Limitations on Pre-existing Conditions

**Summary:** No group health plan or insurer offering group or individual coverage may impose any pre-existing condition exclusion or discriminate against those who have been sick in the past. These protections apply with respect to enrollees under age 19 for plan years (in the individual market, policy years) beginning on or after September 23, 2010. For individuals age 19 and older, this prohibition is applicable for plan years (or in the case of individual insurers, policy years or applications denied) on or after January 1, 2014.

**Status updates:**
- On January 27, 2011, the HELP Committee held a hearing “to examine how the law protects consumers against insurance industry abuses, such as the denial of coverage to Americans with preexisting conditions.”
- On January 18, 2011, the Department of Health and Human Services released a report stating that up to 129 million Americans have a pre-existing condition.

**Next steps:**
- June 22, 2010 – The Departments of Health and Human Services, Labor, and Treasury released an interim final rule (IFR) regarding preexisting condition exclusions among other items. The IFR was published in the Federal Register on June 28, 2010.
- Before August 27, 2010 – Comments due on IFR
- September 23, 2010 – New restrictions apply to plan years or policy years after this date for enrollees under age 19
- October 13, 2010 -- Secretary Sebelius sent a letter to the National Association of Insurance Commissioners (NAIC), along with a press release, claiming that some insurers had “reneged on their commitment to provide coverage options for children with pre-existing conditions and refused to sell child only insurance policies.” In response, the NAIC issued their own press statement.
- December 23, 2010 -- Department of Labor (DoL) Employee Benefits Security Administration posted to its website a fifth set of frequently asked questions (FAQ) regarding grandfathered plan requirements. Among other things, the FAQ discussed permitting issuers to screen applicants for eligibility for alternative coverage options before offering a child-only policy.
- January 6, 2011 – Sen. Harkin announced an upcoming HELP Committee hearing on this topic.
- January 18, 2011 – HHS released a report stating that up to 129 million Americans have a pre-existing condition.
- January 27, 2011 – Scheduled HELP Committee hearing on this topic
- January 1, 2014 – New restrictions apply to plan years or policy years after this date for all enrollees.
Additional information:

- January 28, 2011 AP article regarding the HHS report -- [http://hosted2ap.org/APDEFAULT/89ae8247abe8493fae24405546e9a1aa/Article_2011-01-28-Pre%20Existing%20Conditions%20Fact%20Check/id-c83e3963a8b041e3827e0ab0d6b6e6c4](http://hosted2ap.org/APDEFAULT/89ae8247abe8493fae24405546e9a1aa/Article_2011-01-28-Pre%20Existing%20Conditions%20Fact%20Check/id-c83e3963a8b041e3827e0ab0d6b6e6c4)
- Sen. Harkin's January 6, 2011 press release -- [http://help.senate.gov/newsroom/press/release/?id=13358e0d-e1cb-45fd-a729-1c4ad48dba58&groups=Chair](http://help.senate.gov/newsroom/press/release/?id=13358e0d-e1cb-45fd-a729-1c4ad48dba58&groups=Chair)

Long summary:

PHS Act sec. 2704. Prohibition of preexisting condition exclusions or other discrimination based on health status (as modified by sec. 10103).

Amends the Public Health Service Act (PHSA) to prohibit a group health plan and a health insurance issuer offering group or individual health insurance coverage to impose any preexisting condition exclusion with respect to such plan or coverage. These protections apply with respect to enrollees under age 19 for plan years (in the individual market, policy years) beginning on or after September 23, 2010. For individuals age 19 and older, this prohibition is applicable for plan years (or in the case of individual insurers, policy years or applications denied) on or after January 1, 2014.

Summary of Interim Final Rule (IFR):

**Expansion of HIPAA.** HIPAA generally defines a preexisting condition exclusion as a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for the coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that date. Based on this definition, section 2704 of the Public Health Service Act (PHSA), as added by the Affordable Care Act, prohibits not just an exclusion of coverage of specific benefits associated with a preexisting condition in the case of an enrollee, but a complete exclusion from such plan or coverage, if that exclusion is based on a preexisting condition. Therefore, the new regulations not only protect against the denial of specific benefits but also the denial of enrollment.

**Maintenance of HIPAA.** The interim final regulations do not change the HIPAA rule that an exclusion of benefits for a condition under a plan or policy is not a preexisting condition exclusion if the exclusion applies regardless of when the condition arose relative to the effective date of coverage.
**Application based on age.** The Affordable Care Act provides that these protections apply with respect to enrollees under age 19 for plan years (in the individual market, policy years) beginning on or after September 23, 2010. For individuals age 19 and older, this prohibition is applicable for plan years (or in the case of individual insurers, policy years or applications denied) on or after January 1, 2014.

**Grandfathered plans.** The new pre-existing condition requirements apply to all plans or coverage, except for grandfathered individual policies.

**Long summary:**

PHS Act sec. 2704. Prohibition of preexisting condition exclusions or other discrimination based on health status (as modified by sec. 10103).

Amends the Public Health Service Act (PHSA) to prohibit a group health plan and a health insurance issuer offering group or individual health insurance coverage to impose any preexisting condition exclusion with respect to such plan or coverage.

**Legislative text:**

SEC. 2704. PROHIBITION OF PREEXISTING CONDITION EXCLUSIONS OR OTHER DISCRIMINATION BASED ON HEALTH STATUS.

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''(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage may not impose any preexisting condition exclusion with respect to such plan or coverage.''; and
(B) by transferring such section (as amended by subparagraph (A)) so as to appear after the section 2703 added by paragraph (4);
(3)(A) in section 2702 (42 U.S.C. 300gg–1)—(i) by striking the section heading and all that follows through subsection (a);
(ii) in subsection (b)—
(I) by striking ‘‘health insurance issuer offering health insurance coverage in connection with a group health plan’’ each place that such appears and inserting ‘‘health insurance issuer offering group or individual health insurance coverage’’; and
(II) in paragraph (2)(A)—
(aa) by inserting ‘‘or individual’’ after ‘‘employer’’; and
(bb) by inserting ‘‘or individual health coverage, as the case may be’’ before the semicolon; and
(iii) in subsection (e)—
(I) by striking ‘‘(a)(1)(F)’’ and inserting ‘‘(a)(6)’’;
(II) by striking ‘‘2701’’ and inserting ‘‘2704’’; and
(III) by striking ‘‘2721(a)’’ and inserting ‘‘2735(a)’’; and
(B) by transferring such section (as amended by subparagraph (A)) to appear after section 2705(a) as added by paragraph (4);
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