



Genetic Nondiscrimination in Health Insurance: A Side-by-Side Comparison of the Title I Provisions in S. 358 and H.R. 493

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Summary

On March 29, 2007, the Senate Health, Education, Labor, and Pensions (HELP) Committee approved the Genetic Information Nondiscrimination Act of 2007 (S. 358). The HELP Committee filed a report to accompany S. 358 on April 10 (S.Rept. 110-48). S. 358 is awaiting Senate floor action. On April 25, the House passed its own version of the legislation (H.R. 493) on a vote of 420-3. Earlier, the measure was reported by the Education and Labor Committee (H.Rept. 110-28, Part I), the Ways and Means Committee (H.Rept. 110-28, Part II), and the Energy and Commerce Committee (H.Rept. 110-28, Parts III & IV). On March 5, 2008, the text of H.R. 493, as passed by the House, was added to the end of the Paul Wellstone Mental Health and Addiction Equity Act of 2007 (H.R. 1424) in the engrossment of H.R. 1424. On April 24, 2008, the Senate took up H.R. 493, replaced the existing language with an amendment in the nature of a substitute, and passed the measure, as amended, by a vote of 95-0. H.R. 493, as amended and passed by the Senate, is very similar to the version passed by the House last year. The most significant difference is new language strengthening the “firewall” between Title I and Title II of the act. The House is expected to pass H.R. 493 (as amended) during the week of April 28, 2008. The Genetic Information Nondiscrimination Act would restrict health insurers’ (Title I) and employers’ (Title II) acquisition and use of genetic information in several ways. These restrictions build upon those already imposed in federal law.

This report provides a comparison of the Title I provisions in S. 358 and H.R. 493. Those provisions would extend the current Health Insurance Portability and Accountability Act (HIPAA) protections against discrimination by group health plans and issuers of health insurance in both the group and individual markets, and restrict their collection, use and disclosure of genetic information. A separate report, CRS Report RL33987, *Genetic Nondiscrimination in Employment: A Comparison of Title II Provisions in S. 358 and H.R. 493, 110th Congress*, by (name redacted), discusses the Title II employment provisions.

Contents

Introduction 1
Overview of Title I Provisions in S. 358 and H.R. 493..... 1

Tables

Table 1. Genetic Nondiscrimination in Health Insurance: S. 358 (Title I) vs. H.R. 493
(Title I) 3

Contacts

Author Contact Information 12

Introduction

On March 29, 2007, the Senate Health, Education, Labor, and Pensions (HELP) Committee approved the Genetic Information Nondiscrimination Act of 2007 (S. 358). The HELP Committee filed a report to accompany S. 358 on April 10 (S.Rept. 110-48). S. 358 is awaiting Senate floor action. On April 25, the House passed its own version of the legislation (H.R. 493) on a vote of 420-3. Earlier, the measure was reported by the Education and Labor Committee (H.Rept. 110-28, Part I), the Ways and Means Committee (H.Rept. 110-28, Part II), and the Energy and Commerce Committee (H.Rept. 110-28, Parts III & IV). On March 5, 2008, the text of H.R. 493, as passed by the House, was added to the end of the Paul Wellstone Mental Health and Addiction Equity Act of 2007 (H.R. 1424) in the engrossment of H.R. 1424.¹ On April 24, 2008, the Senate took up H.R. 493, replaced the existing language with an amendment in the nature of a substitute, and passed the measure, as amended, by a vote of 95-0. H.R. 493, as amended and passed by the Senate, is very similar to the version passed by the House last year. The most significant difference is new language strengthening the “firewall” between Title I and Title II of the act. The House is expected to pass H.R. 493 (as amended) during the week of April 28, 2008. The Genetic Information Nondiscrimination Act would restrict health insurers’ and employers’ acquisition and use of genetic information in several ways. These restrictions build upon those already imposed in federal law.

Overview of Title I Provisions in S. 358 and H.R. 493

Title I of S. 358/H.R. 493 would extend the current Health Insurance Portability and Accountability Act (HIPAA) protections against discrimination by group health plans and issuers of health insurance in both the group and individual markets, and restrict their acquisition, use and disclosure of genetic information. The HIPAA nondiscrimination provisions appear in three separate statutes: (1) the Employee Retirement Income Security Act (ERISA, Part 7), which regulates employee benefit plans, including employer-sponsored group health plans; (2) the Internal Revenue Code (IRC, Chapter 100), which also covers group health plans (using a slightly broader definition than ERISA); and (3) the Public Health Service Act (PHSA, Title XVII), which applies to insurance companies and managed care organizations, and to non-federal government health plans. H.R. 493, but not S. 358, would amend the HIPAA nondiscrimination provisions in all three statutes, as well as amending comparable provisions in the Medicare statute (Social Security Act Title XVIII) relating to supplementary health insurance benefits (Medigap).

