



Understanding the New Health Reform Law

From Families USA • August 2010

Grandfathered Plans under the Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (Affordable Care Act), the health reform law that was signed by President Obama on March 23, 2010, 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 also 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 newly sold 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 same coverage they have now.

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 health reform law apply to grandfathered plans and which do not.

The information in this fact sheet is based on the interim final rules for grandfathered plans, the “Patients’ Bill of Rights” (a collection of patient protections that was included in the Affordable Care Act), and 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 6). These preliminary regulations explain how many of the consumer protections in the law will be implemented in relation to grandfathered plans.

Grandfathered Status

Health plans that covered individuals and families on the day that the health reform law was enacted, March 23, 2010, may be considered grandfathered plans. If qualifying new enrollees join a plan that their employer already provided or that their family had already purchased on that date, the plan can still maintain its grandfathered status. Employers with grandfathered plans can add newly hired employees (or existing employees who were not previously enrolled) to their health plans and still maintain the plans’ grandfathered status. Similarly, individuals who are enrolled in a grandfathered plan (whether they purchased the plan in the individual market or are enrolled through their employer) can add family members to their policy without the plan’s grandfathered status changing.

However, if a health insurer sells a plan to an individual or to an employer after March 23, 2010, the plan cannot be considered grandfathered for the new purchaser. This is the case even if the plan is a grandfathered plan for other employers or individuals who were enrolled in it on the day that the law was enacted. The following examples illustrate these two situations:

1. Good Care Plan has long had Employer X as a client. Employer X hires Sally after March 23 and adds her to the company's existing health plan. In this case, Good Care Plan remains grandfathered for Employer X and for Sally.
2. Employer Y, which previously used a different insurance company, decided to purchase coverage for all of its workers through Good Care Plan in April 2010. Since Employer Y made this new purchase after the enactment of health reform, Good Care Plan is not grandfathered for Employer Y. Therefore, the Good Care policy that enrolls Employer Y's workers must abide by the applicable protections under health reform.

To maintain its grandfathered status, a plan cannot significantly increase copayments or deductibles, increase out-of-pocket limits, 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 shows these disqualifying changes in more detail.

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.

These protections against existing health plans making significant changes to benefits and costs will safeguard consumers from eroding coverage, and they will make sure that any plans that decrease their quality or affordability will have to meet all applicable consumer protection standards in the health reform law.

Health Reform Provisions and Grandfathered Plans

Some provisions of the Affordable Care Act apply differently to grandfathered plans than they do to newly sold 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 purchased by individuals or families directly (in the individual market) than to grandfathered plans 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 touch upon all of the provisions of the Affordable Care Act that affect private insurance plans. Future regulations will specify how additional provisions of the Affordable Care Act not included in Table 2 apply to grandfathered plans. 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.

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.

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.

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.

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>.

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.



1201 New York Avenue NW, Suite 1100 ■ Washington, DC 20005

Phone: 202-628-3030 ■ Email: info@familiesusa.org

www.familiesusa.org