

**Supporting Statement**  
**Disclosure and Recordkeeping Requirements for Grandfathered Health Plans under the  
Affordable Care Act (CMS-10325/OMB Control Number: 0938-1093)**

**A. Background**

The Patient Protection and Affordable Care Act, Pub. L. 111-148, was enacted on March 23, 2010; and the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, was enacted on March 30, 2010 (collectively known as the “Affordable Care Act”). The Affordable Care Act reorganizes, amends, and adds to the provisions of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

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 interim final regulations titled “Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act” (75 FR 34538, June 17, 2010) by the Department of the Treasury, Department of Labor, and the Department of Health and Human Services (the Departments) implemented the requirements for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding status as a grandfathered health plan. An amendment to the interim final rule (75 FR 70114, November 17, 2010) permits certain changes in policies, certificates, or contracts of insurance without loss of grandfathered status. The final regulations titled “Final Rules under the Affordable Care Act for Grandfathered Plans, Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections” (80 FR 72192, November 18, 2015, 2015 final regulations) finalized the provisions of the interim final regulations and amendments. The final regulations titled “Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage” (85 FR 81097, December 15, 2020) provided greater flexibility for certain grandfathered health plans to make changes to certain types of fixed-amount cost-sharing requirements without causing a loss of grandfather status under the Affordable Care Act.

The Centers for Medicare & Medicaid Services (CMS) is requesting an extension of the Office of Management and Budget (OMB) approval for the information collections included in this information collection request (ICR).

**B. Justification**

**1. Need and Legal Basis**

A grandfathered group health plan or health insurance coverage must include a statement in

any summary of benefits provided to participants or beneficiaries (in the individual market, primary subscribers) under the plan or health insurance coverage that the plan or coverage believes it is a grandfathered plan within the meaning of section 1251 of the Affordable Care Act (“grandfathered health plan disclosure”) and provide contact information for questions and complaints. Plans and issuers may (but are not required to) utilize the model disclosure language in the 2015 final regulations to satisfy this disclosure requirement. The disclosure language is a model, and thus plans and issuers are permitted to include additional disclosure elements, such as the entire list of the market reform provisions that do not apply to grandfathered health plans.

To maintain its status as a grandfathered health plan, the plan is required to maintain records documenting the terms of the plan in effect on March 23, 2010 and any other documents that are necessary to verify, explain or clarify status as a grandfathered health plan (the “recordkeeping requirement”), per the 2015 final regulations. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

The 2015 final regulations require a grandfathered group health plan that is changing health insurance issuers to provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards of paragraph §147.140(g)(1) of the final regulations are exceeded (“grandfathered plan change in carrier disclosure”).

The 2015 final regulations also require that, for an insured group health plan (or a multiemployer plan) that is a grandfathered plan, the relevant policies, certificates, contracts of insurance, or plan documents must disclose in a prominent and effective manner that employers, employee organizations, or plan sponsors, as applicable, are required to notify the issuer (or multiemployer plan) if the contribution rate changes at any point during the plan year.

## 2. Information Users

The disclosure requirement will provide participants and beneficiaries (in the individual market, primary subscribers) with important information about their grandfathered health plans, including that grandfathered plans are not required to comply with certain consumer protection provisions contained in the Act. It will also provide important contact information for questions and complaints. The recordkeeping requirement will allow a participant, beneficiary, primary subscriber, or Federal or State official to inspect plan documents to verify that a plan or health insurance coverage is a grandfathered health plan. The disclosure required when a change in carrier occurs will ensure that the succeeding health insurance issuer has sufficient information to determine whether the standards set forth in paragraph §147.140(g)(1) under the 2015 final regulations are met.

3. Use of Information Technology

Plans or issuers may use electronic technology to provide either disclosure and to satisfy recordkeeping requirements.

4. Duplication of Efforts

There is no duplication of efforts for these information collections.

5. Small Businesses

Small businesses are not affected by these information collections.

6. Less Frequent Collection

If these information collections were conducted less frequently, affected individuals would not be informed in a timely manner that their plan is a grandfathered health plan that does not have to comply with some of the Affordable Care Act's consumer protection provisions. Without the recordkeeping requirement, verifying a plan's grandfathered status would be more difficult for participants, beneficiaries, primary subscribers, or a Federal or State official. Without the change in carrier disclosure, it would be difficult for the succeeding issuer to determine whether the requirements set forth in paragraph §147.140(g)(1) under the 2015 final regulations are met.

7. Special Circumstances

There are no special circumstances.

8. Federal Register/Outside Consultation

A notice was published in the Federal Register on December 19, 2024 (89 FR 103831), providing the public with a 60-day period to submit written comments on this ICR. No comments were received.

9. Payments/Gifts to Respondents

No payments or gifts are associated with these information collections.

10. Confidentiality

This ICR includes third-party disclosures, and the issue of confidentiality between third parties is out of scope for the information collections.

## 11. Sensitive Questions

These information collections do not involve any sensitive questions.

## 12. Burden Estimates (Hours & Wages)

The burden and equivalent cost estimates have been updated based on recent data. We used data from the Bureau of Labor Statistics (BLS) to calculate the median labor costs (doubled to include the cost of fringe benefits and other indirect costs) for estimating the burden and equivalent cost associated with this ICR.<sup>1</sup>

### Adjusted Hourly Wages Used in Burden Estimates

BLS Occupation Title	Occupational Code	Median Hourly Wage (\$/hour)	Cost of Fringe Benefits and Other Indirect Costs (\$/hour)	Adjusted Hourly Wage (\$/hour)
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	43-6014	\$21.29	\$21.29	\$42.58

### Grandfathered Health Plan Disclosure

The 2015 final regulations provide model language for the grandfathered health plan disclosure that can be incorporated into existing plan documents. After plans first satisfied the disclosure requirement in 2011, any additional burden is expected to be negligible if a plan wants to maintain its grandfathered status in future years. It is also expected that the cost of removing the notice from plan documents as plans relinquish their grandfathered status will be negligible, and therefore it is not estimated.

