

Fact Sheet: Keeping the Health Plan You Have: The Affordable Care Act and “Grandfathered” Health Plans

The Affordable Care Act gives American families and businesses more control over their health care by providing greater benefits and protections for family members and employees. It also provides the stability, and also the flexibility, that families and businesses need to make the choices that work best for them.

During the health reform debate, President Obama made clear to Americans that “if you like your health plan, you can keep it.” He emphasized that there is nothing in the new law that would force them to change plans or doctors. Today, the Departments of Health and Human Services, Labor, and Treasury issued a new regulation for health coverage in place on March 23, 2010 that makes good on that promise by:

- Protecting the ability of individuals and businesses to keep their current plan;
- Providing important consumer protections that give Americans – rather than insurance companies – control over their own health care.
- Providing stability and flexibility to insurers and businesses that offer insurance coverage as the nation transitions to a more competitive marketplace in 2014 where businesses and consumers will have more affordable choices through Exchanges.

The rule announced today preserves the ability of the American people to keep their current plan if they like it, while providing new benefits, by minimizing market disruption and putting us on a glide path toward the competitive, patient-centered market of the future. While it requires all health plans to provide important new benefits to consumers, it allows plans that existed on March 23, 2010 to innovate and contain costs by allowing insurers and employers to make routine changes without losing grandfather status. Plans will lose their “grandfather” status if they choose to significantly cut benefits or increase out-of-pocket spending for consumers – and consumers in plans that make such changes will gain new consumer protections.

Most of the 133 million Americans with employer-sponsored health insurance through large employers will maintain the coverage they have today. Large employer-based plans already offer most of the comprehensive benefits and consumer protections that the Affordable Care Act will provide to all Americans this year – such as preventing lifetime limits on coverage – and in the future.

People who work in smaller firms – which change insurers more often due to annual fluctuations in premiums – and people who purchase their own insurance in the individual market– a group that frequently changes coverage – will enjoy all of the benefits of the Affordable Care Act when they choose a new plan. These Americans also will benefit from the new competitive Exchanges that will be established in 2014 to offer individuals and workers in small businesses with greater choice of plans at more affordable rates – the same choice of plans as members of Congress.

Protecting Patients' Rights in All Plans

All health plans – whether or not they are grandfathered plans – must provide certain benefits to their customers for plan years starting on or after September 23, 2010 including:

- No lifetime limits on coverage for all plans;
- No rescissions of coverage when people get sick and have previously made an unintentional mistake on their application;
- Extension of parents' coverage to young adults under 26 years old; and the

For the vast majority of Americans who get their health insurance through employers, additional benefits will be offered, irrespective of whether their plan is grandfathered, including:

- No coverage exclusions for children with pre-existing conditions; and
- No "restricted" annual limits (e.g., annual dollar-amount limits on coverage below standards to be set in future regulations).

Additional Consumer Protections Apply to Non-Grandfathered Plans

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.

Plans will lose their grandfathered status if they choose to make significant changes that reduce benefits or increase costs to consumers. If a plan loses its grandfathered status, then consumers in these plans will gain additional new benefits including:

- Coverage of recommended prevention services with no cost sharing; and
- Patient protections such as guaranteed access to OB-GYNs and pediatricians.

Under the Affordable Care Act, these requirements are applicable to all new plans, and existing plans that choose to make the following changes that would cause them to lose their grandfathered status.

Compared to their policies in effect on March 23, 2010, grandfathered plans:

- **Cannot Significantly Cut or Reduce Benefits.** For example, if a plan decides to no longer cover care for people with diabetes, cystic fibrosis or HIV/AIDS.
- **Cannot Raise Co-Insurance Charges.** Typically, co-insurance requires a patient to pay a fixed percentage of a charge (for example, 20% of a hospital bill). Grandfathered plans cannot increase this percentage.
- **Cannot Significantly Raise 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 2 years, it will lose its grandfathered status.

- **Cannot Significantly Raise 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 percentage points. In recent years, medical costs have risen an average of 4-to-5% so this formula would allow deductibles to go up, for example, by 19-20% between 2010 and 2011, or by 23-25% 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.
- **Cannot Significantly Lower 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%).
- **Cannot Add or Tighten 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.

Protecting Against Abuse of Grandfathered Health Plan Status

To prevent health plans from using the grandfather rule to avoid providing important consumer protections, the regulation provides for:

- Promoting transparency by requiring 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 Affordable Care Act. 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;
- Revoking a plan's grandfathered status 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; or
- Revoking a plan's grandfathered status if it is bought by or merges with another plan simply to avoid complying with the law.

