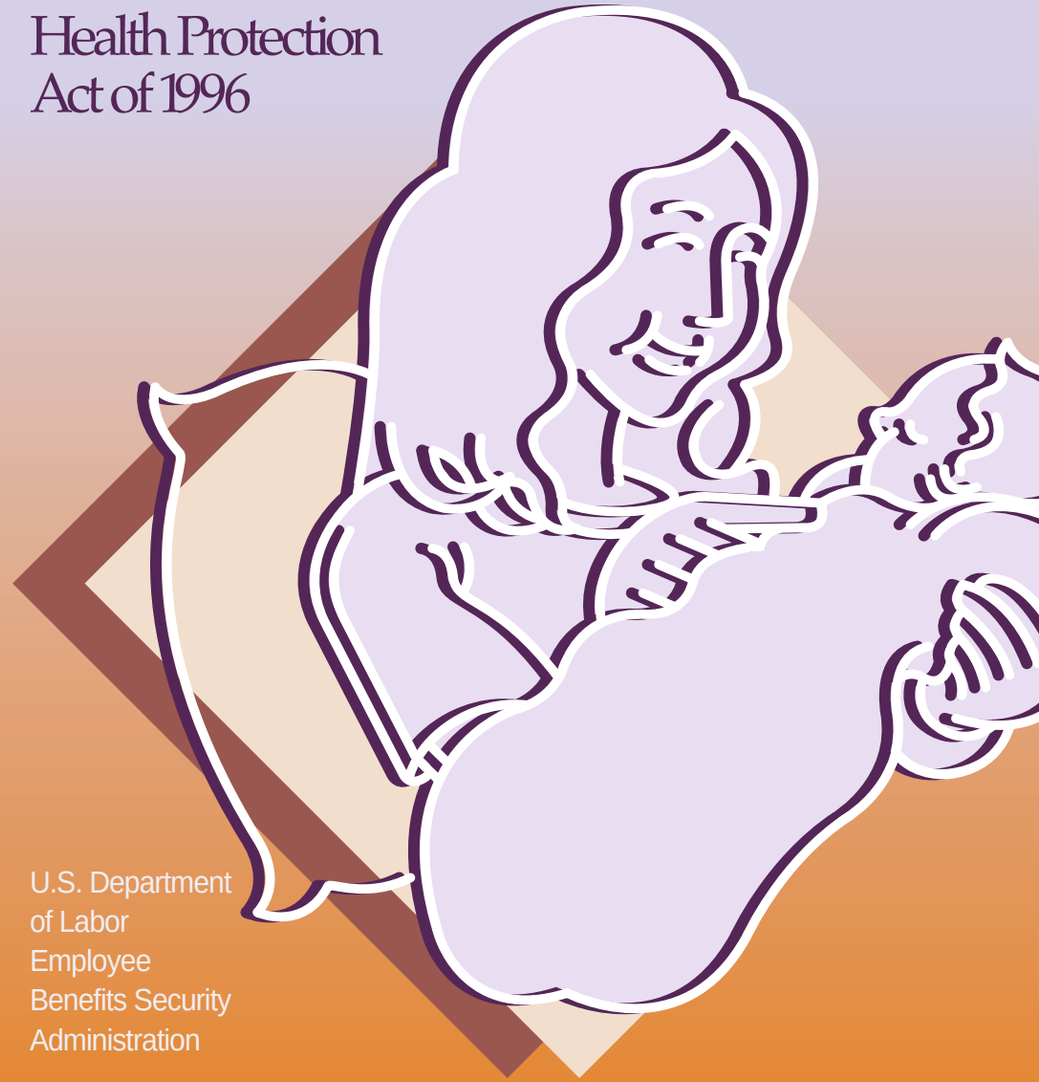
Protections For Newborns, Adopted Children, And New Parents

The Newborns' and Mothers' Health Protection Act of 1996



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This booklet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Important Information for New or Soon-To-Be New Parents:

If you have health coverage and are pregnant, you and your new child may be entitled to a 48-hour hospital stay following childbirth (96 hours in the case of a cesarean section).

If your employer or your spouse's employer offers a health plan, birth, adoption, and placement for adoption may also trigger a special enrollment opportunity for you, your spouse, and your child, without regard to any open season for enrollment.

Your Protections Under The Newborns' And Mothers' Health Protection Act (Newborns' Act):

If a group health plan, health insurance company, or health maintenance organization (HMO) provides maternity benefits, it may not restrict benefits for a hospital stay in connection with childbirth to less than 48 hours following a vaginal delivery or 96 hours following a delivery by cesarean section.

You cannot be required to obtain preauthorization from your plan in order for your 48-hour or 96-hour stay to be covered. (However, certain requirements that you give notice to the plan of the pregnancy or the childbirth may apply.)

