Grandfathered Health Plans

**Summary:** Allows any individual enrolled in any form of health insurance to maintain their coverage as it existed on the date of enactment.

**Status update:** In April 2011, the Department of Labor (DoL) Employee Benefits Security Administration posted to its website a six set of frequently asked questions (FAQ) regarding grandfathered plan requirements. Among other things, the FAQ clarified that grandfather rules would remain when: an employee is transferred from a grandfathered plan to another plan for a bona fide employment-based reason, including when the plan’s insurer leaves the market or discontinues the type of coverage; a plan’s benefits package has low or decreasing participation which would make it impractical for a plan sponsor to continue to offer the package; a plan’s cost-sharing level increases because the generic equivalent of a brand name drug comes onto the market; a plan increases the copayment for preventive services received in an in-network hospital, provided there is no change to the copayment in an in-network ambulatory surgery center. DOL said it will later issue guidance related to value-based insurance design and wellness programs after gathering further information.

**Next steps:**
- June 14, 2010 – Interim final rule with comments issued, with comments due within 60 days, stating that some provisions are effective immediately while others are effective July 12, 2010
- August 16, 2010 – Comments due on the interim final rule with comments
- September 8, 2010 – New Mercer report released suggesting that about half of employer-sponsored health plans will lose their grandfathered status, which is higher than the initial estimates provided in the interim final rule (discussed below).
- September 20, 2010 – The Department of Labor (DoL) issued its first frequently asked questions (FAQ) related to grandfathered health plans. In this FAQ, DoL clarifies the processes by which entities determine whether they are grandfathered, among other things.
- October 8, 2010 – The Department of Labor (DoL) issued a FAQ regarding health reform and touched upon issues related to grandfathered health plans.
- October 29, 2010 – The DoL issued a set of FAQs regarding grandfathered plan requirements. Among other things, the FAQ said that grandfathered health plans and health insurance issuers are required only to provide a disclosure statement to plan participants that the plan is grandfathered when the summary plan description document is sent.
- November 17, 2010 – The Departments of Treasury, Labor, and Health and Human Services issued an amendment to the interim final rule regarding grandfathered plans, allowing certain changes in policies, certificates, or contracts of insurance without loss of grandfathered status.
December 23, 2010 -- On December 23, 2010, the Department of Labor (DoL) Employee Benefits Security Administration (EBSA) posted to its website a fifth set of frequently asked questions (FAQ) regarding grandfathered plan requirements. Among other things, the FAQ clarified the application of out-of-pocket spending limits.

April 2011 -- In April 2011, the DoL EBSA posted to its website a six set of FAQ regarding grandfathered plan requirements.

Additional information:

- DOL’s April FAQ -- http://www.dol.gov/ebsa/faqs/faq-aca6.html
- DOL’s October 29 FAQ -- http://www.dol.gov/ebsa/faqs/faq-aca4.html
- DOL’s October 8 FAQ – http://www.dol.gov/ebsa/faqs/faq-aca2.html
- DoL’s September 20 FAQ -- http://www.dol.gov/ebsa/faqs/faq-aca.html
- June 14, 2010 Federal Register notice -- http://www.regulations.gov/search/Regs/contentStreamer?objectId=0900006480b03a90&disposition=attachment&contentType=pdf
- Obama Administration Fact Sheet -- http://www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html
- Obama Administration Questions and Answers -- http://www.healthreform.gov/about/grandfathering.html
**Long summary:**

Sec. 1251. Preservation of right to maintain existing coverage (as modified by sec. 10103 and sec. 2301 of HCERA).

*No changes in existing coverage.* Provides that nothing in this Act requires an individual to terminate coverage under a group health plan or health insurance coverage in which they were enrolled on the date of enactment.

**Continuation of coverage.** With certain exceptions (described below), provides that with respect to a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment, the insurance market reforms, or any amendments to these provisions, do not apply to such plan or coverage, regardless of whether the individual renews such coverage after date of enactment.

**Exceptions:** The requirements for uniform coverage documents (§2715) and medical loss ratios (§2718) apply for plan years beginning on or after enactment. The prohibition on lifetime limits (§2711), prohibition on rescissions (§2708), and the requirement to provide coverage for dependent children up to age 26 (§2714) applies beginning with the first plan year starting six months after enactment.

The following provisions apply only to grandfathered group health plans: §2711 relating to annual limits and the provisions of §2704 relating to pre-existing condition exclusions as they apply to children under 19 years of age apply for plan years beginning with the first plan year starting six months after enactment. Further stipulates that for plan years beginning before January 1, 2014, coverage of dependent adult children is limited to those adult children without an employer offer of coverage.

**Allowance for family members and new employees to join current coverage.** Permits family members to enroll in plans as in effect on date of enactment. Also allows a grandfathered group health plan to provide for the enrolling of new employees (and their families) in such plan while maintaining grandfathered status.

