



# Health Policy Brief

OCTOBER 29, 2010

## **‘Grandfathered’ Health Plans.** The health reform law exempts certain existing health insurance plans from many requirements. What does that mean for consumers, insurers, and employers?

### WHAT’S THE ISSUE?

One selling point for health care reform was that people would be allowed to keep insurance coverage they already have. To make that possible, the Affordable Care Act “grandfathered” health plans that were in effect the day the law was signed—March 23, 2010—and exempted them from many required changes in health insurance. Building on the law, the Obama administration has issued regulations specifying how much an existing plan could change over time without losing its grandfathered status.

What does all this mean for consumers, insurers, and employers who offer coverage to their workers? Some employers say the rules are too restrictive and will prevent them from making changes needed to keep their current plans affordable. Other employers are deciding not to seek grandfathered status for their existing plans and will instead comply with the new law’s requirements as they take effect. Meanwhile, consumers may wonder whether they’re better off with grandfathered plans or with new ones. This Health Policy Brief examines the debate over provisions of the law and highlights key concerns for consumers and other stakeholders.

### WHAT’S THE BACKGROUND?

One of the lessons policy makers learned from earlier failed attempts at health reform was that many Americans were satisfied with their health insurance and were afraid that legislation could threaten it. When health care reemerged as a major issue in the 2008 presidential campaign, a recurring theme was that reform would not take away coverage that people already had and liked. Candidate Barack Obama promised that “Americans will be able to maintain their current coverage... and will see the quality of their health care improve and their costs go down.”

**CONFLICTING OBJECTIVES:** When it came to enacting the health reform law, policy makers were mindful of this promise. But they also had conflicting objectives. On the one hand, they wanted people to be able to keep their existing plans if they so chose, which meant that they needed to exempt existing plans from making many of the changes required under health reform. At the same time, they wanted all health plans, existing or new, to make certain changes, so they chose not to exempt grandfathered plans from those requirements.

# 35%

## Employer retention

Of employers currently offering a grandfathered plan, only 35 percent expect to still have one in 2013.

## WHAT'S IN THE LAW AND REGULATION?

The result was complex language in the Affordable Care Act, followed by an “interim final rule” issued in June 2010 that also has the force of law and supplies much more detail. Here are some key features of the law regarding grandfathered plans:

- An employer or insurer offering coverage that was in effect on March 23, 2010, can elect to have the plan grandfathered and can continue to operate it even after 2014, subject to provisions described below. An individual who was enrolled in a grandfathered plan as of March 23, 2010, can choose to continue that coverage if the employer or insurer still makes it available. This provision does not require that an employer continue to offer a group health plan, or that an insurer must continue to sell a given policy.
- Grandfathered health plans in general may not enroll new applicants. But they can enroll a new employee at a company or allow an existing employee or policyholder to add a spouse, child, or other dependent to a policy.
- The health reform law requires all grandfathered plans to comply with some of the provisions imposed on other health plans (Exhibit 1). Most of these requirements take effect this year and next.
- Grandfathered plans were exempted from certain other requirements that went into effect in 2010, such as required coverage of specified preventive services without cost sharing.

- Grandfathered plans will be exempt from having to offer the “essential benefits” package required of other plans as of 2014 by the health reform law. They will also not be subject to the law’s limits on out-of-pocket costs for participants. For example, under the law, small-group plans must have a single-person deductible of no more than \$2,000 in 2014. However, grandfathered small-group plans don’t have to meet this requirement. A grandfathered plan that had a \$3,000 deductible in March 2010 could keep that level of deductible in 2014, and even raise it, subject to limits specified in the regulation.

**HOW MUCH CHANGE?:** The law is silent on one important question that was left for the administration to decide in the ensuing regulation: How much can a plan change over time and still be regarded as the same plan that was offered in March 2010? Before the regulation was issued, some consumer groups argued that no change should be allowed, while employers and insurers sought greater flexibility. The administration chose a middle ground, recognizing that health plans typically have moveable parts—premiums, deductibles, co-payments, benefits packages—and that it was unrealistic to expect an existing plan to remain completely frozen in time forever.

The regulation prohibits some kinds of changes and allows others, as follows:

- A plan may not eliminate benefits for a particular condition or for services essential to treat that condition. For example, if an insurer cut all benefits for cystic fibrosis, or a group health plan cut counseling benefits for a mental condition that requires both drug

## EXHIBIT 1

### Major Rule Changes and How They Apply to Grandfathered Insurance Plans

#### RULES THAT APPLY TO BOTH NEW AND GRANDFATHERED PLANS

- No lifetime dollar limits on coverage
- Waiting period for new employee coverage no more than 90 days
- For insured plans, required minimum loss ratio (the share of premiums spent on medical care) of at least 85 percent for large employers and at least 80 percent for small employer and individual plans
- Coverage of dependent children extended to age 26

#### RULES THAT APPLY TO NEW PLANS BUT NOT TO GRANDFATHERED PLANS

- Limit on overall cost sharing for “essential health benefits”
- Cover a minimum package of essential health benefits to be defined by the secretary of the Department of Health and Human Services
- Allowable deductible for small-group plans capped at \$2,000 for single and \$4,000 for family in 2014
- Coverage of recommended preventive services without cost sharing
- Consideration of health status in setting premium rates prohibited; limit on rate variation by age

**“The restrictions on changes in grandfathered plans are meant to ensure that people will not be stuck in plans with shrinking benefits.”**

treatment and counseling, the plans in question would lose grandfathered status.

