

On Tuesday, March 23, President Obama signed into law the “Patient Protection and Affordable Care Act” (“PPACA”). A reconciliation bill making changes to the Act was signed by the President on March 30th. The PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. The Departments of Health & Human Services, Treasury and Labor issued Interim Final Regulations (“IFR”) implementing grandfathering on June 17, 2010. This summary provides an overview of the grandfathering provisions of the Act and the Interim Final Regulations.

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**Summary:** The Act provides that existing group health plan or insurance coverage that an individual was enrolled in prior to March 23, 2010 – so called “grandfathered plans” – may remain in effect and are exempt from certain (but not all) requirements of the Act.

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**Scope:** Applicable to all group health plans (whether insured or self funded) and individual insurance coverage in effect as of March 23, 2010, even if renewed after March 23, 2010.

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**Coverage Requirements:** Grandfathered coverage in the individual market and group health plans (insured or self funded) must comply with the following provisions of the Act for the first plan year beginning on or after September 23, 2010 (§ 2301 of Reconciliation Bill):

- May not impose lifetime maximums;
- May not include provisions to rescind coverage; and
- Must extend coverage to dependent children up to the age of 26 if the child is not eligible to enroll in employer sponsored coverage.

In addition, grandfathered group health plans (insured or self funded) must comply with the following (§ 2301 of Reconciliation Bill):

- May not impose pre-existing condition exclusions for children under age 19 beginning with the first plan year beginning on or after September 23, 2010;
- May only apply “restricted” annual benefit limits for essential benefits beginning with plan years starting on or after September 23, 2010;
- Waiting periods may not exceed 90 days in plan years beginning on or after January 1, 2014;
- May not impose pre-existing condition exclusions for any enrollee after the plan year beginning on or after January 1, 2014; and
- Beginning with renewals and new plan years beginning on or after January 1, 2014, the dependent mandate applies to all children up to age 26 regardless of whether the child is eligible for employer sponsored coverage.

Grandfathered coverage must also comply with the following provisions of the Act:

- Uniform coverage document requirements subject to regulations to be issued by the Secretary of Health & Human Services (HHS) within 12 months (§ 1001 of PPACA adding § 2015 of the Public Health Service Act (PHSA)), applies to individual market and both fully insured and self funded groups;
- Incurred loss and claim reporting requirements (§ 1001 of PPACA adding § 2718 of the PHSA and § 10101(f) of PPACA) beginning for plan years on or after September 23, 2010, applies only to individual market and fully insured groups; and
- Loss ratio rebates beginning January 1, 2011 beginning for plan years on or after September 23, 2010 (§ 1001 of PPACA adding § 2718 of the PHSA and § 10101(f) of PPACA), applies only to individual market and fully insured groups.

Grandfathered coverage is exempt from all other insurance reform provisions of the Act but may be subject to other provisions of the Act such as the employer mandate, tax requirements, etc.

