§ 2590.715–2704 Prohibition of preexisting condition exclusions.

(a) No preexisting condition exclusions.—(1) In general. A group health plan, or a health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion (as defined in §2590.701–2 of this part).

(2) Examples. The rules of this paragraph (a) are illustrated by the following examples (for additional examples illustrating the definition of a preexisting condition exclusion, see §2590.701–3(a)(1)(ii) of this part):

Example 1. (i) Facts. A group health plan provides benefits solely through an insurance policy offered by Issuer P. At the expiration of the policy, the plan switches coverage to a policy offered by Issuer N. N’s policy excludes benefits for oral surgery required as a result of a traumatic injury if the injury occurred before the effective date of coverage under the policy.

(ii) Conclusion. In this Example 1, the exclusion of benefits for oral surgery required as a result of a traumatic injury if the injury occurred before the effective date of coverage is a preexisting condition exclusion because it operates to exclude benefits for a condition based on the fact that the condition was present before the effective date of coverage under the policy.

Example 2. (i) Facts. Individual C applies for individual health insurance coverage with Issuer M. M denies C’s application for coverage because a pre-enrollment physical revealed that C has type 2 diabetes.

(ii) Conclusion. See Example 2 in 45 CFR 147.108(a)(2) for a conclusion that M’s denial of C’s application for coverage is a preexisting condition exclusion because a denial of an application for coverage based on the fact that a condition was present before the date of denial is an exclusion of benefits based on a preexisting condition.

(b) Applicability.— (1) General applicability date. Except as provided in paragraph (b)(2) of this section, the rules of this section apply for plan years beginning on or after January 1, 2014.

(2) Early applicability date for children. The rules of this section apply with respect to enrollees, including applicants for enrollment, who are under 19 years of age for plan years beginning on or after September 23, 2010.

(3) Applicability to grandfathered health plans. See §2590.715–1251 of this part for determining the applicability of this section to grandfathered health plans (providing that a grandfathered health plan that is a group health plan or group health insurance coverage must comply with the prohibition against preexisting condition exclusions).
(4) **Example.** The rules of this paragraph (b) are illustrated by the following example:

*Example.* (i) **Facts.** Individual F commences employment and enroll F and F’s 16-year-old child in the group health plan maintained by F’s employer, with a first day of coverage of October 15, 2010. F’s child had a significant break in coverage because of a lapse of more than 63 days without creditable coverage immediately prior to enrolling in the plan. F’s child was treated for asthma within the six-month period prior to the enrollment date and the plan imposes a 12-month preexisting condition exclusion for coverage of asthma. The next plan year begins on January 1, 2011.

(ii) **Conclusion.** In this Example, the plan year beginning January 1, 2011 is the first plan year of the group health plan beginning on or after September 23, 2010. Thus, beginning on January 1, 2011, because the child is under 19 years of age, the plan cannot impose a preexisting condition exclusion with respect to the child’s asthma regardless of the fact that the preexisting condition exclusion was imposed by the plan before the applicability date of this provision.

[75 FR 37229, June 28, 2010]

§ 2590.715–2705 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) **In general.** A group health plan and a health insurance issuer offering group health insurance coverage must comply with the requirements of §2590.702 of this part.

(b) **Applicability date.** This section is applicable to group health plans and health insurance issuers offering group health insurance coverage for plan years beginning on or after January 1, 2014.

[78 FR 33186, June 3, 2013]

§ 2590.715–2708 Prohibition on waiting periods that exceed 90 days.

(a) **General rule.** A group health plan, and a health insurance issuer offering group health insurance coverage, must not apply any waiting period that exceeds 90 days, in accordance with the rules of this section. If, under the terms of a plan, an individual can elect coverage that would begin on a date that is not later than the end of the 90-day waiting period, this paragraph (a) is considered satisfied. Accordingly, in that case, a plan or issuer will not be considered to have violated this paragraph (a) solely because individuals take, or are permitted to take, additional time (beyond the end of the 90-day waiting period) to elect coverage.

(b) **Waiting period defined.** For purposes of this part, a waiting period is the period that must pass before coverage for an individual who is otherwise eligible to enroll under the terms of a group health plan can become effective. If an individual enrolls as a late enrollee (as defined under §2590.701–2) or special enrollee (as described in §2590.701–6), any period before such late or special enrollment is not a waiting period.

(c) **Relation to a plan’s eligibility criteria—(1) In general.** Except as provided in paragraphs (c)(2) and (c)(3) of this section, being otherwise eligible to enroll under the terms of a group health plan means having met the plan’s substantive eligibility conditions (such as, for example, being in an eligible job classification, achieving job-related licensure requirements specified in the plan’s terms, or satisfying a reasonable and bona fide employment-based orientation period). Moreover, except as provided in paragraphs (c)(2) and (c)(3) of this section, nothing in this section requires a plan sponsor to offer coverage to any particular individual or class of individuals (including, for example, part-time employees). Instead, this section prohibits requiring otherwise eligible individuals to wait more than 90 days before coverage is effective. See also section 4980H of the Code and its implementing regulations for an applicable large employer’s shared responsibility to provide health coverage to full-time employees.

(2) **Eligibility conditions based solely on the lapse of time.** Eligibility conditions that are based solely on the lapse of a time period are permissible for no more than 90 days.

(3) **Other conditions for eligibility.** Other conditions for eligibility under the terms of a group health plan are generally permissible under PHS Act section 2708, unless the condition is designed to avoid compliance with the 90-day waiting period limitation, determined in accordance with the rules of this paragraph (c)(3).