Table 1, beginning on page 3, provides a side-by-side comparison of the two bills, using the Senate-reported measure as the referent. The table only includes the provisions in Title I (Genetic Nondiscrimination in Health Insurance). A separate report, CRS Report RL33987, *Genetic Nondiscrimination in Employment: A Comparison of Title II Provisions in S. 358 and H.R. 493, 110th Congress*, by (name redacted), discusses the Title II employment provisions.

While the Title I provisions in the two bills are broadly similar there are a number of significant differences, including the following.

¹ For more information about mental health parity and H.R. 1424, see CRS Report RL33820, *The Mental Health Parity Act: A Legislative History*, and CRS Report RL31657, *Mental Health Parity: Federal and State Action and Economic Impact*, both by (name redacted) and (name redacted).

- Whereas H.R. 493 would amend the four federal statutes (i.e., ERISA, IRC, PHSA, and Medigap), S. 358 would amend only three; it does not include any provisions to amend IRC.
- Unlike S. 358, H.R. 493 includes a provision relating to the genetic information of a fetus or embryo. It provides that references to genetic information include genetic information on a fetus carried by a pregnant woman and, with respect to an individual utilizing assisted reproductive technology, includes genetic information of any embryo legally held by the individual or family member.
- In H.R. 493, language that prohibits the collection of genetic information by health plans and insurers for the purposes of underwriting and related activities appears in each of the four sections amending federal law. Comparable language in S. 358 appears only once in the privacy section (Sec. 104).
- Whereas both bills include provisions that would allow the relevant Secretary (Labor, Treasury, HHS) to impose the same monetary penalties for violations of the Title's nondiscrimination provisions, S. 358 includes additional remedies and enforcement provisions in its amendments to ERISA.

Table I. Genetic Nondiscrimination in Health Insurance: S. 358 (Title I) vs. H.R. 493 (Title I)

S. 358 (as reported by the HELP Committee, March 29, 2007)	H.R. 493 (as passed by the House, April 25, 2007)
Amendments to ERISA Part 7 (Group Market Requirements)—Section 101	
<p>Clarifies that the ERISA provision prohibiting group health plans and insurance issuers from denying an individual eligibility to enroll in a group based on that individual's genetic information includes information about a request for or receipt of genetic services by that individual or a family member.</p>	<p>No provision.</p>
<p>Prohibits group health plans and insurance issuers from adjusting a group's premium based on an individual's (or family member's) genetic information, including information about a request for or receipt of genetic services by that individual or a family member.</p>	<p>Prohibits group health plans and insurance issuers from adjusting a group's premium on the basis of genetic information.</p>
<p>Prohibits group health plans and insurance issuers from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual (or a family member) undergo a genetic test. Does not limit the authority of a health care professional employed by or affiliated with a group health plan or insurance issuer, and who is providing health care services to an individual as part of a wellness program, to notify such individual about the availability of a genetic test. Does not permit a health care professional to require that an individual undergo a genetic test.</p>	<p>Prohibits group health plans and insurance issuers from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual undergo a genetic test. Does not preclude a group health plan or insurance issuer from obtaining and using genetic test information for payment determinations (only the minimum amount of information necessary to accomplish the intended purpose may be requested). Permits a group health plan or insurance issuer to request, but not require, that an individual voluntarily undergo a genetic test as part of a research project.</p>
<p>[Note: language prohibiting the collection of genetic information is in Section 104, Privacy and Confidentiality; see below.]</p>	<p>Prohibits group health plans and insurance insurers from requesting, requiring, or purchasing genetic information for the purposes of underwriting, eligibility determination (before or during the enrollment process), premium rating, or other activities related to the creation, renewal, or replacement of a health insurance plan or contract. Obtaining genetic information incidental to the acquisition of other information would not be considered a violation.</p>
<p>Applies the above nondiscrimination provisions to all group health plans.</p>	<p>Applies the above nondiscrimination provisions to all group health plans.</p>
<p>No provisions.</p>	<p>Clarifies that any reference to genetic information about an individual or family member who is pregnant shall include genetic information about the fetus. Clarifies that any reference to genetic information about an individual or family member using assisted reproductive technology shall include genetic information about any fetus legally held by that individual or family member.</p>
<p>Defines <i>family member</i> to include an individual's spouse and dependent children (including those born to or placed for adoption with the individual), as well as all others related by blood to the individual, the spouse, or the dependent or adopted children.</p>	<p>Defines <i>family member</i> to include an individual's dependent through marriage, birth, or adoption or placement for adoption, as well as any first-, second-, third-, or fourth-degree relative of the individual or dependent.</p>

