



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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August 13, 2010

Office of Consumer Information and Insurance Oversight  
Department of Health and Human Services  
Room 445-G Hubert H. Humphrey Building  
200 Independence Ave. SW  
Washington, DC 20201

**Re: OCHIO-991-IFC, The Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act**

Transmitted electronically through <http://www.regulations.gov>

To Whom It May Concern:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR), I am pleased to provide comments on the Interim Final Rules regarding grandfathered health plans under the Patient Protection and Affordable Care Act (PPACA).

The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

NAR appreciates the efforts being made to implement this complex legislation in an expedient manner. Finding affordable and accessible health care coverage is one of the biggest problems facing NAR's members today. NAR's members are individual real estate agents, brokers and realty firm broker/owners. The overwhelming majority of real estate agents are not employees of the realty offices with which they are affiliated. Rather, they are independent contractors<sup>1</sup>, a separate legal business entity, who struggle to find affordable coverage in the individual market. Realty firms also face difficulties as they search small group markets for affordable coverage for their salaried administrative staffs. Currently, 28% of NAR's members are uninsured and only 39% of realty firms owned by our members are able to offer coverage to their salaried staffs.

<sup>1</sup> Internal Revenue Code Section 3508 provides criteria that, if satisfied, assure the agent's treatment as an independent contractor.

Those fortunate to have health insurance are challenged annually to hold on to the coverage they have. Consequently, the careful implementation of the new health reform law is a priority for NAR and our members. Given the make-up of our organization, our comments are focused on considerations from the perspective of the self-employed individual and the small employer.

A primary goal of the PPACA was to increase the number of Americans with health insurance coverage. For many of those without health insurance, and for those with coverage that wasn't working for them, the need for reform was evident. Those who had coverage with which they were satisfied were most concerned with whether the new legislation would impose new requirements that would threaten their ability to maintain the coverage that they had. To meet the goals of the legislation and to reassure these latter households, promises were made throughout the debate leading up to passage that those with health insurance coverage that suited their circumstances would be able to "keep the coverage that you have." The implementation of the PPACA's grandfathering provisions will determine whether or not that promise is kept.

Section 1251 of the Act outlines the terms of the grandfather exception. A review of the language of the Section illustrates that the section is very straightforward.

Section 1251 (a)(1) outlines the basic requirement for what constitutes a grandfathered plan, i.e. a group or individual health insurance plan in effect on the date of enactment. The language is also clear that "*nothing*" in the PPACA requires an individual to terminate coverage they were enrolled in as of the date of enactment.

(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.

Section 1251 (a)(2) goes further and clarifies that, with the exception of the requirements spelled out in Paragraph (3) of the section, subtitles A and C of the Act do not apply to plans in which an individual was enrolled on the date of enactment, regardless of whether the individual renews such coverage after such date of enactment.

(2) CONTINUATION OF COVERAGE.—*As revised by section 10103(d)(1).* Except as provided in paragraph (3), 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.

Paragraph (3) of Section 1251(a) addresses only requirements for insurers offering grandfathered plans to comply with the bill's provisions that deal with offering value for premium dollars and developing and using uniform explanations of coverage documents and standardized definitions of terms.

The only provisions of Section 1251 that speaks to required coverage or underwriting practices for grandfathered plans is Paragraph (4) which deals with waiting periods, lifetime limits, annual limits, rescissions and dependent coverage requirements. Paragraph (4) does not address any requirements for the copayments, deductibles, covered benefits, drug coverages, or provider networks such as are discussed in the Interim Final Rule.

Given the promise made and the implications of the loss of the grandfathered status, the grandfather allowance is a critical provision and one that NAR believes must be implemented in

a way to allow small businesses and the self-employed to continue with the coverages that they held at enactment of the PPACA. Since the clear intent of the grandfather provisions was to allow businesses and individuals to choose to stay with an existing policy - and there is no requirement that an individual or household continue to purchase that grandfathered policy in perpetuity and/or give up their right to switch to a policy that meets the guidelines for a PPACA compliant plan moving forward - we believe that the requirements for a what constitutes a grandfathered plan should be minimal and not crafted so tightly that the regulations ensure that existing plans are unable to maintain their grandfathered status.

Health insurance for small businesses and individuals are already difficult commodities to find. We fear that too stringent an application of grandfathering rules will lead to the undesirable outcome of small businesses and individuals being forced to drop their existing coverage because the policy fails to meet the proposed standards when the details of coverage have changed or it is deemed “too costly” even if the policy (a) still meets the needs of the insured parties and (b) is affordable given individual financial circumstances. To do otherwise, would mean that those currently insured could lose their coverage, an outcome that is at odds with the promise made by the President, the explicit legislative language of the PPACA, as well as two of the health reform law’s goals, i.e. providing access to health care coverage for more Americans and encouraging employers to provide employee coverage.

With regard to the specific questions outlined (Federal Register Vol. 75, No. 116, Pg. 34544), NAR again urges caution. Specifically, in the case of structural changes to a plan outlined in the first question, NAR believes that changes to these plan components should not be grounds for ending a plan’s grandfathered status. Individuals and firms should not be unfairly penalized for changes that may be made in response to lifecycle needs, the introduction of new procedures or drugs and the results of new effectiveness research. NAR also agrees with the Departments that the implementation of the PPACA may alter plans or issuer practices in the next several years. We strongly believe that plan subscribers should not be penalized for conditions outside of their control.

Finally, NAR would note that it is rare today for there to be a static set of providers, drug formularies or benefits from year-to-year in even the most highly regarded coverage plans. Furthermore, we believe that it is highly likely that year-to-year changes in provider networks, covered drugs or benefits will be approved in future years for plans offered through the Exchanges. We strongly urge that grandfathered plans not be held to tighter restrictions on changes in provider networks, benefit designs and drug formularies than will be imposed on Exchange policies.

In summary, NAR strongly believes that, in developing the guidelines for what constitutes a grandfathered plan, the Departments should adhere to the clear statement of intent inherent in Section 1251 of the PPACA to allow those with existing coverage to continue with their plans. This is especially the case since nothing in the new law requires small employers and self-employed who chose to continue in grandfathered plans to do so in perpetuity. This circumstance, taken together with the guaranteed issued nature of new PPACA-compliant insurance policies, means that these parties will be free to drop their grandfathered plans should those plans no longer suit their needs without fear of being unable to find alternative coverage. Therefore, we feel that it would be counterproductive to the underlying goal of the PPACA (i.e. to increase the number of individuals with access to health care coverage) to reduce access to existing plans that continue to meet the needs of those who hold them.

Thank you for your time and consideration in this matter. Should you or your staff have any questions or concerns, please do not hesitate to contact our Managing Director for Legislative Policy, Marcia Salkin, at 383-1092 or [msalkin@realtors.org](mailto:msalkin@realtors.org) or our Director of Real Estate Services, Ken Trepeta at 202 383-1294 or [ktrepeta@realtors.org](mailto:ktrepeta@realtors.org).

Sincerely,

A handwritten signature in blue ink that reads "Vicki Cox Golder". The signature is written in a cursive style.

Vicki Cox Golder, CRB  
2010 President  
National Association of REALTORS®