INTRODUCTION

The Patient Protection and Affordable Care Act (PPACA), the new health care reform law, attempts to incorporate President Obama’s promise to the American public, “If you like your health plan, you can keep it.” This promise is codified in what is referred to as the grandfather provision of PPACA (§1251). This past June, the administration issued interim final rules related to the grandfather provision. As of the writing of this article, final rules had not yet been published. This article addresses the implications of retaining status as a grandfathered plan from the perspective of an employer. The perspective may be somewhat different for health insurance companies. Individuals and groups can be affected in different ways depending on their current circumstances and their future plans.

Grandfathered plans are described as “a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment of this Act.” Therefore, such plans are defined in terms of a plan of coverage maintained by an individual or by an employer group. These include both insured and self-insured group health plans. Any new plan into which an employer or individual enrolls after March 23, 2010 does not qualify for grandfathered status, even if the group or individual was previously and continuously insured. However, a newly eligible employee or dependent can join an employer’s grandfathered plan without jeopardizing the grandfathered status of the plan. Also, certain limited benefit changes will be allowed to grandfathered plans.

While the president’s promise implied no changes to one’s current plan if an individual or group wished to keep it, the laws that he signed are not quite that literal. PPACA requires that grandfathered plans must change to add certain benefit and underwriting requirements. These required changes are, in general,
enhancements to coverage and the ability to receive benefits for which an insured might otherwise not qualify. These requirements nonetheless force changes to grandfathered plans that could result in higher premium rates for the plans.

**MANDATED BENEFIT AND UNDERWRITING CHANGES**

The benefit and underwriting changes include the following for grandfathered employer group plans:

- The elimination of any lifetime dollar limits on benefits, effective the beginning of the first plan year on or after September 23, 2010
- The elimination of any internal annual dollar limits on benefits, effective the beginning of the first plan year on or after September 23, 2010. Restricted overall plan annual dollar limits can be introduced to replace the eliminated lifetime limit, but only until January 1, 2014, when all annual dollar limits must be removed.
- A prohibition against imposing any preexisting condition exclusions on plan participants, effective the beginning of the first plan year on or after January 1, 2014, except for child dependents under the age of 19 for whom such a prohibition is effective on the beginning of the first plan year on or after September 23, 2010.
- A group health plan or health insurance issuer must provide a summary of benefits and coverage explanation using standardized definitions and other uniform requirements to be set by the government.
- Effective beginning in 2011, a requirement on health insurance issuers to return to the insureds, on average, at least 85% of large group premiums, 80% of small group premiums and 80% of individual business premiums in the form of claim payments and health care quality improvement initiatives.
- Limitation of the waiting period for a group health plan to no more than 90 days, effective the beginning of the first plan year on or after January 1, 2014.
- Prohibition of rescission of coverage for an individual except in cases of fraud or intentional misrepresentation of a material fact.
- Extension of the limiting age for dependent coverage up until a dependent reaches the age of 26 (i.e., those who are aged 25 or younger are eligible as dependents) even if the young adult is married or not a student. Employers must add such young adults if they apply and must add their parent employee if not currently enrolled. They must be treated the same as any other dependent. This is effective the beginning of the first plan year on or after September 23, 2010 but, through December 31, 2013, is not required if the young adult is eligible for coverage under an employer plan of his or her own. On and after January 1, 2014, a young adult aged 25 or younger can choose between his or her own group plan and a group plan sponsored by either of his parents’ employers.

Because of the administrative costs that are required of insurance carriers to track grandfathered plans and maintain the additional plans on its systems, a number of carriers have decided that they will not protect the grandfathered status of their plans.

**MAINTAINING GRANDFATHERED STATUS**

It will be somewhat challenging for an employer to maintain grandfathered status. The employer will be able to make only limited changes in its qualifying health plan and will not be able to change insurance companies to get a more competitive rate. Maintaining the status is also dependent on whether the health plan’s current insurer intends to continue to maintain the health plan’s grandfathered status, which may not be the case.

