

StateHealth

A look at state implementation of federal health reform and state access initiatives

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Grandfathered Health Plans Under the Patient Protection and Affordable Care Act (ACA)

Overview

September 23, 2010 marked the 6-month anniversary of passage of the Affordable Care Act (ACA). The anniversary ushered in a new set of insurance reforms that will enable more children and families to obtain and keep health insurance. Insurers are no longer allowed to:

- deny coverage to children with preexisting conditions
- put lifetime limits on benefits
- cancel a policy without proving fraud
- deny claims without a chance for appeal

Consumers in new plans (those starting on or after September 23, 2010) will be able to:

- receive cost-free preventive services in accord with the AAP's [Bright Futures Guidelines for Health Supervision of Infants, Children, and Adolescents](#)
- keep young adults on parental plans until age 26
- choose a primary care physician without a referral
- use the nearest emergency room without penalty

While certain provisions of the ACA apply to all health plans, so-called “grandfathered” plans are not required to adopt all of the law’s provisions. The ACA was designed this way to ensure

continuity of coverage and minimize market disruption while enhancing consumer protections through new health plans.

Grandfathered Health Plans

According to an [Interim Final Rule](#) issued by HHS, a grandfathered health plan is coverage provided on a fully-insured or self-insured basis which was in existence on March 23, 2010, the date health care reform was enacted (the “grandfather date”). Grandfathered health plan coverage includes coverage of an individual and the individual’s family members enrolled in the group health insurance plan on the grandfather date. A plan does not lose grandfathered status simply because one or more of the individuals enrolled in the plan on the grandfather date ceases to be covered, so long as the plan has continuously covered someone since the grandfather date. If new enrollees join a plan that their employer already provided or their family had already purchased by the grandfather date, the plan maintains its grandfathered status.

Aside from special rules for collectively bargained plans, health insurance plans sold to new entities or individuals after the grandfather date will not be grandfathered, even if these plans were offered in the group or individual market before the grandfather date. As such, insurers must keep existing plans (and renewals of such policies) separate from newly-sold plans that are ineligible for grandfathered protection.

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Permissible and Prohibited Changes to Grandfathered Plans

Grandfathered plans can make routine changes to their policies without losing grandfathered status. Routine changes include:

- cost adjustments to keep in pace with medical inflation
- adding new benefits
- making modest adjustments to existing benefits
- adopting additional ACA consumer protections
- changing third-party administrator
- making any other changes required by state or federal laws

Changes that disqualify plans from grandfathered status include:

- **Change of Insurance Companies:** If an employer decides to buy insurance for its workers from a different insurance company, the new plan will not be considered grandfathered.
- **Benefits Package:** Grandfathered plans cannot significantly cut or reduce benefits.
- **Deductibles and Out-of-Pocket Limits:** Plans frequently require patients to pay the first bills they receive each year. Grandfathered plans cannot increase deductibles, out-of-pocket limits, or other fixed amount cost sharing (other than copayments) by more than medical inflation plus 15 percentage points.
- **Co-Insurance:** Co-insurance requires a patient to pay a fixed percentage of a charge. Grandfathered plans cannot raise co-insurance percentages above the March 23, 2010 rate.
- **Premium Contribution:** Employers often pay a portion of their employees' premium for insurance. Employee premium contributions cannot be lowered by more than 5 percentage points below the contribution rate on March 23, 2010.
- **Annual Limit:** Some insurers cap the amount that they will pay for covered services each year. Grandfathered plans cannot change annual limits either by adding annual limits when none existed on March 23, 2010, adding annual limits that are lower than existing lifetime benefit limits, or decreasing the dollar value of an existing annual limit.

Special Rules for Collectively Bargained Plans

Health insurance coverage maintained pursuant to one or more collective bargaining agreements (CBA) that was ratified before March 23, 2010, is grandfathered at least until the date on which the last of such CBAs terminates. The regular grandfather rules apply after such date. This rule applies only to insured plans pursuant to a CBA; it does not apply to self-funded CBA plans.

Grandfathered plans maintained pursuant to a CBA will lose grandfather status if changes are made to coverage between March 23, 2010, and the date the CBA expires, and those changes would cause loss of grandfathered status for a plan that is not maintained pursuant to a CBA. However, grandfather status will not be lost until the last CBA relating to such coverage terminates. In addition, grandfathered CBA plans must comply with all reforms that apply to grandfathered bargained plans that are not collectively bargained at the same time as such reforms are applicable to other grandfathered plans.

Recordkeeping and Notice Requirements

There are recordkeeping and notice requirements for grandfathered plans. The Interim Final Rule provides that plan sponsors maintaining grandfathered plans must maintain records documenting the terms of the plan in connection with the coverage in effect on March 23, 2010. Plan sponsors must also maintain any other documents necessary to verify, explain, or clarify the plan's grandfathered status. These records must be made available to participants, beneficiaries, individual policy holders, or state or federal agencies upon request.

