

**Part 1 Chapter 26:** (2000-5) Compliance with Health Insurance Portability and Accountability Act of 1996.

**Rule 26.01:** Authority

This Regulation is promulgated pursuant to the authority vested in the Commissioner of Insurance under Miss. Code Ann. §§ 83-1-43 and 83-5-1 (Rev. 1999), and is promulgated in accordance with Mississippi Insurance Department Regulation No. 88-101, said Regulation being the Rules of Practice and Procedure Before the Mississippi Insurance Department.

Source: Miss. Code Ann. §83-1-43 (Rev. 2011)

**Rule 26.02:** Purpose

It is the purpose of this Regulation to require full compliance with certain provisions contained in the Health Insurance Portability and Accountability Act of 1996, as Amended (hereinafter "HIPAA"), by health insurance issuers which offer group or individual health insurance coverage in the State of Mississippi.

Source: Miss. Code Ann. §83-1-43 (Rev. 2011)

**Rule 26.03:** Definitions

- A. For purposes of this Regulation, the term "health insurance issuer" means any insurance company, hospital or medical service plan or any entity defined in Miss. Code Ann. § 83-41-303(n) (Rev. 1999), which offers group or individual health insurance coverage in the State of Mississippi.
- B. For purposes of this Regulation, the terms "medical care", "health insurance coverage", "individual health insurance coverage", "health status-related factor", "network plan", "placed for adoption", "individual market", "large employer", "large group market", "small employer", " " and "small group market" shall be defined as set forth at 42 U.S.C. § 300gg-91. Nothing in this Regulation shall apply to the excepted benefits as defined at 42 U.S.C. § 300gg-91(c).
- C. Miss. Code Ann. §§ 83-63-3(g) and 83-63-6 (Rev. 1999), classify a sole proprietor as a small employer where certain conditions are met. Such classification of a sole proprietor as a small employer under Mississippi law shall not be affected by this Regulation.

Source: Miss. Code Ann. §83-1-43 (Rev. 2011)

## **Rule 26.04: Individual Market Requirements**

### **A. Guaranteed Renewability of Individual Health Insurance Coverage**

At 42 U.S.C. § 300gg-42, and at 45 C.F.R. § 148.122, HIPAA requires health insurance issuers that provide individual health insurance coverage in the individual market to renew and or continue in force such coverage at the option of the individual, subject to certain exceptions. These provisions also set forth certain requirements for the uniform termination of coverage in the individual market. Every health insurance issuer which offers individual health insurance coverage in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg-42 and 45 C.F.R. § 148.122.

### **B. Certificates of Creditable Coverage**

At 42 U.S.C. § 300gg-43, and at 45 C.F.R. § 148.124, HIPAA requires health insurance issuers that provide individual health insurance coverage in the individual market to provide certificates of creditable coverage under a variety of circumstances when an individual's coverage terminates. Every health insurance issuer which offers individual health insurance coverage in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg-43 and 45 C.F.R. § 148.124.

Source: Miss. Code Ann. §83-1-43 (Rev. 2011)

## **Rule 26.05: Small Group Market Requirements**

### **A. Guaranteed Availability of Coverage in the Small Group Market**

At 42 U.S.C. § 300gg-11(a), (c), (d), (e) and (f), HIPAA requires health insurance issuers that offer coverage in the small group market to accept every small employer that applies for coverage, including every eligible individual of the small employer. These provisions also prescribe special rules for network plans, apply certain financial capacity limits and set forth limited exceptions. At 45 C.F.R. § 146.150, HIPAA regulations clarify that health insurance issuers in the small group market generally must offer to each small employer all products that are approved for sale in the small group market and that the issuer is actively marketing, and must accept any small employer that applies for any of those products. Every health insurance issuer which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg-11(a), (c), (d), (e) and (f) and 45 C.F.R. § 146.150.

### **B. Prohibition against Discrimination within Small Groups**

At 42 U.S.C. § 300gg-1, and at 45 C.F.R. § 146.121, HIPAA bars health insurance issuers that offer coverage in the small group market from establishing rules for eligibility that are based on health status-related factors, and from requiring individuals

within small groups to pay a higher premium or contribution than would a similarly situated individual, based on a health status-related factor. Every health insurance issuer which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg-1, and 45 C.F.R. § 146.121.

### C. Preexisting Condition Exclusions

1. Miss. Code Ann. § 83-9-49 (1) (Rev. 1999) permits health insurance issuers in the small group market to apply preexisting condition limitations which do not contain a definition of a preexisting condition more restrictive than the following:
  - a. A condition that would have caused an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;
  - b. A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage.