**Changes an Employer Can Make**

The law allows only limited changes over the years to the health plan. Changes in excess of the following, by either the employer or health insurer, will result in the plan losing its grandfathered status:

- Cannot eliminate all or substantially all benefits to diagnose or treat a particular condition.
- Cannot increase the coinsurance percentage(s) of a plan (e.g., cannot increase the coinsurance that the insured member pays from 20% to 25%).
Because of the administrative costs that are required of insurance carriers to track grandfathered plans and maintain the additional plans on its systems, a number of carriers have decided that they will not protect the grandfathered status of their plans. While there may be important advantages to carriers in maintaining a grandfathered block, it appears it may be difficult to maintain this status. As such, under the interim final rules issued by the federal government, many employers that may want to maintain grandfathered status will not be able to do so if their current carriers choose not to do so.

**Special Rules for Fully Insured Collectively Bargained Plans**

A fully insured collectively bargained plan ratified before March 23, 2010 retains its grandfathered status until the agreement expires. At time of contract expiration, a determination as to continuation of grandfathered status is made according to the requirements applicable to other grandfathered group health plans. An exception to normal grandfathering rules is that the plan can change the insurance carrier during the term of the collective bargaining agreement (CBA) and not lose grandfathered status. Changing terms of coverage during the CBA period, however, will cause the plan to lose its grandfathered status immediately upon its termination date, except for those changes mandated by PPACA. There is no allowed delay regarding the implementation of the 2010 benefit changes mandated by PPACA. They must be implemented during the period of the CBA under the same rules as any other plan, except for their ability to change carriers.

There are no special exceptions for self-insured collectively bargained plans. They are subject to the same rules as any employer-sponsored plan.

**ADVANTAGES OF MAINTAINING GRANDFATHERED STATUS**

There are important potential advantages to maintaining grandfathered status. These include the following:

- Effective with plan years starting after September 23, 2010, nongrandfathered plans will need to provide fairly extensive preventive benefits without any cost sharing or annual limits on the part of employees and their dependents. This will likely increase premium rates for these plans. Grandfathered plans will not need to change their preventive benefits and may continue to have cost sharing from their insured members.
Grandfathered health plans will not need to implement new internal and external review requirements for claim appeals as required by the new Public Health Service Act Section 2719, as amended by PPACA.

When 2014 comes, all nongrandfathered health plans will be required to meet minimum benefit standards. The plan will need to cover all essential benefits, as defined by the government, and meet a minimum 60% actuarial value. Many current plans, particularly in the small group and individual markets, may fail to meet these requirements. That will likely mean that in 2014 the nongrandfathered health plans will need to be upgraded to richer benefits, which very likely could result in higher premiums. This will require coverage of maternity, mental health and substance abuse benefits. Grandfathered plans will be able to keep their same benefit designs even if some essential benefits are not covered or the plans have less than a 60% actuarial value, although they will need to eliminate annual dollar limits.

When 2014 comes, insurance carriers will need to guarantee issue plans and be subject to rating structure limitations for groups considered to be small group in the state at the time (PPACA defines a small group as one with 100 or fewer employees, but each state may elect to define a small group as 50 or fewer up until plan years beginning January 1, 2016, at which time it changes to 100). These requirements, however, will not apply to grandfathered plans. This has very important implications for healthy and young groups and individuals currently enrolled in grandfathered plans.

The new law requires 3-to-1 rate compression by age. This means that the rate for a person aged 64 can be no more than three times the rate for persons in their 20s. While this may seem to be a lot, actuarial cost studies indicate that claim cost differences exceed 6-to-1. This means that young people, who average lower salaries and wages, will be providing subsidies to older people. This could result in substantial rate increases for individuals and groups who are primarily young. The new rule does not apply to grandfathered groups, which implies that there is potentially greater benefit to young individuals and young small groups in maintaining grandfathered status.

