

**Attachment to Client Bulletin 2010-47**

<i>Application of the New Health Reform Provisions of Part A of Title XXVII of the PHS Act to Grandfathered Plans</i>		
PHS Act Section	Summary of Provision	Application to Grandfathered plans
§2701 Fair health insurance premiums	Health insurance issuers may not charge discriminatory premium rates. The rate may vary only by whether such plan or coverage covers an individual or family, rating area, actuarial value, age, and tobacco use.	Not applicable; also does not apply to large group insurance market coverage in States that do not allow such coverage to be offered through the State exchanges.
§2702 Guaranteed availability of coverage	Health insurance issuers in both the individual and group markets must accept every employer and individual in the State that applies for coverage, but are permitted to limit enrollment to annual open and special enrollment periods for those with qualifying lifetime events.	Not applicable
§2703 Guaranteed renewability of coverage	Requires guaranteed renewability of coverage regardless of health status, utilization of health services, or any other related factor. Coverage can only be cancelled under specific, enumerated circumstances.	Not applicable
§2704 Prohibition of preexisting condition exclusion or other discrimination based on health status	Group health plans and health insurance issuers offering group or individual coverage may not impose a preexisting condition exclusion or discriminate based on health status.	Applicable to grandfathered group health plans and group health insurance coverage.  Not applicable to grandfathered individual health insurance coverage.
§2705 Prohibiting discrimination against individual participants and beneficiaries based on health status	Retains the HIPAA <sup>1</sup> nondiscrimination provisions for group health plans and group health insurance issuers. Specifically, plans and group health insurance issuers may not set eligibility rules based on factors such as health status and evidence of insurability – including acts of domestic violence or disability. Provides limits on the ability of plans and issuers to vary premiums and contributions based on health status.  The Affordable Care Act adds new provisions regarding wellness programs and extends all the nondiscrimination protections to the individual market.	The HIPAA nondiscrimination provisions are applicable to grandfathered group health plans and group health insurance issuers.  The new Affordable Care Act extensions are not applicable to grandfathered group health plans and group health insurance coverage.  Not applicable to grandfathered individual health insurance coverage.
§2706 Nondiscrimination in health care	Prohibits discrimination by group health plans and health insurance issuers against health care providers acting within the scope of their professional license and applicable State laws.	Not applicable
§2707 Comprehensive health insurance coverage	Requires health insurance issuers in the small group and individual markets (and large group markets in State exchanges) to include coverage which incorporates defined essential benefits, provides a specified actuarial value, and requires all policies to comply with limitations on allowable cost sharing.	Not applicable

<sup>1</sup> HIPAA is the Health Insurance Portability and Accountability Act of 1996.

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§2708 Prohibition on excessive waiting periods	Prohibits any waiting periods that exceed 90 days for group health plans and group health insurance coverage.	Applicable
§2709 <sup>2</sup> Coverage for individuals participating in approved clinical trials	Prohibits health insurance issuers from dropping coverage because an individual (who requires treatment for cancer or another life-threatening condition) chooses to participate in a clinical trial. Issuers also may not deny coverage for routine care that they would otherwise provide because an individual is enrolled in a clinical trial.	Not applicable
§2711 No lifetime or annual limits	Prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from establishing lifetime limits and annual limits on the dollar value of benefits. Prior to 2014, plans and issuers may establish certain restricted annual limits (as defined in regulations).	Prohibition on lifetime limits: Applicable  Prohibition and limits on annual limits: Applicable to grandfathered group health plans and group health insurance coverage; not applicable for grandfathered individual health insurance coverage.
§2712 Prohibition on rescissions	Group health plans and health insurance issuers may not rescind health coverage after coverage begins except in the case of fraud or intentional misrepresentation.	Applicable
§2713 Coverage of preventive health	Group health plans and health insurance issuers offering group or individual health insurance coverage must cover certain preventive services, immunizations, and screenings, without any cost sharing.	Not applicable
§2714 Extension of dependent coverage	Group health plans and health insurance issuers offering group or individual health insurance coverage that provide dependent coverage must continue to make such coverage available to children until age 26.	Applicable <sup>3</sup>
§2715 Development and utilization of uniform explanation of coverage	Requires the Federal government to develop standards for use by group health plans and health insurance issuers in compiling and	Applicable

