



BlueCross BlueShield of South Carolina
BlueChoice HealthPlan of South Carolina

Health Care Reform — Bulletin #8

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Grandfathering

Grandfathered health plans are exempt from some, but not all, of the provisions of the health care reform law. This bulletin provides an overview of the recently released (June 14, 2010) interim final rules. Visit this website, http://healthreform.gov/newsroom/keeping_the_health_plan_you_have.html for more information.

In general, the rules allow grandfathered health plans to make changes necessary to comply with state or federal laws, or to enhance or make minor changes to benefits without losing their grandfathered status. Plans that significantly reduce benefits or increase the members' out-of-pocket costs beyond acceptable limits detailed in the rules will lose their grandfathered status and must therefore comply with all provisions in the health care reform law.

Definition of a Grandfathered Plan

A grandfathered health plan is a plan or policy that had individuals enrolled in it on March 23, 2010 (the date the health care reform law was enacted). As long as the plan or policy has continuously covered at least one person (regardless of whether it is the same person) since March 23, 2010, it is eligible to be a grandfathered plan.

For group coverage (employment-based coverage), new family members of an employee enrolled in a plan on March 23, 2010 and new employees (whether newly hired or newly enrolled) and their families can be added to the plan without losing grandfathered status. An employee who had previously declined coverage prior to March 23, 2010 can also enroll him- or herself and eligible family members in grandfathered health plan coverage after this date. For individual coverage (non-employment-based coverage), individuals who had policies in place prior to March 23, 2010 also remain eligible grandfathered coverage even if they add a family member to their coverage.

Each benefit package under a group health plan is considered to be a separate plan under grandfathering rules. For example, if a company offered its employees a choice between a PPO plan and an HMO plan, these options are treated as separate plans. If the PPO lost its grandfathered status, it generally would not affect the HMO's grandfathered status. A member can also switch from one grandfathered option to another grandfathered option without causing either plan to lose its grandfathered status.

Fully insured health insurance products sold to new groups or individuals after March 23, 2010 will not be considered grandfathered health plan coverage, even if those products were offered in the group or individual market before March 23, 2010.

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Disclosures and Documentation to Maintain Grandfathered Status

To maintain grandfathered status, a health plan must: include a disclosure statement in any plan materials provided to members and maintain documentation describing the coverage in effect on March 23, 2010.

Disclose Grandfathered Status in Member Communications:

Any plan materials provided to a member describing the benefits provided under a plan or health insurance coverage must include a statement that the plan or coverage believes it is grandfathered health plan coverage as defined by the health care reform law. These materials must also include contact information for questions and complaints. The regulations seem to indicate that the disclosure must be included in all materials describing benefits, such as the certificate of coverage, summary plan description, enrollment materials and schedule of benefits. The regulations provide “model language” which should be used in any plan and policy documents.

Maintain Documents Evidencing Grandfathered Status:

The health plan must keep records documenting the plan or policy terms in effect on March 23, 2010, and any other documents necessary to verify, explain or clarify its status as a grandfathered plan. This includes insurance policies/contracts/riders, certificates of coverage, plan documents, summary plan descriptions, information on premiums and cost-of-coverage levels, and employer contribution rates. These documents and records must be kept for as long as the insurance carrier or plan takes the position that coverage remains grandfathered and must be available upon request to members, policyholders, beneficiaries and government regulators.

Health Care Reform Requirements That Apply to Grandfathered Plans

Depending on whether or not the plan is an individual policy or group plan, the plan must comply with these provisions of the health care reform law (effective dates, other than 1/1/2014, refer to the first plan year after the date noted in brackets):

Provision	Does it apply to:	
	Grandfathered Individual Plans?	Grandfathered Group Plans?
Prohibition on excessive waiting periods [1/1/2014]	Yes	Yes
Prohibition on lifetime limits [9/23/2010]	Yes	Yes
Prohibition on rescission [9/23/2010]	Yes	Yes
Coverage of dependents to age 26 who do not have other employer-sponsored coverage [9/23/2010] (and coverage of dependents to age 26 regardless of eligibility for other employer-sponsored coverage [1/1/2014])	Yes	Yes
Use of uniform explanation of coverage documents and standard definitions <i>HHS has until 3/23/2011 to come up with the standard summary of benefits and coverage, and plans and insurers have until 3/23/2012 to provide the summaries.</i>	Yes	Yes
Medical loss ratio requirements (fully insured plans) <i>HHS has until 12/31/2010 to establish reporting definitions, and rebates of premium payments are to begin no later than 1/1/2011.</i>	Yes	Yes
No pre-existing condition exclusions [1/1/2014, but for enrollees under 19, effective 9/23/2010]	No	Yes
No discrimination based on health status [1/1/2014] <i>Most requirements already applied to group health insurance and group health plans pre-health care reform pursuant to HIPAA</i>	No	Yes

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Requirements That Do Not Apply to Grandfathered Plans

These requirements do not apply to grandfathered health plan coverage (effective dates for non-grandfathered plans for plan years beginning on or after the dates noted in brackets):