S. 358 (as reported by the HELP Committee, March 29, 2007)

Defines *genetic information* as information about an individual's genetic tests, or those of family members, as well as information about the occurrence of a disease or disorder in family members. Does not include age and sex of individual.

Defines *genetic test* as an analysis of DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic test does not include an analysis of proteins or metabolites that is directly related to a manifest disease, disorder or pathological condition.

Defines *genetic services* as a genetic test, genetic counseling, or genetic education.

Authorizes the Labor Secretary to impose monetary penalties, subject to certain conditions, for violation of the above nondiscrimination provisions. [Note: these penalties are the same as the tax penalties in Section 4980D of the IRC.]

Provides for injunctive relief prior to the exhaustion of available administrative remedies if the preponderance of evidence shows that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary.

Provides for administrative penalties of \$100 per day and the retroactive reinstatement of coverage for violations of the above nondiscrimination provisions.

Requires the Labor Secretary to issue final implementing regulations within one year. Amendments apply to plan years beginning after 18 months from enactment.

H.R. 493 (as passed by the House, April 25, 2007)

Defines *genetic information* as information about an individual's genetic tests, or those of family members, as well as information about family members' manifest diseases or disorders, to the extent that such information is taken into account as genetic information about other individuals. The term genetic information also includes any request for, or receipt of, genetic services (defined below) by an individual or family member. Does not include age and sex of individual.

Same provisions.

Same provisions.

Same provisions.

No provisions.

No provisions.

Same provisions.

Amendments to the Public Health Service Act Title XVII (Group Market Requirements)—Section 102(a)

Clarifies that the PHS Act provision prohibiting group health plans and insurance issuers from denying an individual eligibility to enroll in a group based on that individual's genetic information includes information about a request for or receipt of genetic services by that individual or a family member.

No provision.

Prohibits group health plans and insurance issuers from adjusting a group's premium based on an individual's (or family member's) genetic information, including information about a request for or receipt of genetic services by that individual or a family member.

Prohibits group health plans and insurance issuers from adjusting a group's premium on the basis of genetic information.

S. 358 (as reported by the HELP Committee, March 29, 2007)

Prohibits group health plans and insurance issuers from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual (or a family member) undergo a genetic test. Does not limit the authority of a health care professional employed by or affiliated with a group health plan or insurance issuer, and who is providing health care services to an individual as part of a wellness program, to notify such individual about the availability of a genetic test. Does not permit a health care professional to require that an individual undergo a genetic test.

[Note: language prohibiting the collection of genetic information is in Section 104, Privacy and Confidentiality; see below.]

Applies the above nondiscrimination provisions to all group health plans.

No provisions.

Defines *family member* to include an individual's spouse and dependent children (including those born to or placed for adoption with the individual), as well as all others related by blood to the individual, the spouse, or the dependent or adopted children.

Defines *genetic information* as information about an individual's genetic tests, or those of family members, as well as information about the occurrence of a disease or disorder in family members. Does not include age and sex of individual.

Defines *genetic test* as an analysis of DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic test does not include an analysis of proteins or metabolites that is directly related to a manifest disease, disorder or pathological condition.

Defines *genetic services* as a genetic test, genetic counseling, or genetic education.

H.R. 493 (as passed by the House, April 25, 2007)

Prohibits group health plans and insurance issuers from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual undergo a genetic test. Does not preclude a group health plan or insurance issuer from obtaining and using genetic test information for payment determinations (only the minimum amount of information necessary to accomplish the intended purpose may be requested). Permits a group health plan or insurance issuer to request, but not require, that an individual voluntarily undergo a genetic test as part of a research project.

Prohibits group health plans and insurance issuers from requesting, requiring, or purchasing genetic information for the purposes of underwriting, eligibility determination (before or during the enrollment process), premium rating, or other activities related to the creation, renewal, or replacement of a health insurance plan or contract. Obtaining genetic information incidental to the acquisition of other information would not be considered a violation.

