



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

August 16, 2010

Ms. Karen Levin  
Room 5205  
Internal Revenue Service  
Department of the Treasury  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: CCD Comments regarding the Interim Final Rule and Proposed Rule for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act**

Dear Ms. Levin:

The Consortium for Citizens with Disabilities (CCD) appreciates the opportunity to comment on the interim final rule and proposed rule relating to status as a grandfathered health plan under the Patient Protection and Affordable Care Act (Pub. L. 111-148). CCD believes comprehensive health care reform should ensure that all Americans, including individuals with disabilities and chronic conditions, have access to high quality, comprehensive, affordable health care that meets their individual needs and enables them to be healthy, functional, live as independently as possible, and participate in the community.

We applaud the Department of Health and Human Services (HHS) for requiring grandfathered plans to adhere to a number of important consumer protections in order to retain status as a grandfathered plan. Specifically, CCD commends the HHS Secretary for requiring grandfathered plans to disclose their status to their enrollees and specifically state which benefits they do provide and for requiring grandfathered plans to lift lifetime limits on essential health benefits.

The purpose of grandfathering plans is to provide a transition period that allows individuals satisfied with their current insurance plan to keep it intact during a period of rapid change in the insurance market, perhaps leading to an avoidance of disruption in their coverage. The regulation needs to ensure a smooth transition so as not to disrupt current coverage and consumer protections without inadvertently establishing a permanent “underclass” of grandfathered plans

to which PPACA does not apply. Establishing grandfathering rules that are too permissive risks the creation of a separate insurance market where patients and consumers do not gain the benefits of health care reform and would ultimately work to the detriment of persons with disabilities and chronic conditions who need PPACA's protections to ensure access to quality care.

On the other hand, CCD acknowledges some risk in making grandfathering rules too strict, especially if the essential benefits package is not as expansive as the disability community expects it to be. Individuals and enrollees in group plans with relatively generous benefit packages that cover disability and rehabilitation services may stand to lose access to important benefits if their plan loses grandfathering protection and the new essential benefits package is not as comprehensive in terms of benefits coverage. But above all, this underscores the importance of defining the essential benefits package in a way that meets the needs of people with disabilities and chronic conditions.

**In order to protect participants with disabilities that are covered under a grandfathered plan, on balance, CCD believes that HHS should broaden the circumstances under which grandfathered plans must become subject to the consumer protections that apply to all other new plans.** In addition to the provisions in the regulation that trigger a loss of grandfathered status such as changes in cost sharing and employer contributions, which CCD supports, CCD lists below additional circumstances under which grandfathered plans should lose their status:

- Any significant decrease in benefits should result in the loss of grandfathered status. The current version of the rule only retracts status when grandfathered plans eliminate all or substantially all benefits linked to a specific condition. While this language serves as an important protection against singling out specific types of conditions or disabilities, we believe additional guidance should be promulgated that all significant decreases in the scope or breadth of the benefit package will trigger this loss of grandfathered status. For instance, if a plan were to decide to cap the number of therapy visits for rehabilitative care, cap coverage for durable medical equipment, or limit coverage of prosthetic limbs over a lifetime, these restrictions in benefits should trigger a loss of grandfathered status. For example, a cap of \$500 on durable medical equipment essentially eliminates the ability of a person requiring a wheelchair to access an appropriate mobility device. Similarly, a limit of "one prosthetic limb per lifetime" is totally unrealistic and, for instance, provides only temporary relief for a growing child. If these types of benefit limits are imposed by plans with grandfathered status, such status should be rescinded.
- Any substantial change to the structure of a grandfathered plan should result in the elimination of the plan's grandfathered status. These structural changes could fundamentally change the existing coverage in a manner that significantly affects enrollees, particularly individuals with disabilities and chronic conditions whose coverage may be severely limited by a change in plan structure. For example, if a grandfathered preferred provider organization (PPO) becomes a closed-panel health maintenance organization (HMO), these plans should lose their grandfathered status.

- Significant changes to the prescription drug formulary should result in loss of grandfathered status. Although the use of prescription drug formularies may provide valuable cost containment and quality assurances to health plan enrollees, changes in the design and administration of prescription drug benefits can have a major and negative impact on some of a plan's most vulnerable enrollees. To encourage plans to maintain grandfathered status through the continued provision of "all or substantially all benefits to diagnose or treat a particular condition", grandfathered status should cease upon any of the following changes to the administration of prescription drug benefits and formularies.
  1. Restricting the formulary overall by shifting from an open formulary to a closed or tiered formulary;
  2. The establishment of new, higher, or specialty tiers with the effect of increasing enrollees' cost-sharing requirements;
  3. The elimination of one or more tiers with the effect of increasing certain enrollees' cost-sharing requirement;
  4. The re-arrangement of tiers among a covered class of drugs resulting in a reduction in the total number of drugs with the lowest cost-sharing requirement;
  5. Restricting a formulary to 'generics only';
  6. Requiring mail-order delivery for some or all drugs on the formulary.
  7. Eliminating specialty pharmacy support services for certain plan members with special needs;
  8. Imposing, or lengthening the moratorium period before new therapies can be added to the formulary; and/or
  9. The elimination of a drug(s) from the formulary for reasons other than patient safety.
- Plans that place significant additional limits on a provider network should also lose grandfathered status. Under the existing regulations, an enrollee could see their provider network drop to 5 doctors while the plan maintains its grandfathered status. Even losing one or two physicians could have a serious impact to individuals with disabilities and chronic conditions who often rely on specialized care.

Additionally, we believe that it is crucial that individuals covered under a grandfathered plan know exactly what consumer protections they are afforded. As such, grandfathered plans should not only be required to list what benefits they do provide but also which consumer protections they lack.

Finally, the interim final and proposed rules do not establish an effective mechanism for oversight and enforcement of these important rules. Without such a process in place, there is no way to ensure adherence and plans may avoid complying with the rules yet maintain that they are a grandfathered plan. Without an effective process for challenging grandfathered status, consumers will be without a remedy in the face of significant changes to their grandfathered plan that may keep them indefinitely from the protections afforded under the Affordable Care Act. CCD recognizes the value of grandfathered status of some plans as a means to smoothly transition into a completely reformed private insurance market. But grandfathered status should be viewed as a temporary option to those plans that make a good faith effort to retain current coverage, not a permanent exemption from the new rules of the insurance market.

If you have any questions, please feel free to contact Peter Thomas, CCD Health Task Force co-chair, at 202.466.6550 or Peter.Thomas@ppsv.com.

Sincerely,

American Association of People with Disabilities  
American Counseling Association  
American Medical Rehabilitation Providers Association  
American Music Therapy Association  
American Network of Community Options and Resources  
American Occupational Therapy Association  
American Physical Therapy Association  
American Speech language Hearing Association  
Association of University Centers on Disabilities  
Autism National Committee  
Autism Society  
Bazelon Center for Mental Health Law  
Brain Injury Association of America  
Children and Adults with Attention-Deficit/Hyperactivity Disorder  
Community Access National Network  
Easter Seals  
Epilepsy Foundation  
National Alliance on Mental Illness  
National Association of County Behavioral Health and Developmental Disability Directors  
National Association of State Head Injury Administrators  
National Council for Community Behavioral Healthcare  
National Disability Rights Network  
National Down Syndrome Congress  
National Multiple Sclerosis Society  
National Spinal Cord Injury Association  
Paralyzed Veterans of America  
TASH  
The Arc of the United States  
United Cerebral Palsy  
United Spinal Association