<b><i>Employees eligible for grandfathered coverage:</i></b>	New employees (and their families) and new dependents of existing employees may enroll in grandfathered group health plans. New family members may be enrolled in grandfathered plans in the individual market. (§ 1251 of PPACA; § 2301 of Reconciliation Bill) Existing employees can move between grandfathered plans at annual open enrollment or as the result of a bona fide employment changes. (See 75 Fed. Reg. at 34558, 26 CFR § 54.9815-1251T(b)).
<b><i>When Grandfathered Status Ends:</i></b>	<p>The IFR establishes rules for maintaining grandfathered status. Grandfathering is determined at the benefit package level so that if a group offers more than one level of coverage, each level is reviewed separately to determine grandfathering. The following changes result in loss of grandfathered status:</p> <ul style="list-style-type: none"> <li>• For fully insured plans, any change in insurance company;</li> <li>• Reduction or elimination of benefits for a particular condition, including elimination of benefits for any necessary element to diagnose or treat a condition;</li> <li>• Any change in percentage coinsurance from what was in effect on March 23, 2010;</li> <li>• A change in flat dollar copayments, from what was in effect on March 23, 2010, in excess of the greater of (i) \$5 (adjusted for medical inflation); or (ii) medical inflation plus 15%;</li> <li>• A change in deductible or out-of-pocket maximums, from what was in effect on March 23, 2010, greater than medical inflation plus 15%;</li> <li>• Certain changes to, or adoption of, overall annual benefit limits; and</li> <li>• Decrease of employer contribution level by more than 5% (for any tier of coverage) from the contribution level in effect on March 23, 2010.</li> </ul> <p>The IFR includes formulas for calculating the change in flat dollar copayments, deductible, and out-of-pocket maximums and examples of each (See 75 Fed. Reg. at 34561, 26 CFR § 54.9815-1251T(g)(3)).</p>
<b><i>Permissible Changes:</i></b>	<p>The following changes are permitted and will not cause loss of grandfathered status:</p> <ul style="list-style-type: none"> <li>• Changes to premiums;</li> <li>• Changes required to comply with state or federal law;</li> <li>• Changes to voluntarily comply with PPACA;</li> <li>• Increases in benefits; and</li> <li>• Change of third party administrator (for a self-funded plan).</li> </ul> <p>(See 75 Fed. Reg. at 34544)</p>
<b><i>Notice Requirements:</i></b>	<p>If a plan believes it is grandfathered, notice must be provided to enrollees regarding the grandfathered status of the plan and providing individuals with contact information for questions or complaints. A model notice is provided in the IFR (See 75 Fed. Reg. at 34558, 26 CFR § 54.9815-1251T(a)(2)). Grandfathered plans must retain documentation of the plan that was in effect on March 23, 2010, and such documents are subject to examination by state and federal agencies, participants and/or subscribers.</p>
<b><i>Special Rules for Collectively Bargained Plans:</i></b>	<p>A fully insured plan maintained pursuant to a collective bargaining agreement(s) that was in effect prior to March 23, 2010 is eligible to be grandfathered at least until the date that the last of such collective bargaining agreements terminates. Thereafter, such a plan may maintain grandfathered status subject to the changes and notice requirements set forth above. (See 75 Fed. Reg. at 34559, 26 CFR § 54.9815-1251T(f)) Self funded plans maintained pursuant to a collective bargaining agreement(s) are subject to the regulations as of March 23, 2010. (See 75 Fed. Reg. at 34542)</p>

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<b><i>Transition Rules:</i></b>	<p>In the IFR, the agencies recognized that certain changes may have been made after March 23, 2010 but before the issuance of the IFR; therefore, the following transition rules were adopted:</p> <ul style="list-style-type: none"> <li>• Changes adopted prior to March 23, 2010, even if implemented after that date, will not cause a plan to lose grandfathered status so long as the changes were made pursuant to a legally binding contract, insurance filing, or written plan amendment.</li> <li>• Changes adopted after March 23, 2010 but before the IFR was issued “which only modestly exceed” the requirements will be reviewed by the agencies with an eye toward good faith compliance with PPACA.</li> <li>• Changes adopted after March 23, 2010 which exceed the parameters of the IFR may be revoked by the plan, and the plan will not lose grandfathered status. The revocation must occur by the first plan year on or after September 23, 2010.</li> </ul>
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<b><i>Grandfathered Status is a Choice:</i></b>	<p>The IFR clearly indicates that plan sponsors and health insurers can decide whether to retain or relinquish grandfathered status. Factors that may be considered include short-term business requirements such as “rising costs that result from factors such as technological changes, changes in risk status of the enrolled population, and changes in utilization and provider prices” as compared to long-term business requirements such as the need to “adjust plan structure in order to control premium costs or achieve other business objectives.” (See 75 Fed. Reg. at 34548)</p>
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<b><i>BCBSRI’s Implementation Plan:</i></b>	<p>BCBSRI has determined that it will relinquish the right to grandfather fully insured coverage. Self funded group health plans will need to advise BCBSRI of whether such plans are grandfathered.</p>
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<b><i>Effective Date:</i></b>	<p>To be grandfathered, the plan must have been in effect on or before March 23, 2010.</p>
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<b><i>References:</i></b>	<p>PPACA: <a href="http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f:h3590enr.txt.pdf">http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f:h3590enr.txt.pdf</a></p> <p>Reconciliation: <a href="http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f:h4872pcs.txt.pdf">http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f:h4872pcs.txt.pdf</a></p> <p>IFR: <a href="http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=h1hba0/0/2/0&amp;WAISaction=retrieve">http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=h1hba0/0/2/0&amp;WAISaction=retrieve</a></p>
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*This summary is provided for informational purposes only and is not intended as legal advice. Please consult your legal advisor for additional information.*

