

HEALTH PLAN WEEK

Grandfather Regs, Rate Hikes Put Insurers, Employers Between Rock and Hard Place

As long as employers don't alter their benefit design or shift more costs on to workers in 2011, they will be able to offer the same coverage they offered this year, according to interim final rules released June 14 by HHS and the departments of Labor and Treasury. But a new study on likely rate hikes for 2011 could make it difficult for many employers to comply with the regulations. Industry observers contacted by *HPW* agree the new rules are more stringent than expected.

"While we had some indication that the agencies would adopt a more restrictive view — the breadth of the restrictions on changes came as a major surprise," says John Hickman, an employee benefits attorney with the law firm Alston & Bird. "Really, the only good news was solid confirmation that retiree-only plans and excepted benefits (e.g., dental, vision, cancer) are completely exempt from the new PPACA [i.e., health reform law] mandates."

Health plans that retain grandfather status won't have to abide by several provisions of the reform law, including the coverage of adult children up to age 26, first-dollar benefits for preventive care and inclusion of "essential health benefits" the feds will require beginning in 2014.

Employers will lose grandfather status if they drop coverage for a particular medical condition, if overall benefits are reduced "significantly" or if out-of-pocket costs for enrollees are increased too much. Employers, however, might have a different definition of "significant" than do federal regulators. Employers and health plans, for example, can increase copays by no more than \$5 or a percentage equal to medical inflation plus 15 percentage points. Moreover, Hickman says such increases likely need to be tracked for each discrete group of employees or tier of coverage, rather than in the aggregate.

But compliance could be difficult. Employers can expect coverage costs to jump an average of 9% in 2011, according to the results of an employer survey conducted by PricewaterhouseCoopers (PWC). The increase is down slightly from the percentage cited in last year's study, due in large part to employers that increased deductibles and/or copays, says Rick Judy, a principal in PWC's Health Industries Advisory practice (see table,

p. 7). A growing number of employers, according to PWC, are returning to "indemnity-style" cost-sharing by raising out-of-pocket limits, replacing copays with coinsurance and adding high-deductible health plans. According to the study, employer-based health plans in 2011 will include annual deductibles that average \$400 or more, the highest level ever reported by the study. The survey — coincidentally released the same day as the grandfather regs — is based on responses from more than 700 firms.

Jenny Mills and John McGowan, attorneys at the law firm Baker Hostetler, say the new rules are very specific "to the point of attempting to micromanage

Percentage of Employers Likely to Drop Grandfather Status

Between 2008 and 2009, 15% of small employers and 45% of large employers switched insurance carriers, according to the interim final rules relating to grandfathered health plans under the health reform law. However, exemption from some provisions of the reform law could incent some employers to maintain existing health plans. Here's a look at the percentage of employers that are likely to give up grandfather status over the next three years, according to the regulation filed in the *Federal Register*.

	2011	2012	2013
Low-End Estimate			
Small employer plans	20%	36%	49%
Large employer plans	13%	24%	34%
All employer plans	15%	28%	39%
Mid-Range Estimate			
Small employer plans	31%	51%	66%
Large employer plans	18%	33%	45%
All employer plans	22%	38%	51%
High-End Estimate			
Small employer plans	42%	66%	80%
Large employer plans	29%	50%	64%
All employer plans	33%	55%	69%

Note: Represents full-time employees. Small employers = 3 to 99 employees. Large employers = 100+ employees. All three scenarios assume that 2% of all large employer plans and 6% of small employer plans would relinquish grandfathered status due to a change in issuer. Estimates are based on enrollment in PPOs. SOURCE: *Federal Register*, June 17, 2010. Based on data from Kaiser/HRET Employer Survey, 2008-2009.

where the regulatory line gets drawn.” They contend that the rules should have been grounded in principals such as the covered employees’ overall expectations or whether the coverage continues to have substantial economic value. They tell *HPW* that there is “a movement” to invalidate grandfather protections even if changes occur which either are beyond the plan sponsor’s control (e.g., a change in an insurer’s provider network) or are not perceptible to covered employees (such as a change from fully insured to self-insured coverage, or vice versa). While the interim final rules are effective immediately, there is a 60-day public comment period. The final regulation could contain some changes.