- Required first-dollar coverage for preventive health services [9/23/2010]
- Internal appeals and external review process [9/23/2010]
- No discrimination in favor of highly compensated individuals (applies to insured group insurance coverage only) [9/23/2010]
- Individual choice of primary care physician (and of pediatrician as child's primary care physician) [9/23/2010]
- Individual choice of gynecologist or obstetrician without referral [9/23/2010]
- Emergency services without preauthorization and requirement to treat emergency services as in-network [9/23/2010]
- Premium rate limitations [1/1/2014]
- Guaranteed issue requirements [1/1/2014]
- Guaranteed renewability requirements [1/1/2014]
- Requirement to provide essential benefits (certain fully insured plans) [1/1/2014]
- Coverage of dependents to age 26, regardless of other employer-sponsored coverage [9/23/2010] (does not apply to grandfathered health plans until 2014)
- Cost sharing and deductible limits [1/1/2014]
- No discrimination against individuals participating in clinical trials [1/1/2014]
- No discrimination with respect to health care providers acting within the scope of their license and applicable state law [1/1/2014]
- No pre-existing condition exclusions (applies to group health plans only; does not apply to grandfathered individual policies) [1/1/2014, but for enrollees under 19, effective 9/23/2010]
- Prohibition on annual limits (applies to group health plans only; does not apply to grandfathered individual policies) [9/23/10, but plans may retain restricted annual limits until 1/1/2014; prohibited as of 1/1/2014]
- Required disclosure of enrollee, claims information, and cost-sharing amounts to government regulators, and must be made available to enrollees [9/23/2010]
- Required reporting on initiatives and programs to improve health outcomes [HHS has until 3/23/2012 to develop reporting requirements and regulations]

Losing Grandfathered Status

Certain situations or changes will cause a policy or plan to lose its grandfathered status:

- A change in the insurance issuer of a group health plan, except with respect to insured collectively bargained employee plans
- A merger, acquisition or similar business restructuring arrangement whose principal purpose is to cover new individuals under grandfathered health plan coverage
- A change in eligibility rules in order to transfer members from one grandfathered plan to another grandfathered plan if there is no bona fide employment-based reason for the change and the old plan would have lost grandfathered status if it was amended to provide the same benefits as the new plan

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- A change to eliminate all or substantially all benefits to diagnose or treat a particular condition, or to eliminate benefits for any necessary element to diagnose or treat a condition
- Any increase in a percentage cost-sharing requirement (e.g., coinsurance), measured from March 23, 2010
- An increase in a fixed-amount cost-sharing requirement, other than a copayment (e.g., a deductible or out-of-pocket limit), if the total percentage increase in the cost-sharing requirement exceeds the “maximum percentage increase” (the increase in the overall medical care component of the Consumer Price Index for All Urban Consumers [CPI-U] plus 15 percentage points), measured from March 23, 2010
- An increase in a fixed-amount copayment, if the total increase exceeds the greater of (1) \$5 increased by medical inflation measured from March 23, 2010, or (2) the “maximum percentage increase” (the increase in the overall medical care component of the CPI-U plus 15 percentage points), measured from March 23, 2010
- A decrease in the employer or employee organization’s contribution rate toward the cost of any tier of coverage for any class of similarly situated individuals by more than 5 percentage points
- A decrease in or addition of a new annual limit on the dollar value of benefits (Plans with an existing lifetime limit may adopt an overall annual limit that is less than the dollar value of the existing lifetime limit, subject to regulatory guidance on annual limits)

Changes That Do Not Affect Grandfathered Status

These changes do not cause a plan or policy to lose grandfathered status:

- Enhancing or adding to existing benefits
- Changes to premium amounts
- Voluntary changes to increase benefits, to conform to required legal changes (including health care reform mandates), and to voluntarily adopt health care reform requirements
- Changes to a self-insured plan’s third party administrator
- Coverage changes effective after March 23, 2010 made pursuant to a filing with a State insurance department made on or before March 23, 2010
- Plan or coverage changes effective after March 23, 2010 made pursuant to a legally binding contract entered into on or before March 23, 2010
- Plan changes effective after March 23, 2010 made pursuant to written amendments to a plan that were adopted on or before March 23, 2010
- Other actions not specifically prohibited in the guidance (e.g., amending plan documents or insurance policies to incorporate modified administrative procedures)

Regaining Grandfathered Status

If a grandfathered plan made changes between March 23, 2010 and June 14, 2010 that would cause the loss of grandfathered status, the plan may revoke these changes in order to regain grandfathered status if such changes are revoked effective as of the first day of the first plan year on or after September 23, 2010.

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Collectively Bargained Plans

Insured health plan coverage maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that was ratified before March 23, 2010 is grandfathered health plan coverage, at least until the date the last of the collective bargaining agreements relating to the coverage in effect on March 23, 2010 terminates (the "Termination Date"). A coverage amendment made to conform to a requirement added by the market reform provisions included in health care reform is not treated as a termination of the collective bargaining agreement. As an exception to normal grandfathering rules, changing the insurance issuer during the period of a collective bargaining agreement will not cause a loss in grandfathered health plan status. After the Termination Date, the coverage is treated as grandfathered health plan coverage until it loses grandfathered status under one of the situations described in this bulletin. The determination of grandfathered status is made by considering changes to the terms of the coverage since March 23, 2010. Changes made during the period of a collective bargaining agreement could cause the plan to lose grandfathered status immediately upon the Termination Date.

Grandfathered collectively bargained health plans are subject to the same requirements as other grandfathered health plans and must comply with the requirements at the same time as non-collectively bargained plans. Changes may be required to bring a collectively bargained health plan into compliance with the health care reform law in the middle of a collectively bargaining agreement period.

This bulletin is part of a series of bulletins we are publishing as we gather information about the health care reform law enacted March 23, 2010. To access all of the bulletins released so far, please visit our websites (SouthCarolinaBlues.com or BlueChoiceSC.com). Click on the appropriate tab (Members, Agents, Benefits Coordinators/Group Administrators or Providers); then click on the "Health Care Reform" link to view the list of the bulletins.

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