<b>PPACA Provisions that Do Not Apply<sup>1</sup> to grandfathered plans</b>	<b>Standard BCBSRI Coverage</b>	<b>RI Laws Applicable to Small Group – applicable to Grandfathered plans</b>	<b>RI Laws Applicable to Large Group (Fully Insured) – applicable to Grandfathered plans</b>
§ 2701 – rating rules (applicable to small group and individual markets only)	1. Small Group – minor changes required 2. Individual – minor changes required 3. Large Group – N/A	RIGL 27-50-5 – changes required: eliminate gender rating; reduce age bands from 4:1 to 3:1; possible implementation of tobacco rating at 1.5-1	None
§ 2702 – Guaranteed Issue	Small Group and Individual markets comply	RIGL 27-50-7	None
§ 2703 – Guaranteed Renewability	Complies	RIGL 27-50-6	RIGL 27-18.6-5
§ 2705 – Wellness programs	N/A	None; but note applicability of existing federal regulations	None; but not applicability of existing federal regulations
§ 2706 – Nondiscrimination against providers acting within scope of license	Complies	Various	Various
§ 2707 – 1. Essential Health Benefit Packages (Individual & Small Group markets only) 2. Limits on deductibles and Out-of-pocket maximums 3. Child Only Plans (insurers only)	1. The general categories of essential health benefits are covered under all plans 2. Many plans comply 3. N/A	None	None
§ 2709 – Clinical Trials Coverage	Complies	Mandated under RI Law (RIGL § 27-19-32 through 32.3; RIGL 27-20-27 through 27.3)	Mandated under RI Law (RIGL § 27-19-32 through 32.3; RIGL 27-20-27 through 27.3)
§ 2713 – Preventative Services covered with no cost-sharing	Some services covered without cost-sharing in certain products	None	None
§ 2715A – Transparency & Disclosure Requirements	N/A (BCBSRI will be required to comply regardless of Grandfathered status)	None	None
§ 2716 – Nondiscrimination (salary)	N/A	None	None
§ 2717 – Quality of Care Reporting	N/A (BCBSRI will be required to comply regardless of Grandfathered status)	None	None
§ 2719 – Appeals	All fully insured products have internal and external appeals processes	RIGL Chapter 23-17.12; DOH Regulation R23-17.12-UR	RIGL Chapter 23-17.12; DOH Regulation R23-17.12-UR
§ 2719A – Emergency Services; Choice of PCP/Pediatrician; OB/GYN Access	Compliant	With respect to OB/GYN – RIGL 27-19-36; RIGL 27-20-31)	With respect to OB/GYN – RIGL 27-19-36; RIGL 27-20-31)

<sup>1</sup> Section references are to Public Health Service Act as amended by PPACA

<b>PPACA provisions that <i>Apply to Grandfathered Plans</i><sup>1</sup></b>
§ 2704 – Pre-existing condition exclusions (prohibited for group health plans) <sup>2</sup>
§ 2711 – Prohibition on Lifetime and Annual Limits <sup>2</sup>
§ 2712 – Prohibition on Rescissions
§2714 – Dependents to Age 26 (note until 1/1/14, can limit to dependents that are not eligible for group coverage)
§ 2715 – Uniform Coverage Documents
§ 2718 – MLR Reporting and Rebate requirements
§ 2708 – Waiting periods cannot exceed 90 days (applies plan years beginning on/after 1/1/14)

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<sup>1</sup> Section references are to Public Health Service Act as amended by PPACA

<sup>2</sup> Note, §§ 2704 and 2711 (with respect to annual limits) are not applicable to grandfathered plans in the individual market