**Effect on collective bargaining agreements.** Provides that in the case of coverage maintained pursuant to one or more collective bargaining agreements ratified before enactment, the requirements in this subtitle do not apply until the date on which the last of the collective bargaining agreements relating to the coverage terminates.

**Summary of the Regulations:**

On June 14, 2010, along with modifications on November 17, 2010, the Department of Health and Human Services, the Department of Labor, and the Department of Treasury (hereinafter “Departments”) issued through the Federal Register interim final rules with request for comments related to grandfathered health plans. Section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, specifies that certain plans or coverage existing as of the date of enactment (that is, grandfathered health plans) are only subject to certain provisions.

**Required compliance.** Grandfathered health plans must comply with a subset of the Affordable Care Act’s health reform provisions, as well as a variety of existing provisions. Specifically, those provisions include:
• Section 2704 (Prohibition of preexisting condition exclusion or other discrimination based on health status), with the exclusion of grandfathered individual plans
• Section 2708 (Prohibition on excessive waiting periods)
• Section 2711 (No lifetime or annual limits), with the exclusion of grandfathered individual plans with respect to annual limits
• Section 2712 (Prohibition on rescissions)
• Section 2714 (Extension of dependent coverage until age 26)
• Section 2715 (Development and utilization of uniform explanation of coverage documents and standardized definitions)
• Section 2718 (Bringing down cost of health care coverage for insured coverage, and as such only applicable to insured grandfathered plans
• HIPAA portability and nondiscrimination requirements
• Genetic Information Nondiscrimination Act requirements applicable prior to the effective date of the Affordable Care Act
• Mental health parity provisions,
• Newborns’ and Mothers’ Health Protection Act provisions,
• Women’s Health and Cancer Rights Act, and
• Michelle’s Law.

Changes resulting in loss of grandfathered status. A group health plan or health insurance coverage no longer will be considered a grandfathered health plan if a plan sponsor or an issuer:
• Eliminates all or substantially all benefits to diagnose or treat a particular condition. (The elimination of benefits for any necessary element to diagnose or treat a condition is considered the elimination of all or substantially all benefits to diagnose or treat a particular condition);
• Increases a percentage cost-sharing requirement (such as coinsurance) above the level at which it was on March 23, 2010;
• Increases fixed-amount cost-sharing requirements other than copayments, such as a $500 deductible or a $2,500 out-of-pocket limit, by a total percentage measured from March 23, 2010 that is more than the sum of medical inflation and 15 percentage points.
• Increases copayments by an amount that exceeds the greater of: a total percentage measured from March 23, 2010 that is more than the sum of medical inflation plus 15 percentage points, or $5 increased by medical inflation measured from March 23, 2010;
• For a group health plan or group health insurance coverage, an employer or employee organization decreases its contribution rate by more than five percentage points below the contribution rate on March 23, 2010; or
• With respect to annual limits –
  (1) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, did not impose an overall annual or lifetime limit on the dollar value of all benefits imposes an overall annual limit on the dollar value of benefits;
  (2) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall lifetime limit on the dollar value of all benefits but no overall annual limit on the dollar value of all benefits adopts an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit on March 23, 2010; or (3) a group health plan, or group or individual health insurance coverage, that, on March 23, 2010, imposed an overall annual limit on the dollar value of all benefits decreases the dollar value of the annual limit (regardless of whether the plan or health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits).
Request for comment. Specifically, the Departments invite comments on whether the following changes should result in cessation of grandfathered health plan status for a plan or health insurance coverage: (1) changes to plan structure (such as switching from a health reimbursement arrangement to major medical coverage or from an insured product to a self-insured product); (2) changes in a network plan’s provider network, and if so, what magnitude of changes would have to be made; (3) changes to a prescription drug formulary, and if so, what magnitude of changes would have to be made; or (4) any other substantial change to the overall benefit design. In addition, the Departments invite comments on the specific standards included in these interim final regulations on benefits, cost sharing, and employer contributions.

Additional requirements for grandfathered status. To maintain status as a grandfathered health plan, a plan or health insurance coverage (1) must include a statement, in any plan materials provided to participants or beneficiaries (in the individual market, primary subscribers) describing the benefits provided under the plan or health insurance coverage, that the plan or health insurance coverage believes that it is a grandfathered health plan, (2) must provide contact information for questions and complaints, (3) must maintain records documenting the terms of the plan or health insurance coverage that were in effect on March 23, 2010, and any other documents necessary to verify, explain, or clarify its status as a grandfathered health plan and make such documents available for examination.

Special rule for mergers. To prevent abuse, these interim final regulations provide that if the principal purpose of a merger, acquisition, or similar business restructuring is to cover new individuals under a grandfathered health plan, the plan ceases to be a grandfathered health plan.

