



# The Affordable Care Act and its Effect on Health Insurance Market Segments

POLICY BRIEF

The Patient Protection and Affordable Care Act (ACA)<sup>1</sup> will bring a number of important changes to the private health insurance market. These changes include a series of provisions designed to enhance consumer protections, increase the value of insurance coverage, and standardize health plans sold to individuals and employers. However, these provisions will not take effect at the same time, nor will they affect all individuals and employers equally. This policy brief explains many relevant provisions of the ACA and its effect on each segment of the health insurance market.

An important element of the ACA allows businesses and individuals to retain their current plans through maintaining “grandfathered” status. This feature was designed to smooth the transition to a new health insurance marketplace. Specifically, health plans that existed on March 23, 2010 (when the ACA was signed into law) and have made no significant changes since then are considered “grandfathered” plans. This status exempts them from several (but not all) new ACA requirements. In 2011, an estimated 56 percent<sup>ii</sup> of private employees at firms which offered health plan coverage were insured under grandfathered plans.

The ACA regulates plans differently based on several criteria, including a plan’s grandfathered status. The following questions will help determine which regulations are applicable to a specific plan:

- Is the plan sold to an individual, small employer, or large employer market?
- Is the plan sold as a self-insured or fully insured product?
- Has the plan been granted grandfathered status?

The tables in this brief provide detailed information on the applicability of insurance reforms for various health plan market segments. For a full explanation of market segments please see the Definitions of Terms section later in this brief.

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## Estimated Enrollment by Insurance Market Segment (in millions)

Enrollment, 2010	Individual market	Small group market *	Large group market *	Self-insured *
U.S.	30.15	20.12	38.14	82.10
Michigan	1.00	0.81	1.16	3.07

\*Includes employees, spouses, and dependents who are enrolled in an employer-sponsored health plan through a private company  
**Sources:** Current Population Survey Annual Social and Economic Supplement (2011); Medical Expenditure Panel Survey (2010)

## Provisions Currently Operational

Provision	Individual market	Small group market	Large group market	Self-insured	Grandfathered
<b>Children's pre-existing conditions</b> ACA §1201, PHSA <sup>iii</sup> §2704 Plans may not exclude benefits or deny or limit coverage based on a preexisting condition for individuals under age 19 (9/23/10) <sup>†</sup>	Yes	Yes	Yes	Yes	Does not apply to grandfathered individual coverage, but applies to other grandfathered coverage
<b>Rescissions</b> ACA §1001, PHSA §2712 Coverage can only be rescinded in cases of fraud or deliberate misrepresentation and advanced notice must be provided (9/23/10) <sup>†</sup>	Yes	Yes	Yes	Yes	Yes
<b>Lifetime limits</b> ACA §1001, PHSA §2711 Plans may not impose lifetime limits on the dollar value of essential benefits (9/23/10) <sup>†</sup>	Yes	Yes	Yes	Yes	Yes
<b>Annual limits restrictions</b> ACA §1001, PHSA §2711 Plans are restricted in imposing annual limits on the dollar value of essential benefits prior to 2014 (9/23/10) <sup>†</sup>	Yes	Yes	Yes	Yes	Does not apply to grandfathered individual coverage, but applies to other grandfathered coverage
<b>Preventive care</b> ACA §1001, PHSA §2713 Plans must provide recommended preventive services without cost sharing including items and services with a rating of "A" or "B" by the U.S. Preventative Services Task Force (9/23/10) <sup>†</sup>	Yes	Yes	Yes	Yes	No
<b>Age 26 adult children</b> ACA §1001 and HCERA <sup>iv</sup> §2301, PHSA §2714 Requires plans to cover family members up to age 26 (9/23/10) <sup>†</sup>	Yes	Yes	Yes	Yes	Yes, though prior to 2014, grandfathered group plans only have to cover if the adult child does not have an employer offer of coverage
<b>Medical loss ratio</b> ACA §1001, PHSA §2718 Requires that 85% of premiums be spent on health care in the large group market and 80% in the small group market and in the individual market (1/1/11) <sup>‡</sup>	Yes	Yes	Yes	No	Yes
<b>Unreasonable rate review</b> ACA §1003, PHSA §2794 Requires HHS or states to review rate increases that, on average exceed 10 percent to determine if they are unreasonable. If deemed unreasonable, issuer must submit additional justification. HHS cannot prevent increase. (9/1/11) <sup>‡</sup>	Yes	Yes	Yes, under legislation, but not expected to apply through the regulatory process	No	No

<sup>†</sup> Provisions become effective for plan years beginning on or after this date.