Applies the above nondiscrimination provisions to all group health plans.

Clarifies that any reference to genetic information about an individual or family member who is pregnant shall include genetic information about the fetus. Clarifies that any reference to genetic information about an individual or family member using assisted reproductive technology shall include genetic information about any fetus legally held by that individual or family member.

Defines *family member* to include an individual's dependent through marriage, birth, or adoption or placement for adoption, as well as any first-, second-, third-, or fourth-degree relative of the individual or dependent.

Defines *genetic information* as information about an individual's genetic tests, or those of family members, as well as information about family members' manifest diseases or disorders, to the extent that such information is taken into account as genetic information about other individuals. The term genetic information also includes any request for, or receipt of, genetic services (defined below) by an individual or family member. Does not include age and sex of individual.

Same provisions.

Same provisions.

S. 358 (as reported by the HELP Committee, March 29, 2007)**H.R. 493 (as passed by the House, April 25, 2007)**

Authorizes the HHS Secretary to impose monetary penalties, subject to certain conditions, for violation of the above nondiscrimination provisions. [Note: these penalties are the same as the tax penalties in Section 4980D of the IRC.]

Same provisions.

Requires the HHS Secretary to issue final implementing regulations within one year. Amendments apply to plan years beginning after 18 months from enactment.

Same provisions.

Amendments to the Public Health Service Act Title XVII (Individual Market Requirements)—Section 102(b)

Prohibits insurance issuers from denying eligibility or adjusting premiums based on an individual's (or family member's) genetic information, including information about a request for or receipt of genetic services by that individual or a family member.

Prohibits insurance issuers from denying eligibility, adjusting premiums, or imposing any preexisting condition exclusion on the basis of genetic information.

Prohibits insurance issuers from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual (or a family member) undergo a genetic test. Does not limit the authority of a health care professional employed by or affiliated with a health plan or insurance issuer, and who is providing health care services to an individual as part of a wellness program, to notify such individual about the availability of a genetic test. Does not permit a health care professional to require that an individual undergo a genetic test.

Prohibits insurance issuers from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual undergo a genetic test. Does not preclude a group health plan or insurance issuer from obtaining and using genetic test information for payment determinations (only the minimum amount of information necessary to accomplish the intended purpose may be requested). Permits a group health plan or insurance issuer to request, but not require, that an individual voluntarily undergo a genetic test as part of a research project.

[Note: language prohibiting the collection of genetic information is in Section 104, Privacy and Confidentiality; see below.]

Prohibits insurance issuers from requesting, requiring, or purchasing genetic information for the purposes of underwriting, eligibility determination (before or during the enrollment process), premium rating, or other activities related to the creation, renewal, or replacement of a health insurance plan or contract. Obtaining genetic information incidental to the acquisition of other information would not be considered a violation.

No provisions.

Clarifies that any reference to genetic information about an individual or family member who is pregnant shall include genetic information about the fetus. Clarifies that any reference to genetic information about an individual or family member using assisted reproductive technology shall include genetic information about any fetus legally held by that individual or family member.

For violations of the above nondiscrimination provisions, grants the HHS Secretary the same enforcement authority with respect to insurance issuers in the individual market as the Secretary has for violations by insurance issuers in the small group market.

Same provisions.

Eliminates the option of nonfederal government plans to be excepted from the above genetic nondiscrimination provisions.

Same provision.

S. 358 (as reported by the HELP Committee, March 29, 2007)**H.R. 493 (as passed by the House, April 25, 2007)**

Requires the HHS Secretary to issue final implementing regulations within one year. Amendments apply to insurance coverage offered, sold, issued, renewed, or in effect beginning 18 months after enactment.

Same provisions.

Amendments to the Internal Revenue Code Chapter 100 (Group Health Plan Requirements)—Section 103 (H.R. 493)

No provision.

Prohibits group health plans from adjusting a group's premium on the basis of genetic information.

No provisions.

Prohibits group health plans from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual undergo a genetic test. Does not preclude a group health plan from obtaining and using genetic test information for payment determinations (only the minimum amount of information necessary to accomplish the intended purpose may be requested). Permits a group health plan to request, but not require, that an individual voluntarily undergo a genetic test as part of a research project.

No provisions.

Prohibits group health plans from requesting, requiring, or purchasing genetic information for the purposes of underwriting, eligibility determination (before or during the enrollment process), premium rating, or other activities related to the creation, renewal, or replacement of a health insurance plan or contract. Obtaining genetic information incidental to the acquisition of other information would not be considered a violation.

