



# HEALTH CARE REFORM update



BlueCross BlueShield  
of Kansas City  
An Independent Licensee of the  
Blue Cross and Blue Shield Association

## Grandfathering Existing Coverage

On March 23, 2010, President Obama signed into law the “Patient Protection and Affordable Care Act” (PPACA). A reconciliation bill making changes to the Act was signed by the President on March 30, 2010. The PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. The Departments of Health and Human Services, Treasury, and Labor issued Interim Final Regulations (IFR) implementing grandfathering on June 17, 2010. This summary provides an overview of the grandfathering provisions of the Act and the IFR.

### *Summary*

The Act provides that existing group health plan or insurance coverage that an individual was enrolled in prior to March 23, 2010 – so called “grandfathered plans” – may remain in effect and are exempt from certain (but not all) requirements of the Act.

### *Scope*

Applicable to all group health plans (whether insured or self-funded) and individual insurance coverage in effect as of March 23, 2010, even if renewed after March 23, 2010.

### *Coverage Requirements*

Grandfathered coverage in the individual market and group health plans (insured or self-funded) must comply with the following provisions of the Act for the first plan year beginning on or after September 23, 2010 (§ 2301 of Reconciliation Bill):

- May not impose lifetime maximums;
- May not include provisions to rescind coverage; and
- Must extend coverage to dependent children up to the age of 26 if the child is not eligible to enroll in employer sponsored coverage.

In addition, grandfathered group health plans (insured or self-funded) must comply with the following (§ 2301 of Reconciliation Bill):

- May not impose pre-existing condition exclusions for children under age 19 beginning with the first plan year beginning on or after March 23, 2010;
- May only apply “restricted” annual benefit limits for essential benefits beginning with plan years starting on or after September 23, 2010;

- May not impose pre-existing condition exclusions for any enrollee after the plan year beginning on or after January 1, 2014;
- Waiting periods may not exceed 90 days in plan years beginning on and after January 1, 2014; and
- Beginning with renewals and new plan years beginning on or after January 1, 2014, the dependent mandate applies to all children up to age 26 regardless of whether the child is eligible for employer sponsored coverage.

Grandfathered coverage must also comply with the following provisions of the Act:

- Uniform coverage document requirements subject to regulations to be issued by the Secretary of Health & Human Services (HHS) within 12 months (§ 1001 of PPACA adding § 2015 of the Public Health Service Act (PHSA)), applies to individual market and both fully insured and self funded groups;
- Incurred loss and claim reporting requirements (§ 1001 of PPACA adding § 2718 of the PHSA and § 10101(f) of PPACA) beginning for plan years on or after September 23, 2010, applies only to individual market and fully insured groups; and
- Loss ratio requirements beginning January 1, 2011 beginning for plan years on or after September 23, 2010 (§ 1001 of PPACA adding § 2718 of the PHSA and § 10101(f) of PPACA), applies only to individual market and fully insured groups.

Grandfathered coverage is exempt from all other insurance reform provisions of the Act but may be subject to other provisions of the Act such as the employer mandate, tax requirements, etc.

### ***Notice Requirements***

If a plan believes it is grandfathered, notice must be provided to enrollees regarding the grandfathered status of the plan and providing individuals with contact information for questions or complaints. Grandfathered plans must retain documentation of the plan that was in effect on March 23, 2010, such documents are subject to examination by state and federal agencies, participants and/or subscribers.

Since the enactment of PPACA and publication of the IFR, numerous FAQs regarding grandfathered have been published by HHS, DOL and Treasury. The FAQs are intended to provide clarification and guidance.

### ***Grandfather Rule***

#### **A. Definition of a “Grandfathered Plan”**

In order to be a grandfathered plan, the policy or group health plan must have had at least one individual enrolled in coverage on March 23, 2010, and the policy or plan must have continuously covered someone since March 23, 2010 (even if not the same individuals).

A limited exception is provided for insured plans maintained pursuant to a collective bargaining agreement. These plans are automatically considered grandfathered plans until the expiration of the relevant agreement or agreements. After that, the plan’s grandfathered status is determined in the same way as other plans.

Under the IFR, grandfathered status applies separately to each benefit package offered under a policy or plan.