<sup>‡</sup> Provisions become effective immediately on this date.

## Future Provisions

Provision	Individual market	Small group market	Large group market	Self-insured	Grandfathered
<b>Modified community rating</b> ACA §1201, PHSA §2701 Limits the factors that insurers can use to adjust premiums (1/1/14) <sup>†</sup>	Yes	Yes	No, however, if a state elects to allow large employers onto the exchange in 2017 or later, then modified community rating rules apply to large, fully insured employers on and off exchange	No	No
<b>Essential health benefits</b> ACA §1302(b) A set of benefits that certain plans must offer (1/1/14) <sup>†</sup>	Yes	Yes	No, however, if a large employer is on an exchange in 2017 or later it would have to comply with essential benefits, but this would not impact off exchange large group market	No	No
<b>Actuarial value</b> ACA §1302(d) Requirement for benefits to fit certain "metal levels" of actuarial value (bronze, silver, gold, platinum) (1/1/14) <sup>†</sup>	Yes	Yes	Same as essential health benefits	No	No
<b>Out of pocket maximum</b> ACA §1302(c) Limits the amount that individuals can pay in cost sharing on essential benefits annually (1/1/14) <sup>†</sup>	Yes	Yes	Yes	Yes	No
<b>Annual limits—eliminated</b> ACA §1001, PHSA §2711 Plans cannot place an annual dollar limit on essential benefits (1/1/14) <sup>†</sup>	Yes	Yes	Yes	Yes	Does not apply to grandfathered individual coverage, but applies to other grandfathered coverage
<b>Clinical trials coverage</b> ACA §1201, PHSA §2709 Plans must offer coverage for certain clinical trials (1/1/14) <sup>†</sup>	Yes	Yes	Yes	Yes	No
<b>Employer mandate ("Play or Pay" rules)</b> ACA §1513, IRC §4980H Requirement to offer coverage (1/1/14) <sup>‡</sup>	No	No	Yes	Yes, if applicable large employer	Yes
<b>High-cost plan excise tax ("Cadillac tax")</b> ACA §9001, IRC §4980I, HCERA §1401 A tax on the value of employer-sponsored benefits that exceeds certain thresholds (1/1/18) <sup>‡</sup>	No	Yes, remitted by issuer	Yes, remitted by issuer	Yes, remitted by plan administrator	Yes
<b>Nondiscrimination rules for insured plans</b> ACA §1001, PHSA §2716 Employers cannot discriminate in favor of highly compensated individuals (TBD) <sup>vi</sup>	No	Yes, pending regulatory process	Yes, pending regulatory process	Similar prior requirement <sup>vii</sup>	No, though self-insured plans must observe prior requirement regardless of grandfather status

<sup>†</sup> Provisions become effective for plan years beginning on or after this date.

<sup>‡</sup> Provisions become effective immediately on this date.

## Definitions of Terms

**Individual:** Private insurance purchased by individuals or families outside of the group market. In 2010, approximately 30.15 million Americans were enrolled in individual plans.<sup>viii</sup>

**Small group:** Private insurance purchased by groups (i.e. fully insured) with 1-50 or 1-100 employees. Prior to 2016, states can select either group size as their small group definition. In 2016, all states will recognize groups with 1-100 employees as small groups. In 2010, approximately 20.12 million Americans were enrolled in a health plan through a private fully insured employer with less than 50 employees.<sup>ix</sup>

**Large group:** Private insurance purchased by groups (i.e. fully insured) with more than 100 employees or more than 50 employees, depending on the small employer definition selected by states prior to 2016. In 2010, approximately 38.14 million Americans were enrolled in a health plan through a private fully insured employer with 50 or more employees.<sup>x</sup>

**Self-insured:** A health plan offered by employers who assume the risk of providing insurance to their employees. Self-insured employers may contract with a third-party administrator to process the health claims of their employees. Self-insurance is more common among large employers, though some small employers are self-insured. Approximately 82.1 million Americans were enrolled in a self-insured health plan through a private company in 2010.<sup>xi</sup>

