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

By Sara R. Collins

Last week, the Departments of Health and Human Services, Labor, and Treasury issued interim final regulations that clarify the meaning of "grandfathered" health plans in the Affordable Care Act (ACA). Many provisions of the ACA apply to all health plans, both those in existence on March 23, 2010, when the ACA was signed into law—or "grandfathered plans"—and new health plans, or "non-grandfathered plans." But some provisions apply only to new health plans, exempting existing plans from making some changes right away. Because the ACA does not specify what changes a health plan can undergo over time and still maintain grandfathered status, the new regulations set out to do this.

Overall, the regulations appear to strike the right balance between allowing people to "keep the plans they have," as President Obama promised, and ensuring that people will not be locked into plans that deteriorate significantly over time. Moreover, the regulations will allow people to benefit from the consumer protection provisions of the ACA over time.

Many important provisions of the ACA apply to all health plans, regardless of their grandfathered status, including:

- allowing adult children to stay on or come on to parents' policies until age 26;
- bans against lifetime limits and rescissions;
- bans against waiting periods of more than 90 days; and
- spending no less than 80 percent of premiums on medical costs (small group and individual markets) or 85 percent in large group employer plans.

Meanwhile, according to the regulations, some of ACA's provisions apply only to employer group grandfathered health plans. Grandfathered plans that people purchase on the individual market are exempt from provisions such as a ban on preexisting condition exclusions (which goes into effect this year for children only) and bans against unreasonable annual limits on coverage (with unreasonable to be defined in future regulations).

All grandfathered plans are exempt from certain requirements so long as employers do not significantly lower their premium contributions to employee plans and plans do not increase people's cost-sharing requirements beyond certain limits or reduce benefits. The grandfathered plans do not have to comply with the following provisions:

- offer an essential benefit package in the individual and small group markets and exchanges starting in 2014;
- eliminate cost-sharing for preventive services (this year);
- report on quality improvement activities; and
- guarantee access to emergency, pediatric, and ob-gyn services.

Health plans can retain grandfathered status if the changes they make do not reduce the comprehensiveness of a plan. Health plans are free to increase the number and type of benefits offered, make changes to comply with state or federal regulations, voluntarily adopt other consumer protections of the ACA, and make modest adjustments in benefits, cost-sharing, and premiums.

But health plans lose grandfathered status if they make any of the following changes:

- significantly cut benefits to diagnose or treat a specific condition;
- increase coinsurance above the level it was at on March 23, 2010;
- increase copayments by more than the greater of medical inflation plus 15 percentage points or medical inflation plus $5.00;
- increase deductibles, out-of-pocket limits, or other fixed amount cost sharing other than copayments by more than medical inflation plus 15 percentage points;
- decrease premium contributions by more than 5 percentage points below the contribution rate on March 23, 2010; and
- 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.

The interim regulations provide some transitional flexibility to ease health plans' ability to comply. For example, they allow changes made by plans that fulfill contractual obligations made prior to March 23, 2010, and provide a grace period for plans to revoke changes made this year that would cause them to lose grandfathered status.

Weighing the Options

Over the next three years, employers and health plans will weigh their option to maintain grandfathered status and keep cost-sharing within the parameters necessary to do so, or to relinquish grandfathered status and have greater flexibility to adjust to premium growth. Small employers who face more aggressive growth in premiums are probably more likely to relinquish grandfathered status than large employers. The agencies estimate that approximately 66 percent of small employers (those with under 100 employees) and 45 percent of large employers (those with 100 or more employees) will relinquish grandfathered status by 2013. In the individual market, where most enrollees are in health plans for short periods of time, the agencies estimated that between 40 percent and 67 percent of health plans will relinquish grandfathered status.

The estimated gradual movement away from grandfathered status among health plans will be a positive development for consumers and ultimately for the overall functioning of the insurance exchanges in 2014. As more plans relinquish their grandfathered status over time, more consumers will benefit from the provisions of the ACA that do not apply to grandfathered plans, particularly the full range of health benefits that the law requires plans to offer in the exchanges and in the individual and small group markets beginning in 2014. Restricting the ability to maintain grandfathered status over time also means that insurance carriers will be less able to keep grandfathered status for plans that are comprised mainly of healthy people and end grandfathered status for plans with sicker and older people. As a result, premiums in the exchanges might ultimately be lower than they would have been if no restrictions had been placed on grandfathered plan status. By helping to ensure all Americans will ultimately benefit from the new insurance protections, these regulations should serve consumers well.

A version of this commentary also appears on the *National Journal* Health Care Experts Blog.