The new law requires unisex pricing. Currently, most states allow gender-distinct pricing, which allows for greater precision in matching premium rates to risk. With unisex pricing, males tend to provide a subsidy to females because females average higher claim costs than males until their 50s, at which time male costs become higher. For married couples and two-parent families, these average out, but for small employer health plans for which participation is primarily in the employee-only tier, this unisex requirement may have important rating implications where small groups that are primarily males will possibly see rate increases to bring their rates to a unisex basis. Younger female small groups will tend to benefit from this change. Once again, the new rule does not apply to grandfathered groups, which implies that there is potentially greater benefit to males and small groups with primarily male members in maintaining grandfathered status.

The new law prohibits pricing individuals and small employer groups based upon health status. Under current rules in place in most states, premium rates for individuals and group health can vary based upon health status. For small employers, the amount of rate variance that is due to health status is generally limited to 67%. Because this type of health status rating goes away starting in 2014 for small groups and individuals, rates will need to increase for those healthier small groups that receive the lower health status rating in order to provide additional subsidies to those less healthy groups that currently receive high health status ratings.

However, this rule does not apply to grandfathered groups. Carriers can continue to rate them based upon their health status. The likely outcome of this is that less healthy small groups will move into nongrandfathered coverage.

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pools to get the benefit of the subsidies from healthier nongrandfathered small groups that will not be available to them in the grandfathered business pool. This, in turn, will result in a grandfathered small group business pool that in the aggregate will become relatively healthier over time, resulting in more stable rates.

— The new law will not allow rating variances based upon the industry or occupation of a small group. However, carriers will continue to be able to rate grandfathered business based upon industry or occupation. Small groups in favorable industries will therefore benefit by retaining grandfathered status, while small groups in higher cost industries may be better off moving into a nongrandfathered pool where industry rating will not be allowed.

— Guarantee issue under the new law, coupled with the rating subsidies discussed above for older and less healthy small groups, may attract new less healthy employer groups to the nongrandfathered pool, adding upward pressure on those rates.

— It appears that carriers will not be able to enforce minimum participation and minimum contribution rules for nongrandfathered small group business. They should still be able to do so for grandfathered business, which again helps toward reducing adverse selection.

— The new law prohibits fully insured group health plans from discriminating in favor of highly compensated employees with respect to eligibility and benefits. This does not apply to grandfathered plans to the extent not prohibited by other laws.

— There are other risk-rating characteristics that will be regulated under the new law for nongrandfathered groups that are currently used in today’s markets. Regulations have not yet been issued on these, so it is speculative as to how they will affect the premium rates to be charged to different types of groups. These include such rating parameters as age banding and family tiering. PPACA indicates that rates will be able to vary only by either individual or family (two-tier rating) and does not differentiate between employee and spouse; employee and children; and employee, spouse and children (four-tier rating). This may impact a group’s decision as to whether it should maintain grandfathered status because these rules will not apply to grandfathered business.

• Another consideration for maintaining grandfathered status is that the small employer can take advantage of the above rating benefits but, if at any time its risk status or demographic characteristics change such that the nongrandfathered pool becomes more attractive from a rate perspective, it will be able to move into a nongrand-

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Benefits Quarterly—Publication Guidelines

Benefits Quarterly provides a comprehensive overview and detailed analysis of the major issues in the employee benefits industry. Its articles represent works of substance or original research geared to the employee benefits practitioner. Discussion, opinions and controversial material are desirable for publication. Case study approaches also are encouraged.

Article submissions should relate to employee benefits and compensation, and can include subjects applying to retirement, health care, insurance, law, banking, investments, government, consulting, plan management and administration, actuarial matters, labor relations, accounting, claims management, deferred compensation, work/family, and other areas of human resource management.

Issues represent a mix of articles on subjects reflective of the industry. Some specialty topics, as listed on page 33, are planned for upcoming issues. Individuals interested in contributing articles to Benefits Quarterly should contact the editor as soon as possible. Manuscript guidelines are available upon request.