At 42 U.S.C. § 300gg(a) and 45 C.F.R. § 146.111(a)(1)(i), HIPAA provides that a preexisting condition exclusion in a policy issued in the small group market can only relate to a condition, regardless of its cause, for which medical advice, diagnosis, care or treatment was recommended or received within the 6-month period ending on the enrollment date. Unlike Miss. Code Ann. § 83-9-49 (1) (b) (Rev. 1999), there is no provision under HIPAA allowing a health insurance issuer in the small group market to apply a preexisting condition limitation for a condition that would have caused an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage.

Every health insurance issuer which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(a) and 45 C.F.R. § 146.111(a)(1)(i), which limit the definition of a preexisting condition to "a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date."

2. At 42 U.S.C. § 300gg(d), and at 45 C.F.R. § 146.111(b), HIPAA bars health insurance issuers offering coverage in the small group market from applying preexisting conditions to certain newborns, certain adopted children and to the condition of pregnancy. Every health insurance issuer which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(d) and 45 C.F.R. § 146.111(b).
3. At 42 U.S.C. § 300gg(b)(1)(B), HIPAA bars health insurance issuers offering coverage in the small group market from applying preexisting condition limitations to genetic information in the absence of a diagnosis of the condition related to such information. Every health insurance issuer which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(b)(1)(B).

#### D. Rules Relating To Crediting Previous Coverage

At 42 U.S.C. § 300gg(c), and at 45 C.F.R. § 146.113, HIPAA requires health insurance issuers offering coverage in the small group market to reduce or eliminate the duration of any preexisting condition exclusion by the duration of the person's creditable coverage. Coverage is creditable if it ended within 63 days of the new coverage. The duration of consecutive creditable coverages are added to calculate the total amount of creditable coverage, as long as the break between such coverages does not exceed 63 days. Every health insurance issuer which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(c) and 45 C.F.R. § 146.113.

#### E. Certificates Of Creditable Coverage

At 42 U.S.C. § 300gg(e), and at 45 C.F.R. § 146.115, HIPAA requires health insurance issuers in the small group market to provide certificates of creditable coverage under a variety of circumstances when a person's coverage terminates. Every health insurance issuer providing coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(e) and 45 C.F.R. § 146.115.

#### F. Special Enrollment Periods

At 42 U.S.C. § 300gg(f), and at 45 C.F.R. § 146.117, HIPAA requires health insurance issuers which offer coverage in the small group market to offer eligible employees and dependents special enrollment rights upon the loss of certain other coverage. These provisions also require health insurance issuers in the small group market to offer special enrollment rights when a new dependent becomes eligible through marriage, birth or adoption. Every health insurance issuer which

offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(f) and 45 C.F.R. § 146.117.

#### G. Health Maintenance Organization Affiliation Period

At 42 U.S.C. § 300gg(g), and at 45 C.F.R. § 146.119, HIPAA permits health maintenance organizations ("HMOs") which offer coverage in the small group market to apply affiliation periods in the small group market only if the HMOs do not apply any preexisting condition exclusions, the period is applied uniformly without regard to health status-related factors, and the period does not exceed 2 months, or three months for late enrollees. Every HMO which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(g) and 45 C.F.R. § 146.119.

#### H. Guaranteed Renewability Of Coverage In The Small Group Market

At 42 U.S.C. § 300gg-12, and at 45 C.F.R. § 146.152, HIPAA requires health insurance issuers in the small group market to offer guaranteed renewal of policies, with some specific exceptions. These provisions also set forth certain requirements for the uniform termination of coverage in the small group market. Every health insurance issuer which offers coverage in the small group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg-12 and 45 C.F.R. § 146.152.

Source: Miss. Code Ann. §83-1-43 (Rev. 2011)

### **Rule 26.06: Large Group Market Requirements**

#### A. Prohibition Against Discrimination Within Large Groups

At 42 U.S.C. § 300gg-1, and at 45 C.F.R. § 146.121, HIPAA bars health insurance issuers that offer coverage in the large group market from establishing rules for eligibility that are based on health status-related factors, and from requiring individuals within large groups to pay a higher premium or contribution than would a similarly situated individual, based on a health status-related factor. Every health insurance issuer which offers coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg-1 and 45 C.F.R. § 146.121.