- A plan can make some changes in cost sharing, employer premium contributions, or annual maximum benefits, but only within limits shown in Exhibit 2.

- An employer plan that buys insurance coverage may not change carriers. However, if an employer self-insures and retains the services of an insurance company to contract with health care providers and process claims, changing to a different “administrative services organization” does not trigger loss of grandfathered status.

- A grandfathered plan has to maintain records to demonstrate that it has not made changes that would affect its grandfathered status. It must also tell its enrollees that they are in a grandfathered plan, and must offer contact information if enrollees have questions or complaints.

**ASKING FOR FEEDBACK:** When the administration issued the regulation, it asked for advice on whether grandfathered plans should be able to make other changes and still retain their status. These changes included (1) altering significantly the list of doctors or hospitals in a particular plan’s provider network, (2) changing a prescription drug “formulary” (the list of prescription drugs the plan covers and what it requires consumers to pay for them), and (3) shifting from purchased insurance to becoming self-insured.

Numerous employers, insurers, consumer groups, and members of the public have com-

mented on this matter and criticized other aspects of the regulation. As a result, the rule may be modified and a new version published as a “final” rule, although there is no timetable for this.

### WHAT'S THE DEBATE?

Why should employers or consumers care if their health plans retain grandfathered status? The answer is complex, and the interests of the two groups are not always perfectly aligned.

**TRADE-OFFS FOR EMPLOYERS:** Employers may want to retain the health plans they offered their workers as of March 23, 2010, because compliance with some of the new rules could be costly. Employers with grandfathered plans are already benefiting because they are exempt from some of the law’s immediate requirements, such as covering specified preventive services without cost sharing. The savings for some grandfathered plans could be even greater if they can retain their status after 2014, when much broader benefit rules will begin to apply to all other plans.

But keeping grandfathered status comes at a price: The rule may prevent employers from adopting some short-term measures to control costs. So some employers want more flexibility to modify their existing plans. They argue that the limits on plan changes shown in Exhibit 2 are unrealistic, given ongoing growth in health care costs. The limits could also prevent experiments with “value-based” plan design—offering financial incentives for enrollees to use high-quality providers or choose the most effective course of treatment for their

### EXHIBIT 2

#### Limits on Changes in Provisions of Grandfathered Plans

Coinsurance or other percentage cost sharing	No increase allowed
Deductible or out-of-pocket limit	Cumulative increase limited to medical price inflation plus 15 percentage points
Fixed-dollar copayment	Cumulative increase limited to greater of \$5 (adjusted annually for inflation) or medical inflation rate plus 15 percentage points
Employer contribution to premium	Rate cannot decrease by more than 5 percentage points
Annual limit on benefits	No new limit or reduction in existing limit allowed <sup>a</sup>

**SOURCE** Affordable Care Act (PL 111-148, PL 111-152). <sup>a</sup>A plan that had a lifetime limit but no annual limit on March 23, 2010, may replace the lifetime limit with an annual limit, but it may not be smaller than the former lifetime limit. Under a separate provision of the law, both grandfathered and nongrandfathered plans are barred from imposing an annual limit of less than \$750,000 per person in 2011, or any limit in 2014. The administration has granted temporary waivers of this rule to some employers and insurers, such as McDonald’s and the United Federation of Teachers Welfare Fund. These waivers are not related to the rules for grandfathered plans, but have been granted under a different authority.

**“The health reform law requires all grandfathered plans to comply with some of the provisions imposed on other health plans.”**

problems. Many employers would also like to have the option to change insurance carriers, arguing that their ability to shop for a better premium is an important way to restrain rising health insurance costs.

It seems likely that many employers will choose to give up grandfathered status rather than live within the limits. Newly released survey data from the Kaiser Family Foundation and the Health Research and Educational Trust show that a fast-growing percentage of employers are shifting more costs to employees, either by requiring higher employee premium contributions or by increasing cost sharing (Exhibit 3).

The Obama administration has projected that between 39 and 69 percent of employer group plans will relinquish their grandfathered status by 2013. Small-employer plans (which the administration defines as for companies with 3–99 employees) have the worst projected outcomes, with up to 80 percent relinquishing grandfathered status by 2013. A survey by the Mercer consulting firm found that, although 52 percent of employers that sponsored a health plan expected to have at least one grandfathered plan in 2011, only 35 percent expected to have a grandfathered plan in force in 2013.