Projected Impact on Consumers and Plans

Large Employer Plans

The 133 million Americans with employer-sponsored health insurance through 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. This regulation affirms 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 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, we estimate that 70% 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. To help sustain small business coverage, the Affordable Care Act also includes a tax credit for up to 35% of their premium contributions.

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, will receive the new protections of the Affordable Care Act 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 will be swift. In the short run, individuals whose plan changes and is no longer grandfathered will gain access to free preventive services, protections against restricted annual limits, and patient protections such as improved access to emergency rooms. These Americans also will benefit from the Health Insurance Exchanges that will be established in 2014 to offer individuals and workers in small businesses a much greater choice of plans at more affordable rates.

People in 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 Affordable Care Act insurance reforms.

Projections of Employer Plans Remaining Grandfathered, 2011-2013

There is considerable uncertainty about what choices employers will make over the next few years as the market prepares for the establishment of the competitive Exchanges and other market reforms such as new consumer protections, middle-class tax credits and other steps to expand affordability and choice for millions more Americans. This rule estimates the likely decisions of employers based on assumptions and extrapolations of recent market behavior, including the decisions by employers to change their health plans in 2008 and 2009. The table below depicts the results of this analysis:

Type of Plan	Enrollees	Employer Plans Remaining Grandfathered		Explanation
		2011	2013	
Allowable Percent Change in Co-Payments from 2010		Medical inflation* (4%) + 15% = 19%	Medical inflation* (4%) ³ = 12% + 15% = 27%	Deductibles, copayments can increase faster than medical inflation over time
Large Employer	133 million	Low: 87% remain grandfathered	Low: 66% remain grandfathered	Large plans are more stable and often self-insured. Regulation permits plans to make routine changes needed to keep premium growth in check.
		Mid-range: 82% remain grandfathered	Mid-range: 55% remain grandfathered	
		High: 71% remain grandfathered	High: 36% remain grandfathered	
Small Employer	43 million	Low: 80% remain grandfathered	Low: 51% remain grandfathered	Small businesses typically buy commercial insurance and frequently make changes in insurers and coverage. Limited purchasing power and high overhead often force a trade-off between dramatic changes in benefits and cost sharing and affordable premiums.
		Mid-range: 70% remain grandfathered	Mid-range: 34% remain grandfathered	
		High: 58% remain grandfathered	High: 20% remain grandfathered	

* Assumes medical inflation at 4%

The “low” percentage is based on the mid-range percentages plus plans that could stay grandfathered with small premium changes.

The “mid-range” percentage is based on assumptions of the number of plans that would lose their grandfathered status if they made changes consistent with the changes that they made in 2008 and 2009 that would not lead to premium increases.

The “high” percentage assumes that some plans would not be able to make the adjustments to employer premium contribution they would need to keep premiums the same while keeping their other cost-sharing parameters within the grandfathering rules. The estimates in this case assume these plans will choose to relinquish their grandfathered status instead.

©KeenanSuggsBowersElkins

Choices in 2014 and Subsequent Years

In 2014, small businesses and individuals who purchase insurance on their own will gain access to the competitive market Exchanges. These Exchanges will offer individuals and workers in small businesses with a much greater choice of plans at more affordable rates – the same choice as members of Congress. In fact, the Congressional Budget Office (CBO) has estimated that, on an apples-to-apples basis, premiums will be 14- 20 percent lower than they would be under current law in 2016 due to competition, lower insurance overhead, and increased pooling and purchasing power. Small businesses also will have more affordable options. CBO has estimated that a family policy for small businesses would be available in the Exchanges at a premium that is \$4,000 lower than under current law in 2016.

These reduced premiums do not take into account the tax credits available to small businesses and middle-class families to help make insurance affordable. These additional new choices may further lower the likelihood that small businesses workers will remain in grandfathered health plans. Consumers insured through large employers are more likely to remain in grandfathered plans in 2014 and beyond.

Read the Press Release at: <http://www.hhs.gov/news/press/2010pres/06/20100614c.html>.

Read the Questions and Answers on the Regulation at <http://www.healthreform.gov/about/grandfathering.html>.

You can view the regulation at: http://www.federalregister.gov/OFRUpload/OFRData/2010-14488_PI.pdf.