<sup>2</sup> After the amendments made by the Affordable Care Act, there are two PHS Act sections 2709. The first section 2709 was PHS Act section 2713 before the amendments made by the Affordable Care Act and was redesignated PHS Act section 2733 by section 1001(3) of the Affordable Care Act and then, as PHS Act section 2733, was again redesignated by section 1562(c)(10) of the Affordable Care Act as PHS Act section 2709. The second section 2709 was added by section 10103 of the Affordable Care Act and relates to coverage for individuals participating in approved clinical trials. Grandfathered health plans are subject to the first PHS Act section 2709 because as PHS Act section 2713 it was part of the PHS Act before the enactment of the Affordable Care Act. However, grandfathered health plans are not subject to the second PHS Act section 2709.

<sup>3</sup> For a group health plan or group health insurance coverage that is a grandfathered health plan for plan years beginning before January 1, 2014, PHS Act section 2714 is applicable in the case of an adult child only if the adult child is not eligible for other employer-sponsored health plans coverage. The interim final regulations relating to PHS Act 2714, published in 75 FR 27122 (May 13, 2010), and these interim final regulations clarify that, in the case of an adult child who is eligible for coverage under the employer-sponsored plans of both parents, neither parent's plan may exclude the adult child from coverage based on the fact that the adult child is eligible to enroll in the other parent's employer-sponsored plan.

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documents and standardized definitions	providing an accurate summary of benefits and explanation of coverage for applicants, policyholders or certificate holders, and enrollees. The explanation of coverage must describe any cost sharing, exceptions, reductions, and limitations on coverage, and give examples to illustrate common benefits scenarios.	
§2715A Provision of additional information	Requires group health plans and health insurance issuers offering group or individual health insurance coverage to disclose, to the Federal government and the State insurance commissioner, certain enrollee information such as claims payment policies and practices and enrollee rights. Requires such plans and issuers to provide information to enrollees on the amount of cost-sharing for a specific item or service.	Not applicable
§2716 Prohibition on discrimination in favor of highly-compensated individuals	Prohibits fully-insured group health plans from discriminating in favor of highly compensated individuals with respect to eligibility and benefits.	Not applicable
§2717 Ensuring quality of care	Requires the Federal government to develop guidelines for use by health insurance issuers to report information on initiatives and programs that improve health outcomes. Prohibits a wellness program from requiring the disclosure or collection of any information relating to the presence or storage of a lawfully possessed firearm or ammunition in the residence or the lawful use, possession or storage of a firearm or ammunition by an individual.	Not applicable
§2718 Bringing down cost of health care coverage (medical loss ratio provisions)	Requires health insurance issuers offering group or individual health insurance coverage to submit annual reports to the Federal government on the percentages of premiums that the coverage spends on reimbursement for clinical services and activities that improve health care quality, and to provide rebates to enrollees if this spending does not meet minimum standards for a given plan year.	Applicable to insured grandfathered plans
§2719 Appeals process	Group health plans and health insurance issuers offering group or individual health insurance coverage must provide an effective internal appeals process of coverage determinations and claims and comply with any applicable State external review process. If the State has not established an external review process that meets minimum standards or the plan is self-insured, the plan or issuer shall implement an external review process that meets standards established by the Federal government.	Not applicable
§2719A Patient protections	Group health plans and health insurance issuers offering group or individual health insurance coverage must permit an individual to select a participating primary care provider, or	Not applicable

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	<p>pediatrician in the case of a child. Provides direct access to obstetrical or gynecological care without a referral. Prohibits prior authorization or increased cost sharing for out-of-network emergency services.</p>	
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