

# Legislative Brief

## Health Care Reform: Regulations Issued on Grandfathered Plans



### **EXECUTIVE SUMMARY**

The health care reform law passed earlier this year brings many changes to employers and health plans. The extent of the impact will depend, in part, on whether you maintained a health care plan on March 23, 2010, the date the primary legislation was enacted. If your company sponsored a plan on that date, it is considered a “grandfathered” plan. Grandfathered plans are exempt from certain health care reform requirements, such as no cost-sharing for preventive care and other patient protections.

On June 14, 2010, the Departments of Health and Human Services (HHS), Labor and Treasury issued regulations regarding grandfathered plans. Importantly, it clarifies what types of changes can be made to existing plans that will allow them to retain their “grandfathered” status.

This JM Brassill Group Inc. Legislative Brief summarizes the new regulations as follows.

### **SUMMARY OF THE REGULATIONS**

The regulations essentially state that plans will lose their grandfathered status if they choose to significantly cut benefits or increase out-of-pocket spending for consumers. Losing grandfathered status means that a plan would have to comply with additional health care reform requirements, such as first-dollar coverage of recommended prevention services and patient protections such as guaranteed access to OB-GYNs and pediatricians.

#### **Permitted Changes**

Grandfathered health plans will be able to make routine changes to their policies and maintain their status. These routine changes include cost adjustments to keep pace with medical inflation, adding new benefits, making modest adjustments to existing benefits, voluntarily adopting new consumer protections under the new law, or making changes to comply with state or other federal laws. Premium changes are not taken into account when determining whether or not a plan is grandfathered.

#### **Prohibited Changes**

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to consumers. Specifically, making the following changes would cause a plan to lose its grandfathered status:

- **Significantly Cutting or Reducing Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Raising Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20 percent of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Significantly Raising Co-Payment Charges.** Frequently, plans require patients to pay a fixed-dollar amount for doctor’s office visits and other services. Compared with the copayments in effect on March 23, 2010, grandfathered plans will be able to increase those co-pays by no more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points. For example, if a plan raises its copayment from \$30 to \$50 over the next two years, it will lose its grandfathered status.
- **Significantly Raising Deductibles.** Many plans require patients to pay the first bills they receive each year (for example, the first \$500, \$1,000 or \$1,500 a year). Compared with the deductible required as of March 23, 2010, grandfathered plans can only increase these deductibles by a percentage equal to medical inflation plus 15

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percentage points. In recent years, medical costs have risen an average of 4-5 percent so this formula would allow deductibles to go up, for example, by 19-20 percent between 2010 and 2011, or by 23-25 percent between 2010 and 2012. For a family with a \$1,000 annual deductible, this would mean if they had a hike of \$190 or \$200 from 2010 to 2011, their plan could then increase the deductible again by another \$50 the following year.

- ***Significantly Reducing Employer Contributions.*** Many employers pay a portion of their employees' premium for insurance and this is usually deducted from their paychecks. Grandfathered plans cannot decrease the percent of premiums the employer pays by more than 5 percentage points (for example, decrease their own share and increase the workers' share of premium from 15% to 25%).
- ***Adding or Tightening an Annual Limit on What the Insurer Pays.*** Some insurers cap the amount that they will pay for covered services each year. If they want to retain their status as grandfathered plans, plans cannot tighten any annual dollar limit in place as of March 23, 2010. Moreover, plans that do not have an annual dollar limit cannot add a new one unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit (which is more protective of high-cost enrollees).
- ***Cannot Change Insurance Companies.*** If an employer decides to buy insurance for its workers from a different insurance company, this new insurer will not be considered a grandfathered plan. This does not apply when employers that provide their own insurance to their workers switch plan administrators or to collective bargaining agreements.

### **Additional Requirements for Grandfathered Plans**

The regulations also contain additional requirements to keep health plans from using the grandfather rule to avoid providing important consumer protections.

To promote transparency, the regulations require a plan to disclose to consumers, every time it distributes materials, whether the plan believes that it is a grandfathered plan and therefore is not subject to some of the additional consumer protections of the health care reform law. This allows consumers to understand the benefits of staying in a grandfathered plan or switching to a new plan. The plan must also provide contact information for enrollees to have their questions and complaints addressed.

The regulations also provide that a plan's grandfathered status may be revoked if it forces consumers to switch to another grandfathered plan that, compared to the current plan, has less benefits or higher cost sharing as a means of avoiding new consumer protections. Grandfathered status may also be revoked if a plan is bought by or merges with another plan simply to avoid complying with the law.

### **PROJECTED IMPACT ON CONSUMERS AND PLANS**

The Departments have provided information on the expected impact the grandfathered plan rules will have on health coverage. For additional information, access the fact sheet at:  
[www.healthreform.gov/newsroom/keeping\\_the\\_health\\_plan\\_you\\_have.html](http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html).

### **Large Employer Plans**

It is expected that large employers (100 or more workers) - who make up the vast majority of those with private health insurance today - will not see major changes to their coverage as a result of this regulation. The regulations affirm that most of these plans will remain grandfathered - more than three-quarters of firms in 2011 - based on the way they changed cost sharing from 2008-2009.

Most of these plans already offer the patient protections applied to grandfathered plans such as no pre-existing condition exclusions for children and no rescissions of coverage when a person gets sick. In addition, they are likely to already give their workers and families protections like a choice of OB-GYN and pediatrician, and access to emergency

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rooms in other states without prior authorization. Based on past patterns of behavior, it is expected that large employers will continue to make adjustments to the health plans they offer from year to year so that, by the time the health insurance Exchanges are established in 2014, fewer – but still most – large employer plans will have grandfather status. However, the assumed market changes depend on the choices large employers make in the future.

### **Small Business Plans**

The roughly 43 million people insured through small businesses will likely transition from their current plan to one with the new protections over the next few years. Small plans tend to make substantial changes to cost sharing, employer contributions, and health insurance issuers more frequently than large plans. As such, it is estimated that 70 percent of plans will be grandfathered in the first year, but depending on the choices these employers make, this could drop to about one-third over several years.

### **Individual Health Market**

The 17 million people who are covered in the individual health insurance market, where switching of plans and substantial changes in coverage are common, are expected to receive the health care reform protections sooner rather than later. Roughly 40 percent to two-thirds of people in individual market policies change plans within a year. Given this “churn,” the transition for the 17 million people in this market may be swift, irrespective of the grandfather plan definition.

### **Special Types of Health Plans**

Fully-insured health plans subject to collective bargaining agreements will be able to maintain their grandfathered status until their agreement terminates. After that point, they are subject to the same rules as other health plans; in other words, they will lose their grandfathered status if they make any of the substantial changes described above. Retiree-only and “excepted health plans” such as dental plans, long-term care insurance, or Medigap, are exempt from the health care reform insurance reforms.

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