Grandfathered plans must also disclose to participants in the plan's summary plan description, enrollment guide, and any other plan materials that a particular plan is a grandfathered plan. The materials must also provide contact information for questions and complaints. The [Interim Final Rule](#) includes a model statement that will satisfy this disclosure requirement.

Fraud and Abuse

To prevent health plans from using the grandfather rules to avoid providing consumer protections required by the ACA, the law includes fraud and abuse rules. For example, to ensure transparency, plans must notify consumers when any materials are distributed. The disclosure must include contact information for enrollees to have their questions answered and complaints

addressed. The fraud and abuse rules also provide that grandfathered status will be revoked if consumers are forced to switch to another grandfathered plan that—compared to their current plan—has fewer benefits or higher cost sharing, or if the plan is bought by or merges with another plan simply to avoid complying with the ACA.

AAP Chapter Involvement

Understanding the difference between provisions that apply to grandfathered plans and those that do not is essential to helping patients and families navigate changes resulting from the ACA.

AAP chapters are encouraged to become familiar with the differences between the health insurance plans in the new environment and how federal health insurance reforms will impact given plans. The attached chart provides a comprehensive look at which child-focused reforms apply to grandfathered plans.

AAP chapters are also encouraged to monitor changes to state health plans as public and private insurance providers continue to implement the ACA.

The AAP Division of State Government Affairs recently issued comprehensive guidance on [state implementation of the ACA](#). This StateHealth resource provides information and guidance to AAP chapters on those components of the ACA that impact states - especially those that require action by governors, state legislatures, insurance commissioners, state agencies and officials. This resource will be continually updated as new information, guidance, and regulations are released.

AAP chapters with questions related to state implementation of the ACA or other state health reform issues should contact the AAP Division of State Government Affairs at 800/433-9016 ext 7799, or stgov@aap.org.

AAP chapters with questions on the federal ACA statute, federal ACA regulations, AAP interaction and advocacy with federal agencies, boards, and commissions, or other federal activities should contact the AAP Department of Federal Affairs at 202/724-3301 or rhall@aap.org.

Resources

Interim Final Rule on Grandfathered Plans

www.regulations.gov/search/Regs/contentStreamer?objectId=0900006480b03a90&disposition=attachment&contentType=pdf

HHS

Fact Sheet: The ACA and “Grandfathered” Health Plans

www.healthreform.gov/newsroom/keeping_the_health_plan_you_have.html

Interim Final Rule on the Patients’ Bill of Rights

www.regulations.gov/search/Regs/contentStreamer?objectId=0900006480b0b97c&disposition=attachment&contentType=html

HHS Fact Sheet: The ACA’s New Patient’s Bill of Rights

www.healthcare.gov/law/provisions/billofright/patient_bill_of_rights.html

The Commonwealth Fund

Grandfathered vs. Non-Grandfathered Health Plans Under the Affordable Care Act: Striking the Right Balance

www.commonwealthfund.org/Content/Blog/Grandfathered-vs-Non-Grandfathered-Plans.aspx

Families USA

Grandfathered Plans under the Patient Protection and Affordable Care Act

www.familiesusa.org/assets/pdfs/health-reform/Grandfathered-Plans.pdf

Federal Health Care Reform Web Portal

www.healthcare.gov/

HHS Health Reform (archived)

www.healthreform.gov/

HHS Office of Consumer Information and Insurance Oversight

www.hhs.gov/ociio/

Centers for Medicare and Medicaid (CMS)

Health Reform Center

www.cms.gov/Center/healthreform.asp

National Association of Insurance Commissioners (NAIC) Health Reform

www.naic.org/index_health_reform_section.htm

National Conference of State Legislatures (NCSL) Health Reform Implementation

www.ncsl.org/Default.aspx?TabID=160&tabs=831,139,1156#1156

National Conference of State Legislatures (NCSL) Grandfathered Health Plans Under the Patient Protection and Affordable Care Act

www.ncsl.org/documents/health/Grandfathered.pdf

Health Reform GPS: A project of George Washington University and the Robert Wood Johnson Foundation

www.healthreformgps.org/

Kaiser Family Foundation Health Reform Web site

<http://healthreform.kff.org/>

Commonwealth Fund

Timeline for Health Care Reform Implementation

www.commonwealthfund.org/Content/Publications/Other/2010/Timeline-for-Health-Care-Reform-Implementation.aspx

Georgetown University Center for Children and Families Health Care Reform Web site

<http://ccf.georgetown.edu/index/hcr>

Georgetown University Center for Children and Families Implementing Health Care Reform: Key Questions for States

<http://ccf.georgetown.edu/index/state-decisions>

Urban Institute Health

www.urban.org/health/index.cfm

Congressional Research Service

Regulations Pursuant to the Patient Protection and Affordable Care Act

http://assets.opencrs.com/rpts/R41180_20100413.pdf

Congressional Research Service

Private Health Insurance Provisions in PPACA

http://assets.opencrs.com/rpts/11-148_20100415.pdf

Grandfathered Health Plans Under the Patient Protection and Affordable Care Act (ACA)

This resource provides details on provisions of the [Affordable Care Act](#) that have implications for grandfathered health plans. The Division of State Government Affairs will continue to apprise AAP chapters of information related to the Affordable Care Act through StateHealth e-updates. Chapters are encouraged to review the Kaiser Family Foundation Implementation Timeline at: www.kff.org/healthreform/8060.cfm for additional provision information by date. AAP chapters with questions on state implementation of the Affordable Care Act are encouraged to contact the Division of State Government Affairs at 800/433-9016, ext 7799 or stgov@aap.org.

