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Citation: 42 U.S.C. 300gg-11

Section: 42 USCS § 300gg-23

## 42 USCS § 300gg-23

## UNITED STATES CODE SERVICE

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\*\*\* CURRENT THROUGH PL 111-237, APPROVED 8/16/2010 \*\*\*

TITLE 42. THE PUBLIC HEALTH AND WELFARE  
CHAPTER 6A. THE PUBLIC HEALTH SERVICE  
REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE  
INDIVIDUAL AND GROUP MARKET REFORMS  
EXCLUSION OF PLANS; ENFORCEMENT; PREEMPTION[Go to the United States Code Service Archive Directory](#)

## 42 USCS § 300gg-23

## § 300gg-23. Preemption; State flexibility; construction

(a) Continued applicability of State law with respect to health insurance issuers.

(1) In general. Subject to paragraph (2) and except as provided in subsection (b), this part [42 USCS §§ 300gg et seq.] and part C [42 USCS §§ 300gg-91 et seq.] insofar as it relates to this part [42 USCS §§ 300gg et seq.] shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with individual or group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of this part [42 USCS §§ 300gg et seq.].

(2) Continued preemption with respect to group health plans. Nothing in this part [42 USCS §§ 300gg et seq.] shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1144] with respect to group health plans.

(b) Special rules in case of portability requirements.

(1) In general. Subject to paragraph (2), the provisions of this part [42 USCS §§ 300gg et seq.] relating to health insurance coverage offered by a health insurance issuer supersede any provision of State law which establishes, implements, or continues in effect a standard or requirement applicable to imposition of a preexisting condition exclusion specifically governed by section 701 which differs from the standards or requirements specified in such section.

(2) Exceptions. Only in relation to health insurance coverage offered by a health insurance issuer, the provisions of this part [42 USCS §§ 300gg et seq.] do not supersede any provision of State law to the extent that such provision--

(i) substitutes for the reference to "6-month period" in section 2701(a)(1) [42 USCS § 300gg(a)(1)] a reference to any shorter period of time;

(ii) substitutes for the reference to "12 months" and "18 months" in section 2701(a)(2) [42 USCS § 300gg(a)(2)] a reference to any shorter period of time;

(iii) substitutes for the references to "63" days in sections 2701(c)(2)(A) and 2701(d)(4)(A) [42 USCS § 300gg(c)(2)(A), (d)(4)(A)] a reference to any greater number of days;

(iv) substitutes for the reference to "30-day period" in sections 2701(b)(2) and 2701(d)(1) [42 USCS § 300gg(b)(2), (d)(1)] a reference to any greater period;

(v) prohibits the imposition of any preexisting condition exclusion in cases not described in section 2701(d) [42 USCS § 300gg(d)] or expands the exceptions described in such section;

(vi) requires special enrollment periods in addition to those required under section 2701(f) [42 USCS § 300gg(f)]; or

(vii) reduces the maximum period permitted in an affiliation period under section 2701(g)(1)(B) [42 USCS § 300gg(g)(1)(B)].

(c) Rules of construction. Nothing in this part [42 USCS §§ 300gg et seq.] (other than section 2704 [42 USCS §

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> Standard HIPAA Order in Civil Actions. 65 Ala Law 332, September 2004.

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300gg-4]) shall be construed as requiring a group health plan or health insurance coverage to provide specific benefits under the terms of such plan or coverage.

(d) Definitions. For purposes of this section--

(1) State law. The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) State. The term "State" includes a State (including the Northern Mariana Islands), any political subdivisions of a State or such Islands, or any agency or instrumentality of either.

#### History:

(July 1, 1944, ch 373, Title XXVII, Part A, Subpart 2[4][3], § 2724 [2737] [2723], as added Aug. 21, 1996, P.L. 104-191, Title I, Subtitle A, Part 1, § 102(a), 110 Stat. 1971; Sept. 26, 1996, P.L. 104-204, Title VI, § 604(a)(2), (b)(2), 110 Stat. 2939, 2941; March 23, 2010, P.L. 111-148, Title I, Subtitle A, § 1001(4), Subtitle G, § 1563(c)(14) [1562(c)(14)], Title X, Subtitle A, § 10107(b)(1), 124 Stat. 130, 269, 911.)

#### History; Ancillary Laws and Directives:

- 1. Amendments
- 2. Redesignation
- 3. Other provisions

##### 1. Amendments:

1996. Act Sept. 26, 1996 (applicable with respect to group health plans for plan years beginning on or after 1/1/98, which appears as 42 USCS § 300gg-4 note), in subsec. (c), inserted "(other than section 2704)".

2010. Act March 23, 2010, in subsec. (a)(1), inserted "individual or".

##### 2. Redesignation:

Subpart 3 of Part A of Title XXVII of Act July 1, 1944, ch 373, was redesignated Subpart 4 of such Part by Act Sept. 26, 1996, P.L. 104-204, Title VI, § 604(a)(2), 110 Stat. 2939. It was further redesignated Subpart 2 of such Part by Act March 23, 2010, P.L. 111-148, Title I, Subtitle G, § 1562(c)(11), 124 Stat. 268.

This section, enacted as § 2723 of Part A of Title XXVII of Act July 1, 1944, ch 373, was redesignated § 2737 of such Part by Act March 23, 2010, P.L. 111-148, Title I, Subtitle A, § 1001(4), 124 Stat. 130. It was further redesignated § 2724 of such Part by § 1562(c)(14)(B) of the 2010 Act.

Section 1562 of Act March 23, 2010, P.L. 111-148, which amended this section, was redesignated § 1563 of such Act by § 10107(b)(1) of the Act.

##### 3. Other provisions:

**Applicability of section.** Subject to certain exceptions, Part A of title XXVII of the Public Health Service Act (42 USCS §§ 300gg et seq.) shall apply with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after June 30, 1997, pursuant to § 102(c) of Act Aug. 21, 1996, P.L. 104-191, which appears as 42 USCS § 300gg note.

#### Notes:

#### Research Guide:

##### Law Review Articles:

Standard HIPAA Order in Civil Actions. 65 Ala Law 332, September 2004.

Stein. What Litigators Need to Know about HIPAA. 36 J Health L 433, Summer 2003.

Remus; L'Huillier. HIPAA and lawyers: yes, lawyers! 44 NH BJ 14, March 2003.

Langer. The HIPAA Privacy Rules: Disclosures of Protected Health Information in Legal Proceedings. 78 Wis L 14, April 2005.

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