No provision.

Applies the above nondiscrimination provisions to all group health plans.

No provisions.

Clarifies that any reference to genetic information about an individual or family member who is pregnant shall include genetic information about the fetus. Clarifies that any reference to genetic information about an individual or family member using assisted reproductive technology shall include genetic information about any fetus legally held by that individual or family member.

No provisions.

Defines *family member* to include an individual's dependent through marriage, birth, or adoption or placement for adoption, as well as any first-, second-, third-, or fourth-degree relative of the individual or dependent.

No provisions.

Defines *genetic information* as information about an individual's genetic tests, or those of family members, as well as information about family members' manifest diseases or disorders, to the extent that such information is taken into account as genetic information about other individuals. The term genetic information also includes any request for, or receipt of, genetic services (defined below) by an individual or family member. Does not include age and sex of individual.

S. 358 (as reported by the HELP Committee, March 29, 2007)

No provisions.

No provisions.

No provisions.

No provisions.

H.R. 493 (as passed by the House, April 25, 2007)

Defines *genetic test* as an analysis of DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic test does not include an analysis of proteins or metabolites that is directly related to a manifest disease, disorder or pathological condition.

Defines *genetic services* as a genetic test, genetic counseling, or genetic education.

Clarifies that group health plans that fail to meet the requirements set out in Chapter 100 of the IRC, which include the above nondiscrimination provisions, will be subject to the tax penalties in Section 4980D of the IRC.

Requires the Treasury Secretary to issue final implementing regulations within one year. Amendments apply to plan years beginning at least 18 months after enactment.

Amendments to Social Security Act Title XVIII (Medicare) Relating to Medigap—Section 103 (S. 358), Section 104 (H.R. 493)

Prohibits an issuer of a Medigap policy from: (1) denying or conditioning the issuance or effectiveness of a policy, or (2) discriminating in the pricing of a policy, based on an individual's (or family member's) genetic information, including information about a request for or receipt of genetic services by that individual or a family member.

Prohibits an issuer of a Medigap policy from requesting or requiring that an individual or a family member undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual (or a family member) undergo a genetic test. Does not limit the authority of a health care professional employed by or affiliated with a health plan or insurance issuer, and who is providing health care services to an individual as part of a wellness program, to notify such individual about the availability of a genetic test. Does not permit a health care professional to require that an individual undergo a genetic test.

[Note: language prohibiting the collection of genetic information is in Section 104, Privacy and Confidentiality; see below.]

Defines *family member* to include an individual's spouse and dependent children (including those born to or placed for adoption with the individual), as well as all others related by blood to the individual, the spouse, or the dependent or adopted children.

Prohibits an issuer of a Medigap policy from: (1) denying or conditioning the issuance or effectiveness of a policy; or (2) discriminating in the pricing of a policy, on the basis of genetic information.

Prohibits an issuer of a Medigap policy from requesting or requiring that an individual or a family member of such individual undergo a genetic test. Does not limit the authority of a health care professional who is providing health care to an individual to request that the individual undergo a genetic test. Does not preclude an issuer of a Medigap policy from obtaining and using genetic test information for payment determinations (only the minimum amount of information necessary to accomplish the intended purpose may be requested). Permits an issuer of a Medigap policy to request, but not require, that an individual voluntarily undergo a genetic test as part of a research project.

Prohibits an issuer of a Medigap policy from requesting, requiring, or purchasing genetic information for the purposes of underwriting, eligibility determination (before or during the enrollment process), premium rating, or other activities related to the creation, renewal, or replacement of a health insurance plan or contract. Obtaining genetic information incidental to the acquisition of other information would not be considered a violation.

Defines *family member* to include any first-, second-, third-, or fourth-degree relative of the individual.

S. 358 (as reported by the HELP Committee, March 29, 2007)

Defines *genetic information* as information about an individual's genetic tests, or those of family members, as well as information about the occurrence of a disease or disorder in family members. Does not include age and sex of individual.

Defines *genetic test* as an analysis of DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic test does not include an analysis of proteins or metabolites that is directly related to a manifest disease, disorder or pathological condition.

Defines *genetic services* as a genetic test, genetic counseling, or genetic education.

Defines issuer of a Medigap policy to include a third-party administrator or other person acting for or on behalf of such issuer.

No provisions.

Applies to Medigap policies beginning at least 18 months after enactment.