The law allows you and your baby to be released earlier than these time periods only if the attending provider decides, after consulting with you, that you or your baby can be discharged earlier.

In any case the attending provider cannot receive incentives or disincentives to discharge you or your child earlier than 48 hours (or 96 hours).

If your state has a law that provides similar hospital stay protections and your plan offers coverage through an insurance policy or HMO, then you may be protected under state law rather than under the Newborns' and Mothers' Health Protection Act.

Your Protections Under The Health Insurance Portability And Accountability Act (HIPAA):

If you are eligible but not enrolled in an employer's health plan, you may enroll yourself, your spouse, and your new child upon the birth, adoption, or placement for adoption of a new child. This is referred to as 'special enrollment.'

Special enrollment is available regardless of whether the employer offers open season, or when the next open season might otherwise be.

To be eligible, you must request special enrollment in the plan within 30 days of birth, adoption, or placement for adoption. Check with your plan administrator, or check your plan's summary plan description (SPD) to find out if the plan has special procedures for requesting special enrollment.

Coverage for special enrollees is effective retroactive to the date of birth, adoption, or placement for adoption.

Special enrollees must be treated the same as similarly situated individuals who enrolled when first eligible. They cannot be treated as late enrollees (individuals who did not enroll when first eligible); therefore, the maximum preexisting condition exclusion that can be imposed on a special enrollee is 12 months, (late enrollees can be subject to an 18-month preexisting condition exclusion) reduced by prior creditable coverage.

Most health coverage is creditable coverage, including most coverage under a group health plan (including COBRA), group or individual health insurance coverage, Medicare, Medicaid, TRICARE, Indian Health Service, state risk pools, Federal Employees Health Benefit Plan, public health plans, Peace Corps plans, and State Children's Health Insurance Programs.

HIPAA also prohibits preexisting condition exclusions relating to pregnancy and for newborns, adopted children, and children placed for adoption who are enrolled within 30 days of birth, adoption, or placement for adoption.

For more information on preexisting condition exclusions, see *An Employee's Guide to Health Coverage Portability* available on the Department of Labor Web site at www.dol.gov/ebsa.

Important Facts When Having A New Baby:

Know your rights. If your plan provides maternity benefits, you should be entitled to a minimum hospital stay of 48 hours following a vaginal delivery and 96 hours following a cesarean delivery.

You cannot be required to get a preauthorization from your plan in order for the minimum hospital stay to be covered.

Your plan must provide you with a notice regarding your rights relating to a hospital stay following childbirth. If your plan is insured, the notice must describe your protections under state law.

Remember, you should enroll your baby within 30 days of the date of birth.

Contact your health plan or your spouse's health plan as soon as possible to find out how to enroll your new baby in group health plan coverage.

As long as you enroll your newborn within 30 days of birth, coverage should be effective as of your baby's birth date, and your baby cannot be subject to a preexisting condition exclusion.

Important Facts When Adopting:

Contact your health plan or your spouse's health plan as soon as possible to find out how to enroll your child in group health plan coverage.

As long as you enroll your child within 30 days of adoption or placement for adoption, coverage should be effective as of your child's adoption or placement date and your child cannot be subject to a preexisting condition exclusion.

Remember, you should enroll your child within 30 days of the date of adoption or placement for adoption.

Common Questions:

I am pregnant. How does the Newborns' Act affect my health care benefits?

The Newborns' Act affects the amount of time you and your newborn child are covered for a hospital stay following childbirth. Group health plans, insurance companies, and HMOs that provide maternity benefits may not restrict benefits for a hospital stay in connection with childbirth to less than 48 hours following a vaginal delivery or 96 hours following a delivery by cesarean section. However, the attending provider may decide, after consulting with you, to discharge you or your newborn child earlier. In any case the attending provider cannot receive incentives or disincentives to discharge you or your child earlier than 48 hours (or 96 hours). The Newborns' Act does not require plans, insurance companies, or HMOs to provide coverage for hospital stays in connection with childbirth. Other legal requirements, including Title VII of the Civil Rights Act of 1964, may require this type of coverage.

Who is the attending provider?

The attending provider is an individual licensed under state law who is directly responsible for providing maternity or pediatric care to a mother or newborn child. Therefore, a plan, hospital, insurance company, or HMO would not be an attending provider.

When does the 48-hour or 96-hour period begin?

If you deliver in the hospital, the 48-hour period (or 96-hour period) starts at the time of delivery. So, for example, if a woman goes into labor and is admitted to the hospital at 10 p.m. on June 11, but gives birth by vaginal delivery at 6 a.m. on June 12, the 48-hour period begins at 6 a.m. on June 12.

