



## Applying and Enforcing HIPAA; State Flexibility

### **Are certain benefits exempt from HIPAA's portability requirements?**

HIPAA does not apply to plans with respect to their provision of "excepted benefits." Likewise, if an individual provides evidence of prior health coverage under a plan that provides only excepted benefits, this coverage is not considered creditable coverage.

Some benefits, such as accidental death and dismemberment benefits, are always excepted benefits and are not subject to HIPAA. Other benefits, including (1) limited-scope dental and limited-scope vision benefits, (2) benefits under a health flexible spending arrangement, (3) noncoordinated benefits, and (4) supplemental benefits may be excepted if certain criteria are met.

More specific information on dental-only and vision-only coverage is provided in the following question. For more information on other types of excepted benefits, see 29 CFR 2590.732(c) or contact the EBSA office nearest you.

### **Are dental-only and vision-only coverage subject to HIPAA?**

It depends. These benefits may constitute limited-scope excepted benefits (and, therefore, are not subject to HIPAA) if:

- The benefits are offered under a separate insurance policy, certificate, or contract of insurance. (This is an option for insured plans only.)

OR

- The benefits are "not an integral part of the plan." (This is an option for both insured and self-insured plans.) Benefits are not an integral part of the plan if:
  - Participants have the right to elect not to receive coverage for the benefits; and
  - Participants that do elect to receive coverage for the benefits must pay an additional premium or contribution.



## **Can States modify HIPAA's portability requirements?**

Yes, in certain circumstances. States may impose stricter obligations on health insurance issuers in the seven areas in the following list. States may:

- Shorten the 6-month "look-back period" prior to the enrollment date to determine what preexisting conditions may be subject to the preexisting condition exclusion;
- Shorten the 12- and 18-month maximum preexisting condition exclusion periods;
- Increase the 63-day significant break in coverage period;
- Increase the 30-day period for newborns, adopted children, and children placed for adoption to enroll in creditable coverage without a preexisting condition exclusion;
- Expand the circumstances in which a preexisting condition exclusion period may not be applied;
- Require additional special enrollment periods; and
- Reduce the maximum HMO affiliation period to less than 2 months (3 months for late enrollees). (An affiliation period is the maximum period of time that must pass before coverage provided by an HMO becomes effective. HMOs that impose an affiliation period cannot impose a preexisting condition exclusion period.)

In addition, State laws related to health insurance issuers generally continue to apply except to the extent that such State law "prevents the application of" a requirement of Part 7 of ERISA. Therefore, if health coverage is offered through an HMO or an insurance policy, check with your State insurance department for more information on that State's insurance laws.

## **Who enforces the HIPAA portability provisions?**

The Secretary of Labor enforces these requirements under ERISA for group health plans. In addition, participants and beneficiaries can sue both plans and issuers to enforce their rights under ERISA, as amended by HIPAA.

The Secretary of the Treasury also enforces these requirements for group health plans. A taxpayer that fails to comply may be subject to an excise tax. States also have enforcement responsibility, including sanctions available under



State law, for requirements imposed on health insurance issuers. If a State does not act in the areas of its responsibility, the Secretary of Health and Human Services may make a determination that the State has failed “to substantially enforce” the law, assert Federal authority to enforce, and impose sanctions on insurers as specified in the statute, including civil monetary penalties.