**Grandfathered:** A health plan which is exempt from some of the ACA's insurance regulations because it existed on March 23, 2010 and meets the following six criteria. To be granted grandfathered status a health plan cannot (1) significantly cut or reduce benefits, (2) increase the co-insurance charge percentage, (3) raise patient co-payments by more than the greater of \$5 (adjusted annually for medical inflation) or a percentage equal to medical inflation plus 15 percentage points, (4) raise deductibles more than a percentage equal to medical inflation plus 15 percentage points, (5) lower employer contributions by more than 5 percentage points, (6) decrease the annual dollar limit or add an annual dollar limit where none existing previously unless they are replacing a lifetime dollar limit with an annual dollar limit that is at least as high as the lifetime limit. Employers may change insurers or plan administrators and still maintain their grandfathered status provided they adhere to the above six rules.<sup>xii</sup> In 2011, approximately 56 percent of employees were enrolled in a grandfathered health plan.<sup>xiii</sup> Many expect fewer and fewer plans will retain their grandfathered status each year.

<sup>i</sup> ACA is the Patient Protection and Affordable Care Act, which was passed by the Senate on December 24, 2009 and the House on March 21, 2010. The ACA was signed by President Barack Obama on March 23, 2010. It was later amended by the Health Care and Education Reconciliation Act of 2010 (HCERA).

<sup>ii</sup> 2011 Kaiser/HRET Employer Health Benefits Survey

<sup>iii</sup> PHSA is the Public Health Service Act, which is captured in Chapter 6A of Title 42 of the United States Code.

<sup>iv</sup> HCERA is The Health Care and Education Reconciliation Act of 2010 passed the House on March 21, 2010 and the Senate on March 25, 2010. HCERA was signed by President Obama on March 30, 2010. It combines revised portions of the ACA with the Student Aid and Fiscal Responsibility Act (SAFRA), which amends the Higher Education Act of 1965 (HEA).

<sup>v</sup> The employer mandate applies to all "applicable large employers," which is an employer with at least 50 full-time equivalent (FTE) employees during the previous calendar year. In a request for comment (IRS Notice 2011-36 [www.irs.gov/pub/irs-drop/n-11-36.pdf](http://www.irs.gov/pub/irs-drop/n-11-36.pdf)) on the issue of discerning whether an employer is an "applicable large employer," the Internal Revenue Service suggested the following steps for calculating the number of average full-time equivalents: (1) Determine number of full-time employees in a given month using 130-hour standard. (2) Add up hours of all other employees and divide by 120 (this is defined in statute). (3) Add the full-time employees and FTE employees for each month, add up the monthly tallies for all 12 months, and divide by 12. Any fraction is rounded down. Note: seasonal employees are not included in this calculation if the employee meets the definition of a seasonal worker found in IRC 4980H and DOL regulations referenced in IRC 4980H.

<sup>vi</sup> In January 2011, the Internal Revenue Service (IRS) issued a bulletin indicating that it will not enforce PHSA Section 2716 until it issues further guidance on it. [http://www.irs.gov/irb/2011-02\\_IRB/ar10.html](http://www.irs.gov/irb/2011-02_IRB/ar10.html)

<sup>vii</sup> Currently, self-insured plans are subject to the nondiscrimination rules of Section 105(h) of the Internal Revenue Code (IRC). Highly compensated individuals on self-insured plans that violate these rules are taxed on the medical reimbursements actually paid. PHSA Section 2716 (created by ACA Section 1001), calls for rules "similar to" IRC Section 105(h) to apply to fully insured health plans. However, fully insured employers that violate these rules will be taxed \$100 per day per employee discriminated against, not to exceed the lesser of 10 percent of the group plan cost or \$500,000.

<sup>viii</sup> Current Population Survey Annual Social and Economic Supplement (CPS), 2011

<sup>ix</sup> CHRT calculations based on 2011 CPS Annual Social and Economic Supplement data and 2010 Medical Expenditure Panel Survey data

<sup>x</sup> CHRT calculations based on 2011 CPS Annual Social and Economic Supplement data and 2010 Medical Expenditure Panel Survey data

<sup>xi</sup> CHRT calculations based on 2011 CPS Annual Social and Economic Supplement data and 2010 Medical Expenditure Panel Survey data

<sup>xii</sup> Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered" Health Plans: A Factsheet, Retrieved 6/1/2012 from <http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html>.

<sup>xiii</sup> 2011 Kaiser/HRET Employer Health Benefits Survey



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