



COLLECTIVE BARGAINING AGREEMENTS

How does the PPACA affect employees covered by a collective bargaining agreement?

Collective bargaining agreements must follow reform rules. If these plans were in place when the law passed on March 23, 2010, they are a grandfathered plan. If a grandfathered plan gets rid of some health benefits, increases costs or reduces what employers pay, than it would lose its status and have to follow health care reform rules.

All of the PPACA rules that apply to grandfathered plans also apply to grandfathered collectively bargained plans for all plans beginning on or after September 23, 2010. The law also allows self-insured plans with collective bargaining agreements to remain grandfathered under the same rules.

The PPACA says insured collectively bargained plan may maintain grandfathered status until the last of their agreements in place before March 23, 2010 ends. PPACA rules then apply after the final termination date, and then all plans must comply with health care reform.

If there are three collective bargaining agreements under one health insurance plan, then the PPACA will not apply until the last of the three agreements ratified prior to March 23, 2010 ends

November 17, 2010

On November 15, the Departments of Treasury, Labor, and Health and Human Services jointly announced that they are amending the Interim Final Regulations on grandfathered health plan status under the Patient Protection and Affordable Care Act (PPACA). The amendment allows employers to switch insurance carriers and/or change their funding from Administrative Services Only (ASO) to fully insured without losing grandfathered status.

The original Interim Final Regulations stated that changing insurance carriers would cause an insured group health plan that was in effect on March 23, 2010 (the date PPACA became law) to lose its grandfather status. For plans wanting to maintain grandfather status, this has been an important consideration.

The Interim Final Regulations are amended as of November 17, 2010 to reflect the following changes for group health plans. These changes are not retroactive, nor do they apply to individual policies.

- **Change of Insurer:** If an insured plan changes insurance policies (new carrier) and the new policy is effective:
 - **Prior** to November 17, 2010: The plan **will lose** grandfathered status.



- **On or after** November 17, 2010: The plan **will not lose** grandfathered status, provided no other changes are made to the plan that trigger loss of status (i.e., reductions in benefits or employer contribution).
- **ASO to Insured:** If a plan changes funding from self-insured to insured and the new policy is effective:
 - **Prior** to November 17, 2010: The plan **will lose** grandfathered status.
 - **On or after** November 17, 2010: The plan **will not lose** grandfathered status, provided no other changes are made that trigger loss of status.
- **Proposed Amendment:** Move the credibility adjustment from the 50th percentile to the 80th percentile. Credibility adjustments are designed to mitigate statistical variation disaggregation of risk pools into smaller cells that would trigger a payment of rebates from random variation.
 - **Result:** This proposed amendment failed with a 34-19 vote, with one abstention.
- **Documentation:** The new health insurance carrier must obtain documentation of the prior plan's terms from the new policyholder so the new carrier can determine whether the change in insurance policies will result in a reduction in benefits or employer contribution sufficient to trigger loss of grandfather status. There's dual responsibility as the policyholder must also sufficiently provide the documentation to the carrier. Documentation includes:
 - Benefits
 - Individual cost-sharing
 - Employer contributions
 - Annual limits

Yet to be Clarified

The Federal government has yet to clarify whether a change in prescription drug formulary, network or funding status from insured to ASO will cause a loss in grandfathered status.