Provision	Federal Requirement	Implementation Date	Apply to Grandfathered Group Plans? (employer plans, self-funded plans)	Apply to Grandfathered Individual Market Plans?
Guaranteed coverage for children	Prohibits health plans from denying coverage or benefits for children younger than 19 years due to a preexisting condition. Insurers can charge more for premiums. Child-only plans on the individual market can establish open enrollment periods.	Health plan years starting on or after September 23, 2010	Yes	No
Extension of dependent coverage	Requires health plans that provide dependent coverage to extend coverage to all adult dependents up to age 26 years. Plans must notify current subscribers, provide for an enrollment opportunity, and cannot charge more or offer different benefits for the older dependents than those applied to other dependents. Plans can implement across the board family premium increases and establish premium tiers (eg, self only, self plus one, family coverage).	Health plan years starting on or after September 23, 2010	Yes. However, until 2014 does not apply to young adults with offer of job-based coverage.	Yes
Preventive care without cost-sharing	Requires new health plans to cover and impose no cost sharing for recommended list of preventive items and services obtained in-network. For children, this includes preventive care recommended by <i>Bright Futures Guidelines for Health Supervision of Infants, Children, and Adolescents</i> . Cost and benefit levels for treatment needed following a preventive service are not guaranteed. Insurers can impose cost sharing for an office visit separate from the preventive service in certain circumstances.	Health plan years starting on or after September 23, 2010	No	No

Provision	Federal Requirement	Implementation Date	Apply to Grandfathered Group Plans? (employer plans, self-funded plans)	Apply to Grandfathered Individual Market Plans?
No lifetime benefit limits	Prohibits health plans from imposing lifetime dollar limits on essential benefits. Plans must make “good faith” efforts to define essential benefits consistent with health reform bill. Plans can impose nonmonetary limits (such as number of physician visits).	Health plan years starting on or after September 23, 2010	Yes	Yes
Restricted annual coverage limits	Imposes new restricted annual limits on essential benefits before 2014. Starting in September 2010, health plans cannot impose an annual limit less than \$750,000; in 2011, less than \$1.25 million; and in 2012 and 2013, less than \$2 million. In 2014, plans cannot impose any annual limit. Plans can impose nonmonetary limits and apply for a waiver for “limited benefit plans.”	Health plan years starting on or after September 23, 2010	Yes	No
Choice of provider or pediatrician; access to OB/GYN	Requires health plans to allow enrollees to choose which participating physician or pediatrician they want as their or their child’s primary care provider, respectively. Allows a woman to go directly to her OB/GYN without a referral.	Health plan years starting on or after September 23, 2010	No	No
No prior authorization for emergency care services	Eliminates prior authorization requirements for plans that cover emergency services, even when someone goes out-of-network. Cost sharing for out-of-network emergency services cannot cost more than that charged in-network.	Health plan years starting on or after September 23, 2010	No	No
Right to internal and external appeals of insurer decisions	Requires health plans to establish a mandatory first level internal appeals procedure in addition to a second level, external appeals procedure administered by an independent third party.	Health plan years starting on or after September 23, 2010	No	No
Prohibition against unfair rescissions of coverage	Prohibits health plans from rescinding a health insurance policy unless the enrollee has committed fraud or made an “intentional misrepresentation of material fact.”	Health plan years starting on or after September 23, 2010	Yes	Yes

Provision	Federal Requirement	Implementation Date	Apply to Grandfathered Group Plans? (employer plans, self-funded plans)	Apply to Grandfathered Individual Market Plans?
Medical loss ratio requirements for fully insured plans	Requires insurers to spend a set share of premium dollars on medical care and quality improvements	2011	Yes	Yes
Standardization	Requires insurers to develop and use uniform explanation of coverage documents and standardized definitions for health insurance terms	By March 23, 2011	Yes	Yes
Guaranteed coverage for everyone	Prohibits health plans from denying persons of all ages coverage of benefits due to a preexisting condition	2014	Yes	No
No annual limits	Prohibits health plans from imposing annual limits in coverage	2014	Yes	No
No waiting periods	Prohibits health plans from imposing waiting periods exceeding 90 days for coverage in job-based plans	2014	Yes	N/A