Employers May Pull Plug On ‘Grandfather’

Steven Wojcik, vice president of public policy at the National Business Group on Health, says the grandfather rules could tie the hands of employers when it comes to making changes that could help lower cover-

age costs, such as switching to a high-performance provider network for certain procedures or covering only generic drugs.

Given the “hoops that the government has put up,” employers will need to determine if retaining an existing health plan is worth the effort, he tells *HPW*. “The answer isn’t clear at this point. But the government has made it clear that grandfather status isn’t going to be such a great deal for employers in terms of helping them achieve the overall goal of improving value of their health care spend.”

Many large employers are finalizing their 2011 plan designs and likely will opt to keep what they have and re-evaluate next year. Wojcik says a couple NBGH members have already decided to forego grandfather status and make substantial changes to their 2011 offerings.

Mills and McGowan agree that the new rules essentially “handcuff” employers to existing plan designs. But encouraging employers to comply with the reform law sooner rather than later might be what federal regulators have in mind, they say.

Robert Moffit, Ph.D., director of the Center for Health Policy Studies at the right-leaning Heritage Foundation, says the restrictive rules indicate a desire to “destroy” employer-based coverage. “This is not designed to promote a robust health insurance market. It is going to drive [employers] out of the market,” he says. The grandfather rules, along with others yet to come, he contends, will eventually force employers to drop health coverage, increase wages and encourage employees to purchase individual coverage through an insurance exchange.

Reform Could Trigger Consolidation

The reform law, he adds, ultimately will force further consolidation among health plans. “We’ll have an unintended consequence that is exactly the opposite of what the president and the Congress promised, which was more robust competition,” he says.

Another possible unintended consequence is that the new regs could encourage employers to place all new hires into non-grandfathered plans that comply with provisions of the reform law but have substantially higher contribution rates, copays and deductibles and substantially lower benefits levels, Mills and McGowan warn.

“In many cases, the flexibility to tweak plan design is going to outweigh the cost of maintaining [an existing plan under] the grandfathering provision,” says PWC’s Judy. However, there’s little time for employers to make changes to plans that go into effect on Jan. 1, he adds.

Grandfather Rules, Rate Hikes Place Employers in Tough Spot

Employers risk losing grandfather status of their existing health plans by boosting the percentage employees pay for their coverage, according to interim final rules released June 14 by federal regulators. But a new study from PricewaterhouseCoopers predicts coverage costs will jump 9% in 2011. Here’s a look at some strategies employers have said they would implement to control costs.

	2010	2009	2008
Increase employee contributions	42%	42%	38%
Decrease employee contributions	1%	1%	3%
Increase medical plan cost sharing through plan design changes	41%	41%	35%
Increase prescription drug plan cost sharing through plan design changes	26%	26%	20%
Decrease prescription drug plan cost sharing through plan design changes	6%	6%	4%
Offer a health savings account	24%	22%	21%
Implement a high deductible plan as an additional medical plan option	21%	20%	17%
Expand and improve wellness inside the U.S.	67%	67%	N/A
Expand and improve wellness outside of the U.S.	14%	14%	N/A
Reduce/consolidate wellness programs	6%	6%	N/A
Consolidate vendors	9%	19%	N/A
Decrease medical plan cost sharing through plan design changes	7%	6%	4%
Implement a performance based network	6%	8%	10%

Note: More than one option was allowed to be chosen.
SOURCE AND METHODOLOGY: Excerpted from PricewaterhouseCoopers Health and Well-Being Touchstone Survey, May 2010. Based on survey data provided by more than 700 employers in the first quarter of 2010.

Self-funded employers are allowed to switch administrators as long as the plan design isn't altered, but fully insured employers lose exempt status if they switch carriers. But even self-funded employers might be wary of making changes because it could affect the provider network, which could void the grandfather protection. "You generally cannot switch [administrators] without changing networks," Hickman says.

If more employers do decide to keep their existing plans, that could be good news for health insurers. "It might help them satisfy the new medical loss ratio (MLR) rules because their brokers' and agents' commission costs are likely to be lower," according to Mills

and McGowan. "Insurance brokers and agents are more likely than health insurers to find the new rules distressing."

For a complete look at the interim final rules, visit AIS's Health Reform page at www.AISHealth.com/AISHealthReform.html.

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