

Application of Insurance-Related Requirements under PPACA (P.L.111-148) as Amended by HCERA (P.L. 111-152) to Different Types of Health Insurance or Benefit Plans

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The table below shows, to the best of our knowledge, how selected provisions of Title I-Quality, Affordable Health Care for All Americans of the Patient Protection and Affordable Care Act (PPACA), as amended by the Health Care and Education Reconciliation Act (HCERA), apply to different sources of health insurance in the individual and small group insurance markets both in and outside of the state exchanges. It also shows how the provisions of Title I apply to the large group market, both for group health plans that are purchased by employers or other sponsors (e.g., unions) from state-regulated insurers and for group health plans that are self-insured, private sector plans regulated by the Employee Retirement Income Security Act (ERISA) plans. These latter plans are often referred to as “self-insured ERISA plans.”

It is important to note that the provisions related to insurance sold through the state-based exchanges that are to be established under PPACA do not apply until January 1, 2014. This is when the states (or the federal government, in the case of states that fail to establish an exchange) are required to have the exchanges operational. However, a number of provisions (the “Immediate Reforms”) first become effective as early as 2010 and then continue indefinitely after the exchanges are in place. **For ease of presentation, the table displays how each Immediate Reform provision applies in and outside of the exchanges as if the exchanges were operational prior to 2014.**

A few definitions may be helpful:

ERISA: The Employee Retirement Income Security Act of 1974 provides for the federal regulation of private-sector employee benefit plans (and more expansively, of pensions). ERISA regulates welfare benefit plans that may provide, among other things, medical, surgical and other health benefits. ERISA applies to health benefit coverage offered through health insurance sold by insurers or through other arrangements (e.g., “self-insured” or “self-funded” plans). In general, while ERISA regulates private sector employee benefit plans and health insurance issuers providing group health coverage, it does not cover governmental plans or plans with less than two participants. Section 514 of ERISA preempts state law relating to private sector employer and union sponsored

employee welfare benefits plans, including health plans. This generally means that states cannot regulate such plans.

IRC: The Internal Revenue Code of 1986 is the primary source of U.S. tax law, pertaining to individuals, employers and others. The IRC regulates group health plans, including church plans, but does not regulate health insurers.

PHS Act: The Public Health Service Act regulates group health plans, health insurance issuers providing group health coverage, coverage in the individual market, as well as some non-federal governmental plans.

Grandfathered plan: Under PPACA, a grandfathered plan is a group health plan or health insurance coverage in which an individual was enrolled on the date of enactment (3/23/2010) and, unless otherwise specified, is exempt from the requirements of Title I of the Act. A grandfathered plan retains its status even though: (1) family members are permitted to enroll after 3/23/2010 and (2) for group health plans, new employees and their families are permitted to enroll in the plan after that date.

Although many provisions of Title I of PPACA are included as amendments to Title XXVII of the PHS Act, a conforming amendment (section 1562(e)), applies the PHS Act provisions as if they were also included in ERISA and the IRC. In this way, the requirements are applied to group health plans that are regulated under ERISA and the IRC.

In the table below, a requirement does not apply to a grandfathered plan (GF plan) unless stated explicitly. If it does apply, the table entry indicates “applies to GF plans” or “(including GF plans)”. For example, under “Immediate Reforms,” the ban on the use of preexisting condition exclusions for children under 19 applies to new plans sold in the individual market, does not apply to grandfathered individual insurance plans, but does apply to grandfathered group health plans, both insured and self-insured. Also, only **new** health insurance coverage that meets the requirements of PPACA can be sold through the exchanges. These are Qualified Health Plans (QHPs). A grandfathered plan is not eligible to be a QHP and cannot be offered or sold through the exchanges. Thus, **no references to grandfathered plans are noted for the exchange plans.**

Do the PPACA Title I Insurance-Related Requirements Apply?

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
General application of grandfathering of coverage in place on date day of enactment (3/23/2010) [1251] See specific requirements below for exceptions	Not applicable. (Only new plans are sold through exchange)	Exempt from some new federal rules indefinitely	Not applicable. (Only new plans are sold through exchange)	Exempt from some new federal rules indefinitely	Exempt from some new federal rules indefinitely	Exempt from some new federal rules in indefinitely
IMMEDIATE REFORMS (generally apply as of plan years beginning on or after 9/23/2010) Note that exchanges are not required to be operational until 1/1/2014.						
Ban on preexisting condition	Yes	Yes	Yes	Yes (including GF plans)	Yes (including GF plans)	Yes (including GF plans)

¹ Fewer than 101 employees or, at state option, fewer than 51 employees (see §1304(b)(2) of PPACA).

² Under §1312(d)(2), state laws apply to individual and group insurance sold outside of the exchange.

