969-2800

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