*Example: A plan offers three options: Option F (self-funded), Option G (insured), Option H (insured). The Plan replaces the insurance issuer for Option H. Option H could no longer be considered a grandfathered plan, but Option F and G still are grandfathered (subject to the other grandfather rules).*

## **B. Permissible Changes that Will Not Result in a Loss of Grandfather Status**

The IFR provides the following examples of changes that, on their own, would not cause a plan to lose grandfather status (if these changes are combined with other types of changes, grandfather status could be impacted.):

- Changes to a policy or plan's premium;
- Changes required to comply with federal or state law;  
*Note that the Preamble does not provide examples of what changes can be made to comply with federal or state law without loss of grandfather status. Some laws, such as the Mental Health Parity and Addiction Equity Act, permit insurers and plans to place restrictions on benefits which might run afoul of the rules described above.*
- Changes to voluntarily comply with provisions of PPACA or to increase benefits;
- Changes to a plan's third party administrator.
- Transferring employees from a grandfathered plan into another benefit package only if it is due to a “bona fide employment-based reason.” The Departments interpret the term “bona fide employment-based reason” to embrace a variety of circumstances but offered the following examples:
  - When a benefit package is being eliminated because the issuer is exiting the market;
  - When a benefit package is being eliminated because the issuer no longer offers the product to the employer (for example, because the employer no longer satisfies the issuer's minimum participation requirement);
  - When low or declining participation by plan participants in the benefit package makes it impractical for the plan sponsor to continue to offer the benefit package;
  - When a benefit package is eliminated from a multiemployer plan as agreed upon as part of the collective bargaining process; or
  - When a benefit package is eliminated for any reason and multiple benefit packages covering a significant portion of other employees remain available to the employees being transferred.

This list is not intended to be an exhaustive list as there may be many other circumstances in which a benefit package is considered to be eliminated for a bona fide employment-based reason.

However, the IFR provides that changing the terms or cost of coverage is *not* a bona fide employment-based reason. Specifically with respect to mergers and acquisitions, the IFR states that if the "principal purpose" of a merger, acquisition, or restructuring is to cover new individuals under a grandfathered plan, the plan will lose its grandfathered status.

- Changes to a prescription drug formulary:
  - Changes to the classification of brand-name prescription drugs and/or the cost-sharing level or the brand-name drug. For example:

- A drug was previously classified in Tier 2 as a brand name drug with no generic available. However, a generic alternative for the drug has just been released and is added to the formulary. Since the generic is now available, the plan moves the brand name drug into Tier 3 and adds the generic to Tier 1. This movement of the brand name drug into a higher cost-sharing tier does not cause the plan to relinquish grandfather status
- Changes to copayments for preventive services solely performed in an in-network outpatient hospital setting.
  - Cost-Sharing for preventive services performed in an ambulatory surgery center is not allowed.
  - Cost-Sharing is allowed for preventive services performed at an in-network outpatient hospital
    - This is only allowed if it is medically inappropriate to perform services at an ambulatory surgery center.

### C. Impermissible Changes that Will Cause the Loss of Grandfather Status

The IFR provides that the following changes *will* cause a policy or plan to lose its grandfathered status:

- **Elimination of Particular Benefit:** A policy or plan will lose its grandfathered status if it eliminates all or substantially all benefits to diagnose or treat a particular condition (including a necessary element to diagnose or treat a condition).

*Example: A plan covers mental health benefits, which include counseling and prescription drug benefits. The plan eliminates the counseling benefit. According to the IFR, the plan has eliminated "an element that is necessary to treat the condition," and therefore has eliminated substantially all benefits to treat a condition. Accordingly, the plan loses its grandfather status.*

- **Increase in Coinsurance:** A policy or plan will lose grandfather status if it increases its coinsurance percentage by any amount above the level at which it was set on March 23, 2010.
- **Increase in Deductible or Out-of-Pocket Maximum:** A policy or plan will lose its grandfather status if it increases a deductible or out-of-pocket maximum by more than medical inflation plus 15%, as measured from March 23, 2010.
- **Increase in Copayment:** A policy or plan will lose its grandfather status if it increases a copayment for any service by more than greater of: (1) \$5 (adjusted for medical inflation), or (2) medical inflation plus 15%, as measured from March 23, 2010. The IFR contains a complex formula and examples that illustrate how to apply this requirement.
- **Decrease in Employer Contribution:** A policy or plan will lose grandfather status if an employer (or employee association) decreases its contribution rate toward the cost of any tier of coverage (e.g., self or family) by more than 5 percent below the contribution rate on March 23, 2010.