Departmental estimates. The Departments estimate that approximately 31 percent of small employers and 18 percent of large employers would make changes that would require them to relinquish grandfather status in 2011. The Departments’ mid-range estimate is that 66 percent of small employer plans and 45 percent of large employer plans will relinquish their grandfather status by the end of 2013. The low-end estimates are for 49 percent and 34 percent of small and large employer plans, respectively, to have relinquished grandfather status, and the high-end estimates are 80 percent and 64 percent, respectively.

November 17 amendment related to new policies certificate or contract of insurance. On November 17, 2010, the Departments issued an amendment to the interim final regulations to allow a group health plan to change health insurance coverage (that is, to allow a group health plan to enter into a new policy, certificate, or contract of insurance) without ceasing to be a grandfathered health plan, provided that the plan continues to comply fully with the standards set forth in paragraph (g)(1). The amendment also provides that, to maintain status as a grandfathered health plan, a group health plan that enters into a new policy, certificate, or contract of insurance must provide to the new health insurance issuer (and the new health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health coverage sufficient to determine whether any change described in paragraph (g)(1) is being made. Thus, a plan can retain its grandfather status if it changes its carrier, so long as it has not made any other changes that would revoke its status.
SEC. 1251. PRESERVATION OF RIGHT TO MAINTAIN EXISTING COVERAGE.

(a) NO CHANGES TO EXISTING COVERAGE.—

(1) IN GENERAL.—Nothing in this Act (or an amendment made by this Act) shall be construed to require that an individual terminate coverage under a group health plan or health insurance coverage in which such individual was enrolled on the date of enactment of this Act.

(2) CONTINUATION OF COVERAGE.—Except as provided in paragraph (3), with respect to a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment of this Act, this subtitle and subtitle A (and the amendments made by such subtitles) shall not apply to such plan or coverage, regardless of whether the individual renews such coverage after such date of enactment.

(3) APPLICATION OF CERTAIN PROVISIONS.—The provisions of sections 2715 and 2718 of the Public Health Service Act (as added by subtitle A) shall apply to grandfathered health plans for plan years beginning on or after the date of enactment of this Act.

(4) APPLICATION OF CERTAIN PROVISIONS.—

(A) IN GENERAL.—The following provisions of the Public Health Service Act (as added by this title) shall apply to grandfathered health plans for plan years beginning with the first plan year to which such provisions would otherwise apply:

(i) Section 2708 (relating to excessive waiting periods).
(ii) Those provisions of section 2711 relating to lifetime limits.
(iii) Section 2712 (relating to rescissions).
(iv) Section 2714 (relating to extension of dependent coverage).

(B) PROVISIONS APPLICABLE ONLY TO GROUP HEALTH PLANS.—

(i) PROVISIONS DESCRIBED.—Those provisions of section 2711 relating to annual limits and the provisions of section 2704 (relating to pre-existing condition exclusions) of the Public Health Service Act (as added by this subtitle) shall apply to grandfathered health plans that are group health plans for plan years beginning with the first plan year to which such provisions otherwise apply.

(ii) ADULT CHILD COVERAGE.—For plan years beginning before January 1, 2014, the provisions of section 2714 of the Public Health Service Act (as added by this subtitle) shall apply in the case of an adult child with respect to a grandfathered health plan that is a group health plan only if such adult child is not eligible to enroll in an eligible employer-sponsored health plan (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986) other than such grandfathered health plan.

(b) ALLOWANCE FOR FAMILY MEMBERS TO JOIN CURRENT COVERAGE.—With respect to a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment of this Act and which is renewed after such date, family members of such individual shall be permitted to enroll in such plan or coverage if such enrollment is permitted under the terms of the plan in effect as of such date of enactment.

(c) ALLOWANCE FOR NEW EMPLOYEES TO JOIN CURRENT PLAN.—A group health plan that provides coverage on the date of enactment of this Act may provide for the enrolling of new employees (and their families) in such plan, and this subtitle and subtitle A (and the amendments made by such subtitles) shall not apply with respect to such plan and such new employees (and their families).

(d) EFFECT ON COLLECTIVE BARGAINING AGREEMENTS.—In the case of health insurance coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before the date of enactment of this Act, the provisions of this subtitle and subtitle A (and the amendments made by such subtitles) shall not apply until the date on which the last of the collective bargaining agreements relating to the coverage terminates. Any coverage amendment made pursuant to a collective bargaining agreement relating to the coverage which amends the coverage solely to conform to any requirement added by this subtitle or subtitle A (or amendments) shall not be treated as a termination of such collective bargaining agreement.

(e) DEFINITION.—In this title, the term ”grandfathered health plan” means any group health plan or health insurance coverage to which this section applies.