

## Grandfathering of Health Insurance Coverage

Section 1251 of the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act (P.L. 111-152) exempts from most reforms in Subtitles A and C of Title I, any coverage in which an individual was enrolled as of March 23, 2010, the date on which the bill was signed into law. Additional family members may be enrolled in group and individual policies and new employees and their families may enroll in group health plans. Group health plans that are maintained pursuant to a collective bargaining agreement will remain grandfathered until the last of the agreements governing the plan terminates.

In 2014, when insurers will be required to maintain a single risk pool for all of their individual market policies in a state and a single risk pool for all of their small group market policies in a state, grandfathered plans will not be required to be included in those single risk pools. Any state law that attempts to require them to be included would be invalid.<sup>i</sup> In addition, grandfathered plans will not be included in the risk adjustment mechanism<sup>ii</sup> or the temporary risk corridor program<sup>iii</sup>. While grandfathered plans will be required to make payments into the transitional reinsurance program for the individual market that the bill establishes, they will not be eligible to collect payments under the program.

The legislation does specifically apply a number of provisions to grandfathered plans from which they would otherwise be exempt. These provisions include:

- Section 2708 (relating to excessive waiting periods);
- Provisions of section 2711 relating to lifetime limits (but not those dealing with annual limits);
- Section 2712 (relating to rescissions); and
- Section 2714 (relating to extension of dependent coverage)
- Bringing down the cost of health care coverage (§2718)

Other provisions are applied only to group plans that are grandfathered. These provisions are:

- Provisions of section 2711 relating to annual limits;
- Section 2704 (relating to pre-existing condition exclusions); and
- Section 2714 (relating to coverage of adult children) only if the adult child is not eligible for their own employer-sponsored coverage.

Grandfathered plans are exempt from all other provisions of subtitles A (immediate reforms) and C (market reforms). These provisions include the following reforms that go into effect prior to 2014:

- First-dollar coverage of preventive health benefits (§2713)
- Utilization of uniform explanation of coverage documents and standardized definitions (§2715)
- Provision of additional information (§2715A)
- Prohibition of discrimination based upon salary (§2716)
- Ensuring the quality of care (§2717)
- Internal and external appeals (§2719)
- Patient protections (§2719A)
- Health insurance consumer information (§2793)
- Ensuring that patients get value for their dollars (§2794)

Grandfathered plans are also exempt from the main market reforms that go into effect on January 1, 2014. These provisions include:

- Fair health insurance premiums (§2701)
- Guaranteed availability of coverage (§2702)
- Guaranteed renewability of coverage (§2703)
- Prohibition on discrimination based upon health status (§2705)
- Nondiscrimination in health care (§2706)

- Comprehensive health insurance coverage (§2707)
- Coverage for individuals participating in approved clinical trials (§2709)

### **Open Questions to be Decided in Regulations**

The statutory language of PPACA raises a number of questions that will have to be decided in the regulatory process. The House legislation included a requirement that there be no changes in terms or conditions of grandfathered plans.<sup>iv</sup> The final bill, however, did not contain this requirement. A case could be made, however, that if substantial changes are made to a grandfathered health plan, it is no longer the same plan, and would lose its grandfathered status. A related question will be whether or not states may change state laws governing grandfathered plans, and if so, whether compliance with these changes would cause plans to lose their grandfathered status. These questions are likely to be resolved during the regulatory process by the Department of Health and Human Services.

### **Practical Questions Raised by Grandfathering**

It is possible that grandfathering individual market plans will not cause significant market disruptions. The individual mandate, the creation of Exchanges with significant federal subsidies for low and moderate income individuals and the natural turn-over of individual market business should bring new individuals into the reformed market, ensuring that the pool of new business will be diverse. In the small-group market, however, there are no mechanisms to ensure the diversity of the reformed risk pools. As a result, there is significant risk that younger and healthier small businesses will retain their grandfathered plans, while older and sicker small businesses seek coverage in the reformed market under rules that are more favorable to them. This could limit the size of the reformed small group market and lead to higher premiums for new plans. In addition, some insurers may avoid selling new coverage given the potentially unfavorable risk profile in the reformed market.

## **PPACA 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-** 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.

(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.

**SEC. 1252. RATING REFORMS MUST APPLY UNIFORMLY TO ALL HEALTH INSURANCE ISSUERS AND GROUP HEALTH PLANS.**

Any standard or requirement adopted by a State pursuant to this title, or any amendment made by this title, shall be applied uniformly to all health plans in each insurance market to which the standard and requirements apply. The preceding sentence shall also apply to a State standard or requirement relating to the standard or requirement required by this title (or any such amendment) that is not the same as the standard or requirement but that is not preempted under section 1321(d).

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<sup>i</sup> P.L. 111-148 §1312(c).

<sup>ii</sup> §1343(c).

<sup>iii</sup> §1342(a).

<sup>iv</sup> H.R. 3962 §202(a)(2).