- **Changes in Annual Limits:** A policy or plan will lose grandfather status if it adds an overall annual limit where an annual or lifetime limit did not previously exist. Plans that had annual or lifetime limits on March 23, 2010, will lose grandfather status if they adopt an annual limit that has a lower dollar value than the previous limit.

If a plan or coverage implements an amendment/amendments that would could a loss of grandfather status, the plan or coverage would no longer be considered grandfathered as of the effective date of the change/amendment.

**D. Eligibility and Enrollment Rules**

The IFR provides that an insurer or plan may add new employees (whether newly hired or newly enrolled) after March 23, 2010, without loss of grandfather status. *For example, employees may move between benefit options at Annual Enrollment without affecting the grandfather status of either option.* As mentioned, enrollment changes may be made for bona fide employment-based reasons.

**Grandfathered Plans must comply with the following Insurance Market Reforms:**

Provision	Group Health Plan	Self-Funded Plan	Individual Plan
<b>2011 Plan Year</b>			
No annual limits on essential benefits	X	X	N/A
No lifetime limits on essential benefits (§ 2711)	X	X	X
Must offer coverage to adult children of insured up to age 26 (§ 2714)	X (For group plans prior to 1/1/14 not applicable if adult child is eligible for employer sponsored coverage.)	X (For group plans prior to 1/1/14 not applicable if adult child is eligible for employer sponsored coverage.)	X
No rescissions (except fraud or misrepresentation)	X	X	X
Must provide rebates if plan does not meet required medical loss ratio (§ 2718)	X	N/A	X
No preexisting condition exclusions for enrollees under 19 years old (§§ 2704, 1255)	X	X	N/A
<b>By March 2012</b>			
Must create summary documents using HHS uniform definitions (§ 2715)	X	X	X
<b>Plan Year 2014</b>			
No annual limits on essential benefits (where Secretary has allowed restricted annual limits) (§2711)	X	X	N/A
No preexisting condition exclusions on any enrollees (§ 2704)	X	X	N/A
Waiting periods limited to 90 days (§ 2708)	X	X	N/A

**Grandfathered Plans are EXEMPT from the following Insurance Market Reforms:**

<b>Provision</b>
<b>2011 Plan Year</b>
<ul style="list-style-type: none"> <li>• No cost sharing for immunization or preventive care</li> <li>• No discrimination in favor of highly compensated individuals (Code sec. 105(h)) applies to insured arrangements</li> <li>• Must allow individuals to choose pediatrician for child's primary care physician</li> <li>• Must allow individuals to choose their own gynecologist or obstetrician without referral</li> <li>• Must provide internal appeals and external review process</li> <li>• Must allow emergency coverage without preauthorization/in-network</li> </ul>
<b>2012 Plan Year (March)</b>
<ul style="list-style-type: none"> <li>• Quality of care reporting to HHS</li> </ul>
<b>2014 Plan Year</b>
<ul style="list-style-type: none"> <li>• Variety of reforms that apply only to insured plans (e.g., rating limitations, guaranteed issue, guaranteed renewability, essential benefits)</li> <li>• Cost sharing/deductible limits</li> <li>• No discrimination against individual participating in clinical trial</li> <li>• No discrimination on health care providers acting within scope of license</li> <li>• No discrimination based on health status/allowable wellness reward increased to 30%</li> </ul>

***Effective Date***

To be grandfathered, the plan must have been in effect on or before March 23, 2010.

New employees (and their families) and new dependents of existing employees may enroll in grandfathered group health plans. New family members may be enrolled in grandfathered plans in the individual market. (§ 1251 of PPACA; § 2301 of Reconciliation Bill)

*This summary is provided for informational purposes only and is not intended as legal advice. Please consult your legal advisor for additional information.*

References

PPACA: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h3590enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf)

Reconciliation: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4872pcs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4872pcs.txt.pdf)

Department of Labor: <http://www.dol.gov/ebsa/healthreform/index.html>

Federal Register (IFR) [www.regulation.gov](http://www.regulation.gov)