



August 12, 2010

Office of Consumer Information and Insurance Oversight  
Department of Health and Human Services  
Attention: OCIIO-9991-IFC  
P.O. Box 8016  
Baltimore, Maryland 21244-1850

Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: RIN1210-AB42

Internal Revenue Service  
P.O. Box 7604 Ben Franklin Station  
Washington, DC 20044  
Attention: REG-118412-10

RE: File Code OCIIO-9991-IFC/RIN 1210-AB42/REG-118412-10.

Submitted electronically to: <http://www.regulations.gov>

To Whom It May Concern:

The Center for Medicare Advocacy, Inc. is a national non-profit organization that advocates on behalf of older people and people with disabilities for access to comprehensive, fair, and affordable health care. We file these comments to the interim final rules published in the Federal Register concerning grandfathered health plans. 75 Fed. Reg. 34537 (June 17, 2010). Overall, we support the approach the Departments have taken to implement the provisions of the Affordable Care Act concerning grandfathered status for health plans that were in existence on March 23, 2010. .

**Model language to satisfy the disclosure requirement:** The interim final rules include model language that can be used to satisfy the disclosure requirement. Based on our experience with Medicare Advantage and Medicare prescription drug plans, we believe

that model language is necessary to ensure that health insurance plans and plan sponsors provide all of the information that is required of them. Further, it has been our experience in the context of Medicare that model notices need to be clear, thorough, and written in language that is easily understandable. We therefore suggest that the model notice:

- Explain what is meant by grandfathered status, including that grandfathered status applies to plans that were in effect on March 23, 2010; that status does not change because a plan is renewed or covers new employees or family members.
- Explain both the provisions of the Affordable Care Act that apply and the provisions that do not apply to grandfathered plans.
- Describe the right of a covered individual to inspect and copy documents that establish grandfather status.
- Explain the reasons why a plan may lose grandfathered status.

**Clarification to regulations defining changes that result in a loss of grandfather status:** The interim final rules identify circumstances under which a change in plan benefit structure or cost-sharing would result in a loss of grandfathered status. We suggest the following clarifications.

Changes to Annual Benefit-Specific Limits: Under the interim final regulations, a plan would lose its grandfathered status if it makes certain changes to annual and lifetime dollar limits. We suggest that the final rules clarify how changes to limits imposed on specific benefits would affect grandfather status. Specifically, a plan that did not have an annual or lifetime limit on all benefits on March 23, 2010 should lose grandfather status if it imposes a new annual or lifetime limit on a specific benefit, such as prescription drug coverage or therapy services. Similarly, plans that had an annual or lifetime limit should lose grandfather status, even though they do not change the dollar amounts, if they impose a new, specific limit on a particular item or service. Finally, plans that lower their annual and/or lifetime limits should lose grandfather status, as lowering a limit is in direct contravention of the intent of the Affordable Care Act..

Changes in Availability and Cost of Out-of-Network Coverage: We suggest that the final rule be clarified to ensure that changes to both in-network and out-of-network cost-sharing amounts be evaluated by the standards included in the interim final rule. Loss of a point-of-service option under an HMO should be considered a significant change that would result in loss of grandfather status.

**Comments on other changes that may result in a loss of grandfather status:** The interim final regulations invite comments on the impact of other changes to health plans. Again, given our experience working with Medicare Advantage and Medicare prescription drug plans, we believe that certain changes to plan design, physician networks or plan formularies can result in such a fundamental change to a plan or insurance policy that grandfather status should be lost.

Plan Structure: Plans should automatically lose grandfathered status when they change from a PPO to an HMO or vice versa. The structures of these plans are so different that plan participants would have to familiarize themselves with a whole new set of rules to determine coverage and provider access after such a change was effectuated. We also believe that plans that go from being fully insured to self-insured should lose grandfathered status. Such a change could result in a substantial restructuring of the benefits that are provided as plan sponsors would no longer have to follow state-law mandates.

Provider Network: Physicians, hospitals and other providers may decide to leave or join a plan's network based on their own business decisions. Some of the business decisions reflect the quality of the health plan, including the restrictions the plan imposes on covering services that are ordered and the promptness with which the plan issues payment. When changes in provider networks become significant, they should result in a loss of grandfathered status. Significant changes would include a plan/insurer dropping a significant portion of providers in a given geographic area from its network (including the primary hospital in the area serving a significant portion of all hospital inpatient days in the area); a plan/insurer reducing the number of total network providers; or a plan/insurer substantially reducing the number of in-network providers in a particular specialty or subspecialty.

Drug Formulary: Plan formularies change as a result of new drugs being added to the market; generic versions of drugs becoming available; and drugs being removed for safety reasons. Such changes, in most circumstances, may not involve significant changes to the plan benefit package. When the structure of the formulary changes, however, the change becomes fundamental and should result in a loss of grandfathered status. Such structural changes include going from an open to a closed formulary; adding formulary tiers, including a "specialty tier" for high cost drugs; restricting network pharmacies; and increasing the uses of utilization management tools such as prior authorization, quantity limits, and step therapy. Significant increases in out-of-pocket costs for drug coverage, including the addition of or increase in deductibles and increased co-payment amounts, should be treated the same as significant increases in cost-sharing for other benefits under the plan. Thus, a plan that shifts more cost-sharing to its participants would lose grandfather status.

**Need for oversight of grandfathered plans**: The interim final regulations rely primarily on plan self-regulation of grandfather status. Because self-regulation can lead to misapplication of standards and, in a few instances, fraudulent activity, we believe that greater oversight by the Departments is required. Plans should be required to submit an initial certification of grandfather status to an appropriate government agency and an annual itemized report that describes plan changes and recertifies grandfather status. Plan participants should receive an updated initial disclosure notice as part of the annual notice of changes in plan benefits that they receive.

Thank you for the opportunity to submit comments. We look forward to working with you to implement these and other provisions of the Affordable Care Act.

Sincerely,

A handwritten signature in black ink that reads "Vicki Gottlich". The signature is written in a cursive style with a large initial "V" and a distinct "Gottlich" surname.

Vicki Gottlich  
Senior Policy Attorney