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favored to another to obtain the most competitive
rates for the group’s plan, even if the plan of ben-

• Grandfathered plans will be able to continue to
add new employees and newly eligible depend-
ents without losing grandfathered status. So this
is not a concern for maintaining the status.
• Grandfathered plans are also subject to the same
minimum loss ratio and rebate rules as non-
grandfathered plans. They may actually end up
reaping more benefit from these new rules than
nongrandfathered plans because the two busi-
ness segments will be pooled together for rebate
determination. Carriers may be more willing to
aggressively rate grandfathered business because
of its better risk profile in order to meet the
overall minimum loss ratios. The greater likeli-
hood for adverse selection in the nongrandfa-
thered block will make carriers more reticent to
rate this business more aggressively than the
grandfathered block.

It is clear that the dichotomy of the grandfathered/
nongrandfathered business sectors creates the poten-
tial for significant selection that will prove advanta-
geous to grandfathered business and adverse to non-
grandfathered business pools. This should ultimately
become evident in the premium rates charged in each
sector.

DISADVANTAGES OF MAINTAINING
GRANDFATHERED STATUS

There also exist important disadvantages for main-
taining grandfathered status. As can be inferred from
the comments above, older and less healthy groups
may receive little benefit in maintaining grandfa-
thered status. However, if the older or less healthy
group wants to maintain leaner benefits than will be
required of it in 2014, then even an unhealthy group
may want to retain its grandfathered status. Key dis-
advantages of maintaining grandfathered status from
the perspective of an employer are the following:
• Employers will be very limited in being able to
make benefit changes to offset premium trend
increases. Of course, as discussed earlier, in 2014
the plan design may need to be upgraded to a
richer and more expensive benefit package than
the current plan the employer offers. So this may
be a short-term disadvantage to be weighed
against the longer term advantage of maintaining
grandfathered status.
• The employer cannot move from one health in-
surer to another to obtain the most competitive
rates for the group’s plan, even if the plan of ben-
fits is identical between carriers.
• The employer—particularly if it does not qualify
for tax subsidies and is exempt from assessable
payments imposed by the government—may de-
cide that it wants to retain its ability to down-
grade benefits or reduce its contribution toward
the health plan over the next three years by either
converting its plan to a defined contribution plan
(i.e., providing each employee a contribution to-
ward purchase of an individual plan through an
exchange) or totally terminating its health plan
sponsorship. Either strategy would eliminate the
main risk elements of being a plan sponsor and
result in a known budgetable expense.
• The fully insured employer may find that its in-
surance carrier has decided to not maintain
grandfathered status for the plan. Unless final
regulations state differently, the employer will
not be able to maintain grandfathered status un-
less it can convince the carrier to change its mind.

SUMMARY

Each employer should review its current benefit
plan offerings, think about whether the benefits of
maintaining grandfathered status for the health plan
outweigh the disadvantages in terms of the restric-
tions placed on the plans, both in the short term and
over the long term, and then take action to imple-
ment strategies to best position itself for the future in
terms of not only grandfathering issues, but all the
health reforms imposed by PPACA.

Unfortunately, the government has given em-
ployers little time to make such decisions, although
there is the possibility of revoking changes that
have been made between March 23, 2010 and Sep-
tember 23, 2010. However, it is not clear yet how
fully insured plans may be able to do so, because
there does not appear to be a requirement that their
prior carrier restore them to the same plan if it is no
longer offering it.

Strategies should deal with tax issues, potential as-
seSSable payments required for large groups, small
group subsidies and individual employee subsidies.
While these are beyond the scope of this article, they
may be affected by decisions regarding maintenance
of grandfathered status. These issues are complex,
and regulations defining and impacting the issues
have either not yet been released or have not yet
been finalized. Unfortunately, employers are being
forced to make decisions without the benefit of
knowing what the final rules are.