



Understanding the New Health Reform Law

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Grandfathered Plans under the Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (Affordable Care Act) provides many new, important protections for consumers who have or who are seeking private health insurance. These protections will help make private coverage more accessible and affordable, and they will improve the quality of coverage for enrollees. However, many of these protections apply differently to health plans that existed on the day the law was enacted, known as “grandfathered plans,” than they do to new plans. Grandfathered plans are exempt from requirements to comply with some of the new consumer protections that the law includes. Congress designed the law this way in order to make sure that people who like their health plans can keep the coverage they currently have.

This fact sheet explains the requirements that health plans must meet in order to maintain their status as grandfathered plans. It also outlines which protections in the Affordable Care Act apply to grandfathered plans and which do not.

The information in this fact sheet is based on the interim final rules for grandfathered plans, for the “Patients’ Bill of Rights” (a collection of patient protections that was included in the Affordable Care Act), and for internal and external appeal processes under the Affordable Care Act that the Departments of Treasury, Labor, and Health and Human Services released in the *Federal Register* on June 17, 2010, June 28, 2010, and July 23, 2010, respectively (see “Additional Resources” on page 7). This fact sheet also includes information from an amendment to the interim final rules for grandfathered plans that was released on November 17, 2010. These preliminary regulations explain which health plans may be considered to be grandfathered and how several of the consumer protections in the law will be implemented in relation to grandfathered plans.

Grandfathered Status for Plans Sold in the Individual Market

Individual market health plans that covered individuals and families on the day that the Affordable Care Act was enacted, March 23, 2010, may be considered grandfathered plans. People who are enrolled in grandfathered individual market plans can add family members to their policies without the plans’ grandfathered status changing. However, if an insurer in the individual market sells a plan to someone after March 23, 2010, the plan cannot be considered grandfathered for the new purchaser. This is the case even if the plan is considered to be a grandfathered plan for others who were enrolled in it on the day that the law was enacted.

In addition, a health plan that is sold in the individual market will lose its grandfathered status for people it covered on or before March 23, 2010, if it makes significant changes to its benefits package or its costs to enrollees. These changes are described on page 3.

Grandfathered Status for Job-Based (Group) Coverage

Job-based health plans that covered workers and their families on March 23, 2010, may be considered grandfathered plans. If qualifying new enrollees join a plan that their employer already provided on that date, the plan can maintain its grandfathered status. Employers with grandfathered plans can add newly hired employees, existing employees who were not previously enrolled, and employees' family members to their health plans and still maintain the plans' grandfathered status.

Under the amendment to the interim final rules for grandfathered plans that was released in November 2010, job-based health plans may also be considered grandfathered plans if they change the insurance companies they use for coverage and those changes go into effect on or after November 15, 2010.¹ However, such plans must still cover the same benefits at the same costs to enrollees as they did with the previous insurers.

If a job-based health plan makes significant changes to its benefits package or its costs to enrollees, whether it is providing coverage through its current insurer or starting a contract with a new health insurer, it will lose its grandfathered status. These changes are described on page 3.

Changes that Cause Plans to Lose Grandfathered Status

To maintain its grandfathered status, a plan in the individual or group (job-based) market cannot significantly increase copayments or deductibles, raise co-insurance, make annual limits more restrictive or add new annual limits, significantly decrease the share of premiums that employers contribute for their workers (in group plans), or eliminate covered benefits. If plans that existed on March 23, 2010, eliminate covered benefits that are necessary to treat or diagnose a condition, or if they significantly increase costs to enrollees, they will lose their grandfathered status and be subject to all applicable consumer protections in the health reform law. Table 1 on page 3 shows these disqualifying changes in more detail.

These protections against existing health plans making significant changes to benefits and costs will safeguard consumers from eroding coverage. They will also ensure that any health plans that decrease their quality or increase their costs for enrollees will have to meet the new consumer protection standards in the Affordable Care Act.

Table 1

Changes that Disqualify Plans from Grandfathered Status

Plan Element	Disqualifying Change*
Copayment	The greater of an increase of more than \$5 (adjusted for medical inflation since March 23, 2010) or an increase above medical inflation plus 15 percentage points.
Deductible	An increase above medical inflation (since March 23, 2010) plus 15 percentage points.
Out-of-Pocket Limit	An increase above medical inflation (since March 23, 2010) plus 15 percentage points.
Co-Insurance	Any increase in the co-insurance rate after March 23, 2010.
Annual Limit	Any decrease of an annual limit that was in place on March 23, 2010, disqualifies a plan. Adoption of a new annual limit for plans that did not have one on March 23, 2010, also disqualifies a plan.**
Employer Premium Contribution Rate (in group plans)	A decrease of more than 5 percentage points below the existing employer contribution rate as of March 23, 2010.
Benefits Package	The elimination of all or substantially all covered benefits to diagnose or treat a particular condition after March 23, 2010.

* See the interim final rule on grandfathered plans listed under “Additional Resources” for information regarding exceptions to the March 23, 2010, date. Exceptions may apply to plans that had already filed pending changes at the time that health reform was enacted.

** If a plan had a lifetime limit but no annual limit on March 23, 2010, it may replace its lifetime limit with an annual limit while maintaining its grandfathered status, as long as the annual limit has a dollar value that is equal to or greater than the previous lifetime limit.

How Provisions in the Affordable Care Act Apply to Grandfathered Plans

Some provisions of the Affordable Care Act apply differently to grandfathered plans than they do to new plans. Table 2 on pages 4 and 5 shows which consumer protections apply to grandfathered plans and which do not, according to information available in the interim final rules for grandfathered plans, the Patients’ Bill of Rights, and internal and external appeal processes under the Affordable Care Act. Since some provisions apply differently to grandfathered plans that are purchased by individuals or families directly (in the individual market) than they do to grandfathered plans that are offered by employers (group plans), the plans are also broken down according to whether they are in the group or individual market.