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
exclusions for children under 19 [1201: 2704; 10103(e); 2301 of HCERA]						
Ban on most annual limits ³ [1001: 2711; 10101(a); 2301 of HCERA]	Yes	Yes	Yes	Yes (including GF plans)	Yes (including GF plans)	Yes (including GF plans)
Ban on all lifetime limits [1001: 2711; 10101(a); 2301 of HCERA]	Yes	Yes (including GF plans)	Yes	Yes (including GF plans)	Yes (including GF plans)	Yes (including GF plans)
No rescissions [1001: 2712; 2301 of HCERA]	Yes	Yes (including GF plans)	Yes	Yes (including GF plans)	Yes (including GF plans)	Yes (including GF plans)
Coverage of preventive services [1001-2713; 1302(b)]	Yes	Yes	Yes	Yes	Yes	Yes

³ Plans may limit annual benefits that are not included within the Essential Benefit Package after 2014. Prior to 2014, Secretary determines what may be restricted.

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
Dependent coverage [1001-2714; 2301 of HCERA]	Yes (but only if the plan provides for dependent coverage)	Yes (including GF plans) (but only if plan provides for dependent coverage)	Yes (but only if plan provides for dependent coverage)	Yes (including GF plans) (but only if plan provides for dependent coverage) ⁴	Yes (including GF plans) (but only if plan provides for dependent coverage) ⁵	Yes (including GF plans) (but only if plan provides for dependent coverage) ⁶
Uniform coverage explanation/standardized definitions [1001-2715; 10101(b); 10103(d)]	Yes	Yes (applies to GF plans)	Yes	Yes (applies to GF plans)	Yes (applies to GF plans)	Yes
Nondiscrimination based on salary [1001-2716; 10101(d)]	Not applicable	Not applicable	Yes	Yes	Yes	No (already subject to similar rules under §105(h) of IRC)
Quality reporting	Yes	Yes	Yes	Yes	Yes	Yes

⁴ Section 2301 of HCERA adds a new paragraph (4)(B)(ii) that applies this requirement to grandfathered group health plans only if the child is ineligible to enroll in a non-grandfathered (i.e., new) health plan that is an employer-sponsored health plan.

⁵Section 2301 of HCERA adds a new paragraph (4)(B)(ii) that applies this requirement to grandfathered group health plans only if the child is ineligible to enroll in a non-grandfathered (i.e., new) health plan that is an employer-sponsored health plan.

⁶ Section 2301 of HCERA adds a new paragraph (4)(B)(ii) that applies this requirement to grandfathered group health plans only if the child is ineligible to enroll in a non-grandfathered (i.e., new) health plan that is an employer-sponsored health plan.

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
[1001-2717; 10101(e)]						
Minimum loss ratios/rebates [1001-2718; 10101(f); 10103(d)]	Yes	Yes (applies to GF plans)	Yes	Yes (applies to GF plans)	Yes (applies to GF plans)	No
Appeals process [1001-2719; 10101(g)]	Yes	Yes	Yes	Yes	Yes	Yes
Patient protections (e.g., direct access; access to hospital emergency departments) [1001: 2719A as added by 10101(h)]	Yes	Yes	Yes	Yes	Yes	Yes
Review of premium	Yes	Yes	Yes	Yes	Yes	No

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
increases [1003: 2794;10101(i)] ⁷						
LONGER-TERM REFORMS (Generally apply for plan years beginning on or after January 1, 2014)						
Uniform application [1252] ⁸	Uniform application of state laws across market (although may be intended only to apply to rating standards)	Same as inside exchange	Uniform application of state laws across market (although may be intended only to apply to rating standards)	Same as inside exchange	Same as inside exchange	Retains ERISA exclusive federal regulation (state laws do not apply)
Rating limits [1201: 2701; 1301; 1312(c);	Yes Issuer has to	Yes	Yes Issuer has to	Yes	No (except after 2016 in states where issuers	No

⁷ Effective beginning on 3/23/2010.

⁸ Numbers in brackets refer to section number of PPACA. For those PPACA sections amending the PHS Act, the new PHS section is shown as the set of numbers after the colon. (E.g., 1001: 2711 means §1001 of PPACA which adds new §2711 to the PHS Act). An amendment to PPACA made by HCERA is shown as follows: 1201: 2704; 10103(e); 2301 of HCERA where §1201 is the section of PPACA which adds or modifies §2704 of the PHS Act, further modified by §10103(e) of PPACA. The provision is then further amended by §2301 of HCERA. Note that the conforming amendments to Title I renumber certain provisions in Title XXVII of the PHS Act. This renumbering is not reflected in the table.

