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# PUBLIC SUBMISSION

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**Docket:** HHS-OS-2010-0015

Group Health Plans and Health Insurance Coverage: Interim Final Rules for Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

**Comment On:** HHS-OS-2010-0015-0001

Group Health Plans and Health Insurance Coverage: Interim Final Rules for Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

**Document:** HHS-OS-2010-0015-DRAFT-0047

Comment on FR Doc # N/A

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## Submitter Information

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**Organization:** New Yorkers for Accessible Health Coverage

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## General Comment

New Yorkers for Accessible Health Coverage (NYFAHC) is a statewide coalition of 53 voluntary health organizations and allied groups who serve and represent people with chronic illnesses and disabilities, including mental illness for whom access to affordable, accessible comprehensive health coverage is essential to maintaining their well being. We appreciate this opportunity to comment on the proposed rules for implementing the grandfathering provisions of the Affordable Care Act.

We understand that the American people were told that they can "keep what they have". At the same time, "what they have" could be improved by being subject to the consumer protections and quality standards of the Act, so we support setting reasonable well-defined limits on a health plan's ability to maintain grandfathered status to ensure that the law fulfills its promise for as many consumers as possible.

Small changes to an insurance plan can mean entirely different coverage to a person or group. Given our constituency, we particularly appreciate the proposal that a plan lose grandfathered status if it eliminates substantially all benefits to treat or diagnose a specific condition, no matter how rare, including eliminating benefits for an element of treatment. We would recommend that elimination of benefits which are not designed to treat or diagnose a specific condition, but which are designed to keep a participant healthy, such as preventative benefits or wellness programs be included as well. In general, whether a change functions to eliminate access to treatment for a group or individual is a good standard to use in considering what changes should cause a plan to lose its grandfathered status.

We know that the kinds of cost shifting onto the consumer through increased cost-sharing, deductibles or out-of-pocket-limits and co-pays can deter or prevent access to care. We realize that you have attempted to take a middle road with regard to these provisions and we hope

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## Attachments

**HHS-OS-2010-0015-DRAFT-0047.1:** Comment on FR Doc # N/A



## New Yorkers For Accessible Health Coverage

### Member Organizations

American Association of Kidney Patients,  
New York chapter  
American Cancer Society  
American Diabetes Association  
Brain Tumor Foundation  
Cancer Care  
Care for the Homeless  
The Center for Independence of the Disabled, NY  
Cystic Fibrosis Foundation, Greater New York  
chapter  
Disabled in Action of Metropolitan New York  
Epilepsy Foundation of Greater New York  
Gay Men's Health Crisis  
Hemophilia Association of New York  
Huntington's Disease Society of America, New  
York and Long Island chapters  
Interagency Council of Mental Retardation and  
Developmental Disabilities  
Leukemia & Lymphoma Society, New York City  
chapter  
Mental Health Association of New York City  
Mental Health Association of Westchester County  
National Alliance for the Mentally Ill –  
New York State  
National Aphasia Association  
National Marfan Association  
National Multiple Sclerosis Society, Capital,  
Long Island, New York City, Southern,  
and Upstate chapters  
New York AIDS Coalition  
New York Association of Psychiatric  
Rehabilitation Services  
SHARE: Self-Help for Women with Breast and  
Ovarian Cancers  
SLE Foundation  
West Islip Breast Cancer Coalition for Long Island

### Cooperating Organizations

Alliance of Resident Theaters of New York  
Brooklynwide Interagency Council of the Aging  
Citizen Action of New York  
Commission on the Public's Health System  
Community Healthcare Network  
Dance Theater Workshop  
Greater New York Labor-Religion Coalition  
Institute for Puerto Rican and Hispanic Elderly  
Joint Public Affairs Committee for Older Adults  
Lambda Legal Defense and Education Fund  
Long Island Progressive Coalition  
Medicare Rights Center  
Metro New York Health Care for All Campaign  
National Association of Social Workers,  
New York City chapter  
New York State Health Care Campaign  
New York State Nurses Association  
New York State Psychological Association  
New York Statewide Senior Action Council  
Senior Services  
Society for Hospital Social Work Directors,  
Metropolitan New York chapter  
South Fork Community Health Initiative  
William F. Ryan Community Health Center

August 13, 2010

Office of Consumer Oversight  
Department of Health and Human Services  
Hubert H Humphrey Building, Room 445-G  
200 Independence Avenue, SW  
Washington, D.C. 20201

Re: HHS-05-2010-0015-0004

To Whom it May Concern:

New Yorkers for Accessible Health Coverage (NYFAHC) is a statewide coalition of 53 voluntary health organizations and allied groups who serve and represent people with chronic illnesses and disabilities, including mental illness for whom access to affordable, accessible comprehensive health coverage is essential to maintaining their well being. We appreciate this opportunity to comment on the proposed rules for implementing the grandfathering provisions of the Affordable Care Act.

