

# Final Rules Provide Some Relief to Grandfathered Plans

By: John Kirk on December 22, 2020 on [graydon.law](https://graydon.law)

As discussed in our prior [post](#), last July the Department of Labor (“DOL”) and Health and Human Services (“HHS”) released proposed rules regarding grandfathered health plans. Earlier this month, the two agencies issued the final grandfathered plan rules. The final rules follow the proposed rules with no substantive changes.

As a reminder, a grandfathered health plan is a group health plan that has continuously provided coverage since March 23, 2010, and has not taken certain actions, including not changing any cost-sharing under the plan beyond specific limits. By remaining grandfathered, a health plan is not subject to several ACA requirements, including the requirement to cover preventive care at 100%. The final rules provide grandfathered plans more flexibility with cost-sharing in two ways.

First, the rules specify that grandfathered group health plans that are HDHPs may make changes to fixed-amount cost-sharing requirements that would otherwise cause a loss of grandfather status without causing a loss of grandfather status, but only to the extent that those changes are necessary to comply with the requirements of HDHPs under section 223(c)(2) of the Internal Revenue Code.

Second, the rules include a revised definition of “maximum percentage increase,” which provides an alternative method of determining that amount based on the premium adjustment percentage. The maximum percentage increase is used to measure cost-sharing requirements, such as co-pays and deductibles. Under the rules, grandfathered plans cannot increase copays by the greater of (a) \$5, as increased by medical inflation; or (b) the maximum percentage increase. For non-copay fixed-amount cost-sharing requirements (such as a deductibles or out-of-pocket maximums), increases cannot exceed the maximum percentage increase. The increase granted by the final rules will allow plans more flexibility in their design to account for increased costs.

Currently, the maximum percentage increase is medical inflation from March 23, 2010 plus 15 percentage points. The final rule changes the maximum percentage increase for grandfathered group plans to be the greater of (a) the current standard (medical inflation plus 15 percentage points); or (b) the change in the premium adjustment percentage plus 15

percentage points. In general, the new method is expected to be approximately 3% higher, on average, than previously allowed.

Grandfathered health plans can be quite complicated if you are trying to make cost-sharing changes; and a mistake means you lose your grandfathered status forever. If you have any questions about your grandfathered plan, the final rules, or benefits in general, please contact any of Graydon's employee benefits attorneys.