The interim final rules on grandfathered plans, the Patients’ Bill of Rights, and internal and external appeal processes do not address all of the provisions of the Affordable Care Act that affect private insurance plans. Therefore, there is still some uncertainty regarding how other consumer protections in the law will apply to grandfathered plans in the group and individual markets. Future regulations will need to resolve these issues. Consumers will benefit from having as many protections as possible applied to grandfathered plans, as numerous provisions of the Affordable Care Act can be applied to such plans without disrupting the coverage that enrollees currently have.

Table 2

Which Affordable Care Act Provisions Apply to Grandfathered Plans?

Provision	Date It Goes into Effect	Does It Apply to Grandfathered Group Plans?	Does It Apply to Grandfathered Individual Market Plans?
Young adults can stay on their parents' health plans until age 26	Health plan years starting on or after September 23, 2010*	YES, with one exception: Until 2014, this provision applies only if a young adult does not have another offer of job-based coverage (excluding an offer from another parent's job-based plan).	YES
Prohibition of pre-existing condition exclusions for children under age 19	Health plan years starting on or after September 23, 2010	YES	NO
Preventive services covered with no cost-sharing	Health plan years starting on or after September 23, 2010	NO	NO
Restriction on annual limits in coverage	Health plan years starting on or after September 23, 2010	YES	NO
Prohibition of lifetime limits in coverage	Health plan years starting on or after September 23, 2010	YES	YES
Prohibition against unfair rescissions of coverage	Health plan years starting on or after September 23, 2010	YES	YES
Direct access to OB/GYNs without a referral; pediatricians can be classified as primary care providers; Enrollees must have choice of primary care providers	Health plan years starting on or after September 23, 2010	NO	NO
No higher cost-sharing for out-of-network emergency services (compared to in-network); no prior authorization requirements for emergency care	Health plan years starting on or after September 23, 2010	NO	NO
Right to internal and external appeals of insurer decisions	Health plan years starting on or after September 23, 2010	NO	NO

Table 2 (continued)

Which Affordable Care Act Provisions Apply to Grandfathered Plans?

Provision	Date It Goes into Effect	Does It Apply to Grandfathered Group Plans?	Does It Apply to Grandfathered Individual Market Plans?
Medical loss ratio requirements for fully insured plans: Insurers must spend a set share of premium dollars on medical care and quality improvements* *	2011	YES	YES
Development and use of uniform explanation of coverage documents and standardized definitions for health insurance terms	By March 23, 2011	YES	YES
Prohibition of pre-existing condition exclusions for enrollees of all ages	2014	YES	NO
Prohibition of annual limits in coverage	2014	YES	NO
Prohibition of waiting periods exceeding 90 days for coverage in job-based plans	2014	YES	N/A

Table Notes

* When this provision and others that take effect in health plan years starting on or after September 23, 2010, will actually apply for individual consumers depends on when their health plan starts its year. For example, some health plan years start in October, whereas others, such as the Federal Employees Health Benefits Program (FEHBP) plan year, do not start until January. After September 23, 2010, whenever an individual's health plan year starts again is when the provision will apply to him or her.

** Self-insured plans are exempt from this provision. Self-insured plans are those in which a large employer directly pays the costs of employee claims for medical care, instead of purchasing health insurance for its workers. Self-insured plans still usually collect premiums from employees and may contract with a health insurer to administer claims and coverage for employees, but the employer bears the risk of employee medical costs.

Conclusion

By creating a foundation of consumer protections, including many for grandfathered plans, the Affordable Care Act will ensure that health coverage is accessible and affordable for consumers. Strong requirements for existing plans to maintain their quality and affordability in order to remain grandfathered will protect consumers from thinning coverage, and new protections for plans that are not grandfathered will make sure that newly sold plans meet the needs of consumers and provide good value for their money.

¹ If job-based health plans changed insurance carriers after March 23, 2010, but before November 15, 2010, they may not retain their grandfathered status.

Additional Resources

For more on grandfathered plans, see the following resources:

- *Keeping the Health Plan You Have: The Affordable Care Act and “Grandfathered” Plans* (Department of Health and Human Services), available online at http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html.
- *Amendment to Regulation on “Grandfathered” Health Plans under the Affordable Care Act (Fact Sheet)* (Department of Health and Human Services), available online at <http://www.hhs.gov/ociio/regulations/grandfather/factsheet.html>.
- *Interim Final Rule on Grandfathered Plans* (Departments of Health and Human Services, Labor, and Treasury, printed in the *Federal Register* on June 17, 2010), available online at <http://www.regulations.gov/search/Regs/contentStreamer?objectId=0900006480b03a90&disposition=attachment&contentType=pdf>.
- *Amendment to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act* (Departments of Health and Human Services, Labor, and Treasury, printed in the *Federal Register* on November 17, 2010), available online at <http://www.gpo.gov/fdsys/pkg/FR-2010-11-17/pdf/2010-28861.pdf>.
- *Interim Final Rule on the Patients’ Bill of Rights* (Departments of Health and Human Services, Labor, and Treasury, printed in the *Federal Register* on June 28, 2010), available online at <http://www.regulations.gov/search/Regs/contentStreamer?objectId=0900006480b0b97c&disposition=attachment&contentType=html>.
- *Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Internal Claims and Appeals and External Review Processes under the Patient Protection and Affordable Care Act* (Departments of Health and Human Services, Labor, and Treasury, printed in the *Federal Register* on July 23, 2010), available online at <http://edocket.access.gpo.gov/2010/2010-18043.htm>.

This fact sheet is part of a series of fact sheets, issue briefs, and special reports designed to help the public understand the new health reform law.



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