We understand that the American people were told that they can "keep what they have". At the same time, "what they have" could be improved by being subject to the consumer protections and quality standards of the Act, so we support setting reasonable well-defined limits on a health plan's ability to maintain grandfathered status to ensure that the law fulfills its promise for as many consumers as possible.

Small changes to an insurance plan can mean entirely different coverage to a person or group. Given our constituency, we particularly appreciate the proposal that a plan lose grandfathered status if it eliminates substantially all benefits to treat or diagnose a specific condition, no matter how rare, including eliminating benefits for an element of treatment. We would recommend that elimination of benefits which are not designed to treat or diagnose a specific condition, but which are designed to keep a participant healthy, such as preventative benefits or wellness programs be included as well. In general, whether a change functions to eliminate access to treatment for a group or individual is a good standard to use in considering what changes should cause a plan to lose its grandfathered status.

We know that the kinds of cost shifting onto the consumer through increased cost-sharing, deductibles or out of-pocket-limits and co-pays can deter or prevent access to care. We realize that you have attempted to take a middle road with regard to these provisions and we hope that you have struck the right balance.

The Departments have sought advice on what other plan changes should forfeit grandfathered status. Our recommendations follow:



## Changes to Plan Structure

Changes to a plan's basic design, such as from a PPO to an HMO, or an EPO, or other closed network structure should trigger a loss of grandfathered status. Such changes can have a significant impact on access to care by placing additional barriers for participants attempting to access specialists, forcing them to change providers with possible disruptions in care. New York has chosen to use an EPO for its Pre-existing Condition Insurance Plan and we are very concerned about how a closed network will work for this population.

## Network

NYFAHC has long been concerned about network adequacy and we believe that significant changes to a plan's provider network should result in loss of grandfathered status for the plan. A network change can mean months of delayed treatment as an individual is searching for a provider in network and waiting for a new patient appointment. If a plan drops all providers within a certain subspecialty in a region, such that a consumer does not have access to a choice of specialist within a reasonable travel time or distance, the plan has essentially eliminated the benefits to treat or diagnose a specific condition. Such a change should result in a loss of grandfathered status.

## Formularies

For plan members with chronic or serious illnesses and disabilities, changes in the design and administration of drug benefits can result in un-affordable increases in out-of-pocket costs, interruptions or delays in care and can amount to an elimination of substantially all benefits to diagnose or treat a particular condition. Accordingly we would recommend that the following changes operate to eliminate grandfathered status.

1. Restricting the formulary overall by shifting from an open formulary to a closed or tiered formulary;
2. The establishment of new, higher, or specialty tiers with the effect of increasing enrollees' cost-sharing requirements;
3. The elimination of one or more tiers with the effect of increasing certain enrollees' cost-sharing requirement;
4. The re-arrangement of tiers among a covered class of drugs resulting in a reduction in the total number of drugs with the lowest cost-sharing requirement;
5. Restricting a formulary to 'generics only';
6. Requiring mail-order delivery for some or all drugs on the formulary.
7. Eliminating specialty pharmacy support services for certain plan members with special needs;



8. Imposing or lengthening the moratorium period before new therapies can be added to the formulary.

### **Enforcement Mechanism**

The interim final rules do not provide a mechanism for consumers to challenge a plan's grandfathered status. The notice set forth in the interim final rule does not advise a consumer which agency will be enforcing the rules nor is any agency given the authority to strip a plan of its grandfathered status as a result of the investigation of a consumer complaint. Without a designated authority to enforce the regulations, there is not a way for a consumer to obtain relief if a plan takes an action that, under the rules, could result in the loss of grandfathered status. Consumers, providers, non-profit advocacy organizations, and state agencies should all have standing to challenge a plan's grandfathered status and we strongly urge that any hearings held on a plan's status be conducted locally so that consumers, other stakeholders, and the public can attend and testify at them

We appreciate this opportunity to comment these proposed rules. Thank you for your attention in this matter.

Sincerely,

Heidi Siegfried, Esq.  
Program Director