

Emergency Justification for Disclosure and Recordkeeping Requirements for Grandfathered Health Plans under the Affordable Care Act

Under section 1251 of the Affordable Care Act, as modified by section 10103 of the Affordable Care Act and section 2301 of the Reconciliation Act, certain provisions of the Affordable Care Act do not apply to a group health plan or health insurance coverage in which an individual was enrolled on March 23, 2010 (a grandfathered health plan). The statute and these interim final regulations allow family members of individuals already enrolled in a grandfathered plan to enroll in the plan after March 23, 2010; in such cases, the plan or coverage is also a grandfathered health plan with respect to the family members. New employees (whether newly hired or newly enrolled) and their families can enroll in a grandfathered group health plan after March 23, 2010. If a plan or health insurance coverage intends to be a grandfathered health plan, it must include a statement in any plan materials provided to participants or beneficiaries (in the individual market, primary subscriber) describing the benefits provided under the plan or health insurance coverage, and that the plan or coverage is intended to be grandfathered health plan within the meaning of section 1251 of the Affordable Care Act (“grandfathered health plan disclosure”). Due to the urgency and short time frames associated with these provisions, HHS does not have sufficient time to allow for the usual comment timeframe allotted in the PRA process.