

In the Spotlight: Health Care Reform and Grandfathering

Throughout the health care reform debate, President Barack Obama frequently stated that “if you like your health plan, you can keep it”. To help deliver on this promise, the Affordable Care Act of 2010 (ACA) included a provision called “grandfathering”.

The provision allows group and individual health insurance plans in effect on March 23, 2010 to be grandfathered and, therefore, exempt from some of the health care reform law requirements. On June 14, 2010, the Administration released final interim regulations regarding what qualifies as a grandfathered health plan, how that status is maintained, and how a grandfathered health plan may lose its grandfathered status. For details, [click here](#) or keep reading for some highlights.

Grandfathered plans will not be subject to the major rating reforms or pooled with Exchange and non-Exchange new plans for rate setting, but there are other exceptions as well. Specifically, grandfathered plans differ from new plans by being exempt from the following reform requirements (note these provisions phase in from 2010 – 2014):

- Coverage of an “essential benefits package” and limits on cost-sharing exposure
- Coverage of preventive benefits with no cost-sharing
- Restrictions on annual limits in the individual market
- Coverage of participation in clinical trials
- Reforms in the internal and external appeals process
- Protections against health status based on pre-existing conditions
- Transitional reinsurance and risk corridors
- Modified community rating
- Guaranteed issue requirements
- Prohibition on employers altering benefits and other eligibility based on salary
- Use of plain language in disclosing health plan data
- Provider non-discrimination rules
- Quality of care reporting

The new law also specifies that certain changes to a grandfathered plan will result in the loss of grandfathered status, while others may not.

Changes that will result in loss of grandfathered status:

- Elimination of all (or substantially all) benefits to diagnose or treat a particular condition
- Any increase in cost-sharing percentage requirements (e.g. coinsurance)
- Increase in a deductible or out-of-pocket maximum by an amount that exceeds medical inflation plus 15 percentage points.
- Increase in a copayment by an amount that exceeds medical inflation plus 15 percentage points (or, if greater, \$5 plus medical inflation).
- Reduction in employer contributions by more than 5 percent
- Any decrease in the dollar amount of the overall annual limit

Changes that will not result in a loss of grandfathered status:

- Addition of dependents to a grandfathered plan
- Addition of new employees to a grandfathered employer plan
- Removal of dependents or employees from a grandfathered plan, as long as at least one member remains on the grandfathered plan at all times
- Changing premiums
- Changes required to conform to state or federal requirements
- Changing third-party administrators (as long as the benefits remain the same)

The changes to grandfathered plans are calculated on a cumulative basis; in other words, percentages will be in comparison to plans as they were before March 23, 2010 - not annually. Carriers have the choice whether or not to continue grandfathered plans – a decision not to grandfather would mean that a plan had been modified to comply with all regulations applying to post-March 23, 2010 plans.

Like most ACA reforms, these regulations have been met with mixed reactions from various stakeholders. According to a [May 2010 Kaiser Family Foundation article](#), groups like the American Cancer Society's Action Network praised the strict regulations that ensure everyone had access to the reform's benefits; others, like the U.S. Chamber of Commerce and the National Federation of Independent Businesses, believe that maintaining grandfathered plans is too difficult and could result in many small businesses dropping coverage.

BCBSNC Views

Each health insurer is handling the grandfathering provision independently. BCBSNC has chosen to grandfather most plans to enable individuals and groups to take advantage of the benefits of grandfathering. For individuals under 65, Blue Advantage and Blue Options HSA will maintain grandfathered status; we will not maintain grandfathered status for Blue Assurance due to the very small membership in this plan. (This means Blue Assurance will be altered to comply with ACA provisions.) Also, note that any voluntary downgrade in Blue Advantage or Blue Option HSA plans, including removing the maternity rider, would negate grandfather status. At this time, BCBSNC will grandfather all existing group plans. BCBSNC implemented some of the health care reform changes before health care reform came about, which means that some of our grandfathered plans already have some non-grandfathered HCR requirements. However, moving forward the policy we have established is that any benefit change to a group or individual plan will result in the loss of grandfathered status. Communications have been developed and distributed to key stakeholders explaining these details. The decision to continue to offer grandfathered plans will be revisited periodically to ensure that it continues to make sense for members and BCBSNC.

What to expect long-term

While grandfathering regulations are stricter than many insurers and employers would like, there are some benefits to maintaining a grandfathered plan. If an employer or individual chooses to keep a grandfathered plan, it will enable them to avoid certain provisions of the law and any associated costs.

There are administrative requirements and complexity that result from maintaining both a "grandfathered" version of a product, in addition to a fully ACA-compliant version so that the product can continue to be marketed for new sales that will result in added costs. These costs come at a time when the ACA is limiting the amount of premium that can be spent on administrative costs.

Additionally, because of the strict regulations surrounding how to maintain a grandfathered status, it is likely that many employers will decide to give up grandfathered plans. The Administration's mid-range estimates predict that by 2013, only 55 percent of large employers and 34 percent of small employers will maintain grandfathered plans. Thus, grandfathering may be of limited importance and long-term value in the group market.

Grandfathered coverage will be of value to some in the individual market. A June 2010 [Robert Wood Johnson Foundation study](#) discusses the following scenario:

- Healthy individuals who maintain grandfathered plans will avoid the rating changes associated with health care reform. These rating changes will likely result in certain young and healthy individuals paying more in premium costs. The grandfathered individual plans will not be pooled with the new plans for the purposes of determining rates, which benefits those with grandfathered plans. Some who are currently in a grandfathered individual plan may find it beneficial to move to a new, fully ACA-compliant plan. Specifically, individuals who are less healthy or older may receive greater benefits under a new plan and may also be attracted by certain benefit requirements not applicable to grandfathered plans.

Such a scenario reveals the downside to allowing grandfathered coverage to be maintained – new fully ACA-compliant plans will not enroll healthy individuals who choose to maintain a grandfathered plan, resulting in higher premiums for the new plans than would occur if those healthy individuals had moved to the new plans. However, with a weak coverage mandate, there is not an effective means to ensure that the healthiest individuals will actually buy and maintain coverage under a new plan. Under these circumstances, allowing grandfathering helps to encourage healthy individuals in grandfathered plans to remain insured.

For More Information

White House Fact Sheet on Grandfathering:

http://www.healthcare.gov/news/factsheets/keeping_the_health_plan_you_have_grandfathered.html

HHS Press Release on Regulations: <http://www.hhs.gov/news/press/2010pres/06/20100614e.html>

White House Q&A on Grandfathering: <http://www.healthreform.gov/about/grandfathering.html>

DOL Frequently Asked Questions: <http://www.dol.gov/ebsa/faqs/faq-aca2.html>

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