

Applying and Enforcing Laws in Part 7 of ERISA

Are certain benefits exempt from the requirements in Part 7 of ERISA, including HIPAA and the Affordable Care Act?

Part 7 of ERISA (Part 7) does not apply to plans with respect to their provision of “excepted benefits.”

Some benefits, such as accidental death and dismemberment benefits, are always excepted benefits and are not subject to the laws in Part 7, including HIPAA and the Affordable Care Act. Other benefits, including 1) limited-scope dental and limited-scope vision benefits, 2) benefits under certain health flexible spending arrangements, 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 and supplemental excepted benefits is provided in this section. 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 Part 7?

It depends. These benefits may constitute limited-scope excepted benefits (and, therefore, are not subject to Part 7) 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.) Under the final rules issued in September 2014, benefits are not an integral part of the plan if participants have the right to elect not to receive coverage for the benefits.

Is supplemental health insurance coverage subject to Part 7?

It depends. Three types of coverage may qualify as supplemental excepted benefits (and, therefore, are not subject to Part 7): Medicare supplemental health insurance, TRICARE supplemental programs, and similar supplemental coverage provided to coverage under a group health plan.

Coverage will be treated as “similar supplemental coverage” if it is provided under a separate policy, certificate, or contract of insurance, and it satisfies these requirements:

- The supplemental coverage must be issued by an entity that does not provide the plan’s primary coverage;
- It must be specifically designed to fill gaps in primary coverage, such as coinsurance or deductibles (but does not include coverage that becomes secondary or supplemental only under a coordination-of-benefits provision);
- The cost of supplemental coverage must not exceed 15 percent of the cost of primary coverage; and
- The supplemental coverage must not differentiate among individuals and dependents in eligibility, benefits, or premiums based on any health factor.

See Field Assistance Bulletin 2007-04 at dol.gov/ebsa for more information.

Who enforces the requirements of Part 7 of ERISA and parallel requirements under the Internal Revenue Code and the Public Health Service Act?

The Secretary of Labor enforces the requirements under ERISA for private-sector group health plans. In addition, participants and beneficiaries can sue both plans and issuers to enforce their rights under ERISA.

The Secretary of the Treasury enforces requirements for private-sector group health plans under the Code. A taxpayer that fails to comply may be subject to certain excise taxes or penalties.

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 or does not have authority to enforce, the Secretary of Health and Human Services may assert Federal authority to enforce, and impose sanctions on insurers as specified in the statute, including civil monetary penalties.

Can States laws apply to employment-based group health plan coverage?

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.