**CHOICES FOR CONSUMERS:** No individual who is in a grandfathered plan has to stay in that plan. But some will have incentives to do so. These are different for people who

buy a grandfathered plan from an insurance company on their own and for employees in grandfathered group plans.

Many who buy individual coverage may prefer to keep their plan, because their age or health problems could make it difficult for them to find other affordable coverage. But this will change in 2014, when all plans in the individual market that are not grandfathered will have to be open to anyone, and insurers will not be allowed to consider an individual's health status when quoting a premium.

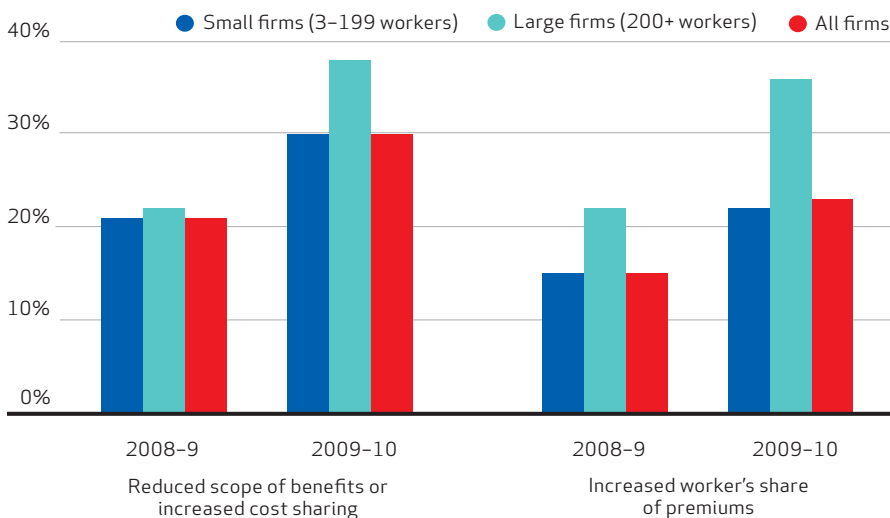
Individuals who buy coverage through the new state health insurance exchanges will be eligible for federal premium subsidies if their family income is below 400 percent of the poverty level (currently \$88,200 for a family of four). The administration projects that most people will find coverage through the state exchange programs attractive and that grandfathered individual plans will gradually disappear.

As of 2014, workers in grandfathered group plans could also shift to buying coverage through an insurance exchange. But it is likely that they would find coverage through the exchange to be more costly because they could lose whatever contribution their employer was making toward their group premium. In addition, they would not qualify for the new federal premium subsidies, because these subsidies are not available to people who have declined coverage offered by their employer. (There are some exceptions when the employer plan offers very limited benefits or requires a high employee contribution.) This means moderate-income individuals and families may be effectively locked into a grandfathered employer-sponsored plan, because they cannot afford to leave it.

**PROVIDER AND CONSUMER CONCERNS:** The restrictions on changes in grandfathered plans are meant to ensure that people will not be stuck in plans with shrinking benefits. Some provider and consumer groups would like to tighten the rules governing grandfathered plans. Some say that employers should be prohibited from moving from a purchased insurance plan to a self-insured arrangement, whereby a company simply pays employees' health care expenses out of company funds. A company might elect to do this if it is cheaper than purchasing insurance for employees from a third party. But moving to self-insurance would free employer plans

**EXHIBIT 3**

**How Companies Have Shifted Insurance Burden to Employees (2008–10)**



**SOURCE** Kaiser Family Foundation and Health Research and Educational Trust Employer Health Benefits Surveys for 2009 and 2010.

# 80%

## Small-employer losses

Up to 80 percent of grandfathered plans at companies with 3–99 employees will lose that status by 2013.

from state insurance regulations, potentially depriving participants of some consumer protections. The interim final regulation does not specifically address the issue, and the administration has invited additional comments on this topic.

Consumer groups also point out that there are many important design features of health plans that are not considered in the rule, but that grandfathered plans should not be allowed to change. For example, many plans have rules limiting the number or frequency of services (for example, limiting covered hospital days), but the interim final rule doesn't bar employers from making changes in these types of limits, which could adversely affect enrollees.

## WHAT'S NEXT?

As noted above, once the administration has evaluated all comments from the public, it may issue a revised final rule that could alter some of the provisions described in this brief. But there is no deadline for this, and the existing regulation applies for now.

How insurers, employers, and consumers respond to the complicated changes stemming from the Affordable Care Act remains to be seen. Right now, many observers predict that most people currently in grandfathered plans are likely to be in plans that fully comply with the act by 2014 or soon thereafter, because their employers will give up grandfathered status or because consumers will simply find new coverage on their own.

Some people contend that this outcome will belie the promise that Americans could keep the coverage they formerly had and liked. Others respond that anyone who interpreted that promise as meaning that their coverage would never change in any way was bound to be disappointed, because insurance plans have always changed in the past, and would have done so in the future with or without the health reform law. The ultimate test will clearly be whether insurance coverage is not only better but more affordable once all provisions of the Affordable Care Act take effect. ■

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