Issuers of grandfathered group health plans and grandfathered multi-employer plans must also add a prominent disclosure in their policies, certificates, contracts of insurance, or plan documents that employers, employee organizations, or plan sponsors, as applicable, are required to notify the issuer if the contribution rate changes at any point during the plan year. This requirement only affects issuers of fully insured group health plans and multi-employer plans. After this requirement is first satisfied, any additional burden in future years is expected to be negligible and is therefore not estimated.

### Recordkeeping Requirement

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<sup>1</sup> May 2023 Occupational Employment Statistics found at [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm).

It is assumed that most of the documents required to be retained to satisfy the recordkeeping requirement of the 2015 final regulations are already retained by plans for tax purposes, to satisfy ERISA's record retention and statute of limitations requirements, and for other business reasons. It was previously estimated that after the one-time cost related to the recordkeeping requirement was incurred in 2011, costs in subsequent years will be negligible, and, therefore, are not estimated.

### Grandfathered Plan Change in Carrier Disclosure

A group health plan that is changing health insurance coverage must provide to the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards set forth in paragraph §147.140(g)(1) of the 2015 final regulations are exceeded.

It is estimated that there are approximately 90,887 state and local governments that offer health insurance coverage to employees<sup>2</sup>, with approximately 14,542 grandfathered plans.<sup>3</sup> The number of plans that might change carriers and thus be affected (1,200) is estimated by multiplying the estimated number of grandfathered plans (14,542) by the percentage of plans shopping for a new carrier (55 percent) and the percentage of plans shopping for a new carrier that switched (15 percent).<sup>4</sup>

Each employer will require about 2 minutes of clerical labor (at an hourly cost of approximately \$42.58) to send the information required for the disclosure (which is already retained under the recordkeeping requirement) electronically to the issuer. The total annual labor burden for all employers is estimated to be approximately 40 hours with an equivalent annual cost of approximately \$1,703. The cost of transmitting the information electronically to the issuer is negligible, and, therefore, not estimated. The number of disclosures and the cost burden may be lower in subsequent years as more plans relinquish their grandfathered status. In the absence of data regarding how many plans will retain grandfathered status in subsequent years, we consider this estimate to be the upper limit for the burden in future years.

## 13. Capital Costs

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<sup>2</sup> The estimate of the total number of state and local governmental plans is based on the 2022 Census of Governments (available at <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>).

<sup>3</sup> HHS lacks data on the number of state and local plans that are grandfathered plans. The KFF 2020 Employer Health Benefits Survey estimated that 16 percent of employers offering health plans had at least one grandfathered plan in 2020. <https://www.kff.org/health-costs/report/2020-employer-health-benefits-survey/>.

<sup>4</sup> See Section 13 of the KFF 2020 Employer Health Benefits Survey, available at <https://www.kff.org/health-costs/report/2020-employer-health-benefits-survey/>.

## Grandfathered Health Plan Disclosure

Grandfathered plans will incur printing and material costs associated with the disclosure requirement. It is estimated that there are approximately 14,542 grandfathered state and local governmental health plans with approximately 1.8 million policyholders.<sup>5</sup> It is further estimated that there are approximately 286,657 policyholders in the individual market with grandfathered coverage issued by approximately 61 issuers.<sup>6</sup> Therefore, grandfathered state and local government plans and issuers in the individual markets will need to send approximately 2.1 million disclosures notifying plan participants and beneficiaries and policyholders in the individual market of their plan's or coverage's status as a grandfathered health plan. We anticipate that the notice will require one-half of a page and that a five cents per page printing and material cost will be incurred. We also assume that approximately 58 percent of the notices will be delivered electronically, with the remaining approximately 42 percent of the notices delivered by mail.<sup>7</sup> This results in a total annual capital cost of approximately \$21,823 ( $\$0.05 \text{ per page} * 1/2 \text{ pages per notice} * 2,093,306 \text{ notices} * 0.417$ ). The number of notices sent annually and the total annual capital costs are likely to be lower in subsequent years as more plans relinquish their grandfather status. In the absence of data regarding how many plans will retain grandfather status in subsequent years, we consider these estimates to be the upper limits for the number of notices sent and the total capital cost, respectively, in future years.

### 14. Cost to Federal Government

There is no cost to the federal government.

### 15. Changes to Burden

There is no change in burden.

### 16. Publication/Tabulation Dates

There are no plans to publish the outcomes of these information collections, as they entail third-party disclosures and a recordkeeping requirement.

### 17. Expiration Date

There are no instruments associated with these information collections.

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<sup>5</sup> Estimates based on CMS analysis of data from the 2022 Census of Governments and the KFF 2020 Employer Health Benefits Survey.

<sup>6</sup> Estimates based on preliminary CMS analysis of 2023 Prescription Drug Data Collection (RxDC) data submissions required under Section 204 of Division BB, Title II of the Consolidated Appropriations Act, 2021.

<sup>7</sup> See calculation at <https://www.federalregister.gov/documents/2024/09/23/2024-20612/requirements-related-to-the-mental-health-parity-and-addiction-equity-act#footnote-383-p77685>.