



Charles N. Kahn III
President and CEO

March 27, 2019

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Request for Information Regarding Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage; 84 Fed. Reg. 5,969 (Feb. 25, 2019); (CMS-9923-NC)

Dear Administrator Verma,

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 investor-owned or managed community hospitals and health systems throughout the United States. Our members include teaching and non-teaching, short-stay acute, inpatient rehabilitation, long-term acute care, psychiatric and cancer hospitals in urban and rural America, and provide a wide range of acute, post-acute and ambulatory services. The FAH appreciates the opportunity to submit comments to the Centers for Medicare & Medicaid Services (CMS) addressing its *Request for Information Regarding Grandfathered Group Health Plans and Grandfathered Group Health Insurance Coverage*.

Grandfathered health plans are plans that were offered before the *Affordable Care Act* (ACA) passed. Under the ACA, those health plans are exempt from some of the law's rules and consumer protections, so long as they continuously provide coverage and the terms of coverage remain unchanged. Employers and individuals were permitted to maintain the non-compliant health plans in order to help smooth the transition to a minimum essential benefit level and to incorporate other standards for health plans. Under the exemption, plan sponsors did not need to immediately make substantial changes in their existing coverage – those changes could be made at more natural points as new plans were offered or as other changes to the coverage or terms of coverage were made.

Under the ACA's exemption, grandfathered health plans are not required to offer essential health benefits nor provide preventive care without cost-sharing. They do not need

to comply with certain coverage guarantees or rating rules. They can still impose annual dollar limits and are not subject to a number of patient protections and consumer safeguards including appeals rights and certain non-discrimination rules.

As intended by the ACA, the number of grandfathered plans has naturally declined each year since the law's enactment. In 2011, 72% of employers offered employees at least one grandfathered group health plan. In 2018, that percentage declined to 20 percent.¹

The Departments request feedback on whether there are opportunities for them to help group health plans and issuers preserve their grandfathered status.² The FAH has concerns about preserving grandfathered status. The ACA provision allowing for the continued offering of grandfathered plans is working precisely as intended. Over time, the number of such non-compliant plans were expected to decline as health plans naturally turn over, or their benefits or terms are updated. We support continuing the natural decline in grandfathered plans that is already underway because that decline represents the natural transition to health coverage that meets statutory minimum standards for coverage and consumer protections.

As grandfathered plans phase out, any replacements must comply with the requirements of the ACA. Among those requirements is the offering of minimum essential health benefits. Increasing support for coverage that cannot meet minimum benefits standards would undermine the transitional purpose of the grandfathered plans and reduce access to essential health benefits for patients. Further, we are concerned that if the Administration were to enable grandfathered plans to make changes to coverage or terms and not lose grandfathered status, those changes would, over time, further erode the value of grandfathered coverage, raising enrollee out-of-pocket costs and leaving consumers without the coverage they need. We believe the Administration should instead support health care markets where all individuals are able to purchase coverage that meets a minimum standard.

Weaker regulations combined with the lack of coverage for minimum benefits mean that grandfathered plans are not likely to be good options for individuals with health problems or are in need of comprehensive health care coverage. For those reasons, they are more likely to continue where the covered population are lower risk. Continuing or encouraging the offering of grandfathered plans could therefore invite risk segmentation – where lower risk populations seek coverage through non-compliant health plans and higher risk populations seek out compliant health plans. This type of risk segmentation in health insurance markets causes instability and raises the probability of risk selection spirals.

For those reasons, the FAH encourages the Administration to continue the existing policies towards grandfathered plans rather than making changes that would invite instability and reduce the likelihood that people who need comprehensive health care coverage are able to find it.

¹ 2018 Employer Health Benefits Survey, Kaiser Family Foundation, available at <https://www.kff.org/report-section/2018-employer-healthbenefits-survey-section-13-grandfathered-healthplans/>. See also 2011 Employer Health Benefits Survey, Kaiser Family Foundation, available at: <https://kaiserfamilyfoundation.files.wordpress.com/2013/04/8225.pdf>.

² The Departments of Health and Human Services, Labor, and Treasury share jurisdiction over many aspects of the ACA including grandfathered health plans.

Thank you for the opportunity to comment on this matter. Should I be able to provide you with additional information, please do not hesitate to contact me or my staff at (202) 624-1500.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Kuntz". The signature is fluid and cursive, with a large initial "A" and "M".