A state identified by the HHS Secretary as requiring a change in its statutes or regulations to conform its regulatory program to the requirements of this section would have until October 1, 2008, to make such a change before being considered out of compliance. States requiring a statutory change that do not meet in legislative session in 2008 would be given additional time to come into compliance. The bill would give the National Association of Insurance Commissioners (NAIC) until June 30, 2008, to modify its model regulation to conform to the requirements of this section. If NAIC failed to meet that deadline, the HHS Secretary would have until October 1, 2008, to make the modifications.

H.R. 493 (as passed by the House, April 25, 2007)

Defines *genetic information* as information about an individual's genetic tests, or those of family members, as well as information about family members' manifest diseases or disorders. The term genetic information also includes any request for, or receipt of, genetic services (defined below) by an individual or family member. Does not include age and sex of individual.

Same provisions.

Same provisions.

Same provisions.

Clarifies that any reference to genetic information about an individual or family member who is pregnant shall include genetic information about the fetus. Clarifies that any reference to genetic information about an individual or family member using assisted reproductive technology shall include genetic information about any fetus legally held by that individual or family member.

Applies to Medigap policies beginning at least 18 months after enactment.

Same provisions.

S. 358 (as reported by the HELP Committee, March 29, 2007)

H.R. 493 (as passed by the House, April 25, 2007)

Privacy and Confidentiality—Section 104 (S. 358), Section 105 (H.R. 493)

Applies the HIPAA privacy rule protections to the use and disclosure of genetic information (as defined in this act). Prohibits a group health plan, health insurance issuer, or issuer of a Medigap policy from using or disclosing genetic information (including information about a request for or receipt of genetic services by an individual or family member) for underwriting, premium rating, or other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

Prohibits a group health plan, health insurance issuer, or issuer of a Medigap policy from requesting, requiring, or purchasing genetic information (including information about a request for or receipt of genetic services by an individual or family member) for underwriting, eligibility determination (before or during the enrollment process), premium rating, or other activities related to the creation, renewal, or replacement of a contract for health insurance or health benefits. Obtaining genetic information incidental to the acquisition of other information would not be considered a violation.

The above privacy and confidentiality provisions would not apply to plans, insurers, and Medigap issuers that are not HIPAA covered entities, nor would they apply to genetic information that is not considered individually identifiable under the HIPAA privacy rule.

Provides that any group health plan, health insurance issuer, or issuer of a Medigap policy who violates the above privacy and confidentiality provisions would be subject to the civil and criminal penalties set out in the Administrative Simplification provisions of HIPAA.

The above privacy and confidentiality provisions would not preempt more stringent state requirements.

Requires the HHS Secretary to coordinate implementation of the above privacy and confidentiality provisions with the administration of the HIPAA privacy rule.

Amends HIPAA to require the HHS Secretary, by rulemaking, to revise the HIPAA privacy rule as follows: (1) genetic information (as defined in the bill) would be treated as health information under the privacy rule; and (2) the use and disclosure of genetic information by a group health plan, health insurance issuer, or issuer of a Medigap policy for underwriting and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits would be prohibited. Requires the HHS Secretary to publish the revisions as a notice in the *Federal Register*, not later than 60 days after enactment. The revisions would take effect upon publication without any prior public comment, but may be further modified, after opportunity for public comment.

[Note: similar language prohibiting the collection of genetic information appears in each of Sections 101—104; see above.]

No comparable provisions.

Provides that any group health plan, health insurance issuer, or issuer of a Medigap policy who violates the privacy rule with respect to the use or disclosure of genetic information would be subject to the civil and criminal penalties set out in the Administrative Simplification provisions of HIPAA.

No comparable provisions.

Requires the HHS Secretary, within one year, to issue final regulations to implement the above revisions to the privacy rule, in consultation with the Secretaries of Labor and the Treasury. Provides that the above amendments to the privacy rule will take effect 18 months after enactment.

Interagency Coordination—Sections 105 & 106 (S. 358), Section 106 (H.R. 493)

Requires the Secretaries of HHS, Labor, and the Treasury, through an interagency memorandum of understanding, to coordinate implementation and enforcement of Title I of this act.

Same provisions.

S. 358 (as reported by the HELP Committee, March 29, 2007)

H.R. 493 (as passed by the House, April 25, 2007)

Requires the Secretaries of HHS, Labor, and the Treasury to issue final regulations within one year of enactment. Unless otherwise noted, the amendments made by this Title shall take effect 18 months after enactment.

No comparable provisions. [Note: effective date provisions appear in each section of Title I.]

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