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
10103(a); 10104(a)]	agree to offer same rates in and outside of exchange (regardless of whether through an agent). Must pool risks. May vary rates based on rating area.		agree to offer same rates in and outside of exchange (regardless of whether through an agent). Must pool risks. May vary rates based on rating area.		offer large group coverage through exchange)	
Guaranteed availability and renewability [1201: 2702-3]	Yes	Yes	Yes	Yes	Yes	No
No preexisting condition exclusions (all ages) [1201: 2704; 10103(e); 2301 of HCERA]	Yes	Yes	Yes	Yes (applies to GF plans)	Yes(applies to GF plans)	Yes(applies to GF plans)
a) No health status	a) Yes	a) Yes	a) Yes	a) Yes	a) Yes	a) Yes

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
discrimination against individuals b) No discrimination in wellness programs ⁹ [1201: 2705]	(b) NA (except in demonstration states)	(b) NA (except in demonstration states)	(b) Yes	(b) Yes	(b) Yes	(b) Yes
No discrimination in health care (provider scope of license) and against individuals [1201: 2706. See also 1558]	Yes	Yes	Yes	Yes	Yes	Yes
90-day limit on waiting periods [1201: 2708; 10103(b); 2301 of HCERA]	No	No	Yes	Yes (applies to GF plans)	Yes (applies to GF plans)	Yes (applies to GF plans)

⁹Existing wellness programs that qualify under current rules are grandfathered.

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
Coverage of clinical trials/ coverage of routine services [10103]	Yes ¹⁰	Yes	Yes	Yes	Yes	Yes
Transitional reinsurance for individual markets [1341; 10104(r)]	Yes. Eligible for reinsurance and subject to assessment	Yes. Eligible for reinsurance (except GF plans) and subject to assessment	Ineligible for reinsurance but subject to assessment	Ineligible for reinsurance but subject to assessment	Ineligible for reinsurance but subject to assessment (directly through insurers and indirectly through any third party administrators)	Ineligible for reinsurance but indirectly subject to assessment through any third party administrators
Transitional risk corridors [1342]	Yes	Yes for Qualified Health Plans	Yes	Yes for Qualified Health Plans	No	No
Risk adjustment [1343]	Yes	Yes (but not GF plans or their issuers)	Yes	Yes (but not GF plans or their issuers)	No	No
SCOPE OF BENEFITS (Generally applies as of January 1, 2014)						

¹⁰ Does not preempt state laws that require a clinical trials policy for state regulated health insurance plans that is in addition to this federal requirement (see §2709(h) as added by 10103(c) of PPACA).

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
Comprehensive coverage [1201: 2707]	Must cover essential benefits package	Must cover essential benefits package	Must cover essential benefits package	Must cover essential benefits package	Must limit annual cost-sharing to specified limits (see 1302(c))	Must limit annual cost-sharing to specified limits (see 1302(c))
Essential benefit package [1201: 2707; 1301; 1302; 10104(a) and (b)]	Yes	Yes	Yes	Yes	Not clear	No (applies to health plans but not if exempt under ERISA – Also does not apply to MEWAs ¹¹ to extent not subject to state law. (1301(b))
Limits on cost-sharing [1201: 2707(b); 1302(c)]	Out-of-pocket (OOP) limits equal to HSA-qualified HDHP limits (2014) and then indexed	Same as for coverage sold inside exchange	OOP limits equal to HSA-qualified HDHP limits (in 2014 and then indexed); ¹²	Same as small group insurance coverage sold inside exchange	OOP limits equal to HSA-qualified HDHP limits [2014] and then indexed.	No (by reference, assuming application of 1301(b))

¹¹ Multiple Employer Welfare Arrangements

¹² Permits Secretary to issue regulations under which employer contributions to HSAs may be taken into account in determining level of coverage for an employer plan (see 1302(d)(2)(B)).

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
			deductibles capped at \$2,000/\$4,000 (in 2014) and then indexed (amounts increased by amounts reimbursed by FSAs). ¹³ Exempts preventive benefits from deductible.			
Child-only plans [1302(f)]	Yes	Maybe (see 2702(c))	Yes	Maybe (see 2702(c))	No	No
Catastrophic plans [1302(e)]	Yes	Yes	No	No	No	No
State mandated benefits [1312(d)(2); 1311(d)(3)(B); also 1334(c) for	Do not apply unless state pays difference	Apply	Do not apply unless state pays difference	Apply	Apply (to the extent state law applies to such plans)	No

¹³ FSA amounts are limited to \$2500 per year, effective 2011 under the revenue provisions of the bill

Requirement	Individual Market		Small Group Market ¹		Large Group	
	Inside Exchange (State licensed insurers)	Outside Exchange ² (State licensed insurers)	Inside Exchange (State licensed insurers)	Outside Exchange (State licensed insurers)	Coverage Sold Outside Exchange (State licensed insurers)	Self-Insured: (Exempt from state laws under ERISA)
multi-State plans]						
Collective bargaining agreements [1251(d)]	NA	NA	NA	NA	Delays application of reform requirements until the date on which the last of the collective bargaining agreements relating to the coverage terminates.	To extent relevant, delays application of reform requirements until the date on which the last of the collective bargaining agreements relating to the coverage terminates.
Co-Op plans (1322)	Yes	Yes	Yes	Yes	No	No
Multi-State plans [1334 as added by 10104(q)]	Yes	No	Yes	No	No	No
Annual fee on health insurance providers [9010; 10905; 1406 of HCERA]	Yes	Yes	Yes	Yes	Yes (including indirectly through third party administrators)	No