#### B. Preexisting Condition Exclusions

1. Miss. Code Ann. § 83-9-49 (1) (Rev. 1999) permits health insurance issuers in the large group market to apply preexisting condition limitations which do not contain a definition of a preexisting condition more restrictive than the following:
  - a. A condition that would have caused an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage;
  - b. A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage.

At 42 U.S.C. § 300gg(a) and 45 C.F.R. § 146.111(a)(1)(i), HIPAA provides that a preexisting condition exclusion in a policy issued in the large group market can only relate to a condition, regardless of its cause, for which medical advice, diagnosis, care or treatment was recommended or received within the 6-month period ending on the enrollment date. Unlike Miss. Code Ann. § 83-9-49 (1) (b) (Rev. 1999), there is no provision under HIPAA allowing a health insurance issuer in the large group market to apply a preexisting condition limitation for a condition that would have caused an ordinary prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage.

Every health insurance issuer which offers coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(a) and 45 C.F.R. § 146.111(a)(1)(i), which limit the definition of a preexisting condition to "a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date."

2. At 42 U.S.C. § 300gg(d), and at 45 C.F.R. § 146.111(b), HIPAA bars health insurance issuers offering coverage in the large group market from applying preexisting conditions to certain newborns, certain adopted children and to the condition of pregnancy. Every health insurance issuer which offers coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(d) and 45 C.F.R. § 146.111(b).
3. At 42 U.S.C. § 300gg(b)(1)(B), HIPAA bars health insurance issuers offering coverage in the large group market from applying preexisting condition limitations to genetic information in the absence of a diagnosis of the condition

related to such information. Every health insurance issuer which offers coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(b)(1)(B).

### C. Rules Relating To Crediting Previous Coverage

At 42 U.S.C. § 300gg(c), and at 45 C.F.R. § 146.113, HIPAA requires health insurance issuers offering coverage in the large group market to reduce or eliminate the duration of any preexisting condition exclusion by the duration of the person's creditable coverage. Coverage is creditable if it ended within 63 days of the new coverage. The duration of consecutive creditable coverages are added to calculate the total amount of creditable coverage, as long as the break between such coverages does not exceed 63 days. Every health insurance issuer which offers coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg(c) and 45 C.F.R. § 146.113.

### D. Certificates Of Creditable Coverage

At 42 U.S.C. § 300gg (e), and at 45 C.F.R. § 146.115, HIPAA requires health insurance issuers in the large group market to provide certificates of creditable coverage under a variety of circumstances when a person's coverage terminates. Every health insurance issuer providing coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg (e) and 45 C.F.R. § 146.115.

### E. Guaranteed Renewability Of Coverage In The Large Group Market

At 42 U.S.C. § 300gg-12, and at 45 C.F.R. § 146.152, HIPAA requires health insurance issuers in the large group market to offer guaranteed renewal of policies, with some specific exceptions. These provisions also set forth certain requirements for the uniform termination of coverage in the large group market. Every health insurance issuer which offers coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg-12 and 45 C.F.R. § 146.152.

### F. Special Enrollment Periods

At 42 U.S.C. § 300gg(f), and at 45 C.F.R. § 146.117, HIPAA requires health insurance issuers which offer coverage in the large group market to offer eligible employees and dependents special enrollment rights upon the loss of certain other coverage. These provisions also require health insurance issuers in the large group market to offer special enrollment rights when a new dependent becomes eligible through marriage, birth or adoption. Every health insurance issuer which

offers coverage in the large group market in the State of Mississippi shall fully comply with the provisions of 42 U.S.C. § 300gg (f) and 45 C.F.R. § 146.117.

#### G. Health Maintenance Organization Affiliation Period

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Source: Miss. Code Ann. §83-1-43 (Rev. 2011)

#### **Rule 26.07:** Conflicts of Law

To the extent the provisions of this Regulation conflict with other provisions of State law, the provisions of this Regulation shall be controlling pursuant to the authority granted under Miss. Code Ann. § 83-1-43 (Rev. 1999), and the Health Insurance Portability and Accountability Act of 1996, as Amended.

Source: Miss. Code Ann. §83-1-43 (Rev. 2011)

#### **Rule 26.08:** Separability

If any provision of this Regulation, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of the Regulation, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Source: Miss. Code Ann. §§83-1-43; 83-5-1 (Rev. 2011)

#### **Rule 26.09:** Effective Date

This Regulation shall become effective thirty (30) days after filing with the Office of the Secretary of State of the State of Mississippi.

Source: Miss. Code Ann. §25-43-3.113 (Rev. 2010)