



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Office of Consumer Information and Insurance Oversight  
Department of Health and Human Services  
Attention: OCIIO-9991-IFC  
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To Whom it May Concern:

I reviewed the Interim Final Rules for Group Health Plans and Health Insurance Coverage relating to Status as a Grandfathered Health Plan. In response to the solicitation for comments in various sections of the rule, I suggest adding further guidance in four areas: the model disclosure language; provider network changes; prescription drug formulary changes; and cost sharing provisions.

Disclosure Statement to Consumers

The interim final rule requires insurers to provide consumers with a disclosure statement indicating their plan is believed to be a grandfathered plan. The model disclosure language requires consumers to contact their plan administrator to find out which consumer protections apply or do not apply to grandfathered plans. I suggest directing the National Association of Insurance Commissioners to develop a standardized table for inclusion in the consumer disclosure document that details the specific reforms applicable to individual, group and collectively bargained grandfathered plans.

Provider Network Changes

I recommend specifying in the rule that a plan loses grandfathered status if there is any significant reduction or loss of a provider network after March 23, 2010, including the following:

- A whole network is replaced.
- A network loses an entire specialty.
- A hospital is dropped from a network.
- Network changes result in a reduced availability of services in a specific geographical area.

Prohibiting the above changes protects consumer access to service providers under their current plan. Insurers choosing such changes to their networks are significantly reducing service options that were available prior to March 23, 2010 and should therefore lose grandfathered status.

#### Prescription Drug Formularies

Indicate in the rule that a plan loses grandfathered status if changes to a prescription drug formulary, made after March 23, 2010, create barriers to access. Such changes include:

- Increasing the cost differential between prescription drug tiers beyond a certain threshold.
- Adding an additional prescription drug tier, if the new tier is likely to significantly increase policyholder's out of pocket costs.
- Moving a significant amount of drugs specific to a certain condition to a higher tier or moving all drugs from one tier to a higher tier.

Prohibiting the above changes protects consumer access to prescription drugs under their current plan. Insurers choosing to modify their prescription drug formularies, in a manner noted above, are making a significant change to coverage and should lose grandfathered status.

#### Cost Sharing Provisions

The Interim Final Rule indicates that plans lose grandfathered status if there is an increase in a fixed-amount copayment that exceeds the greater of the following:

- An amount equal to \$5 increased by medical inflation; or
- Medical inflation plus 15 percentage points.

The rule also indicates grandfathered status is lost if there is any increase measured from March 23, 2010, in a percentage cost-sharing requirement (e.g. co-insurance).

It is not clear whether these copayment provisions apply to copayments for prescription drugs. I recommend clarifying that the copayment restrictions apply to prescription drug copayments. For many consumers, prescription drugs are a critical and expensive component of their treatment regime. If excessive cost sharing changes are made, resulting in an increase out of pocket payment for consumers, a health plan should lose its grandfathered status.

If there are questions or follow up needed regarding my recommendations, please contact Jennifer Stegall of my office at: 608-267-7911 or [Jennifer.Stegall@wisconsin.gov](mailto:Jennifer.Stegall@wisconsin.gov)

Sincerely,

  
Sean Dilweg  
Commissioner