However, if you deliver outside the hospital and you are later admitted to the hospital in connection with childbirth (as determined by the attending provider), the period begins at the time of the admission. So, for example, if a woman gives birth at home by vaginal delivery, but begins bleeding excessively in connection with childbirth and is admitted to the hospital, the 48-hour period starts at the time of admission.

Is it permissible for my health plan, insurance company, or HMO to require me to get permission for a 48-hour (or 96-hour) stay (sometimes called prior authorization or precertification) based upon their determination of whether it is medically necessary?

No. Plans, insurance companies and HMOs cannot deny your coverage for the 48-hour (or 96-hour) hospital stay based on a failure to show medical necessity. However, plans, insurance companies, and HMOs can deny coverage for any portion of the stay that is longer than 48 hours (or 96 hours) based on their determination of whether it is medically necessary.

In addition, a plan may require you to give notice of pregnancy before admission to the hospital (or to give notice of your admission at the time of admission) in order to obtain more favorable cost sharing. However, a plan may not reduce your benefits because your pregnancy began before the first day of coverage and you failed to give notice of the pregnancy before becoming covered under the plan. This type of plan provision operates as a preexisting condition exclusion and these exclusions cannot be applied to pregnancy.

May group health plans, insurance companies, or HMOs impose deductibles or other cost-sharing provisions for hospital stays in connection with childbirth?

Yes, but only if the deductible, coinsurance, or other cost sharing for the later part of a 48-hour (or 96-hour) stay is not greater than that imposed for the earlier part of the stay. For example, with respect to a 48-hour stay, a group health plan is permitted to cover only 80 percent of the cost of the hospital stay. However, a plan covering 80 percent of the cost of the first 24 hours could not reduce coverage to 50 percent for the second 24 hours.

My attending provider discharged me in less than 48 hours, is this permissible?

Yes. Under the Newborns' Act an attending provider, after consulting with a mother, can discharge a mother or newborn in less than 48 hours. Your attending provider, after consulting with you, can decide to discharge you or your newborn earlier. However, it is not permissible for your plan or insurance company to offer you incentives to induce you to accept less than the minimum protections available to you under the Newborns' Act. Further, it is not permissible for your plan or insurance company to provide incentives to induce your attending provider to discharge you or your newborn earlier than the minimum 48 hours after delivery (or 96 hours in the case of a cesarean delivery).

How do I know if the Newborns' Act protections apply to my coverage?

Even if your plan offers benefits for hospital stays in connection with childbirth, the Newborns' Act only applies to certain coverage. Specifically, it depends on whether your coverage is 'insured' by an insurance company or HMO or 'self-insured' by an employment-based plan. (You should check your summary plan description (SPD), the document that outlines your benefits and your rights under the plan, or

contact your plan administrator to find out if your coverage in connection with childbirth is 'insured' or 'self-insured.')

Self-insured coverage is subject to the Newborns' Act. However, if your coverage is 'insured' by an insurance company or HMO and your state has a similar law regulating coverage for newborns and mothers that meets specific criteria, then your rights will be the rights provided under state law rather than under the Newborns' Act. The state law may differ slightly from the Newborns' Act requirements, so it is important for you to know which law applies to your coverage in order to know what your rights are. Based on a preliminary analysis of state laws, most insured coverage is subject to state law requirements in lieu of the Federal protections.

How does giving birth to or adopting a baby affect my rights to enroll in my health plan or health insurance coverage?

Under HIPAA, you, your spouse, and your new child have a special right to enroll in your health plan upon the birth, adoption, or placement for adoption of your new child, if you, your spouse, and your new child are otherwise eligible to enroll in the plan. You must request enrollment in the plan within 30 days of the birth, adoption, or placement for adoption. Your plan or insurance issuer may not treat you or your spouse as a late enrollee in this circumstance. So, for example, the longest preexisting condition exclusion that could be imposed on you or your spouse is 12 months. Your family's coverage under this type of special enrollment must be effective as of the date of the birth, adoption, or placement for adoption.

May my plan or health insurance coverage impose preexisting condition exclusions on my newborn child, adopted child, or child placed for adoption?

Under HIPAA, as long as you enroll your newborn child, adopted child, or child placed for adoption within 30 days of the birth, adoption, or placement for adoption, your plan or insurance coverage may not impose preexisting condition exclusions on the child. Further, any future plan may not impose a preexisting condition exclusion, provided the child does not incur a significant break in coverage (generally, a break in coverage of at least 63 days).

If I enroll in a new plan or health insurance coverage while I am pregnant, may my plan or insurance coverage impose a preexisting condition exclusion relating to my pregnancy?

No. Under HIPAA a plan or insurance issuer cannot refuse to pay benefits by imposing a preexisting condition relating to pregnancy.

Resources:

The Newborns' Act is administered by the U.S. Departments of Labor and the Treasury, state insurance departments, and the U.S. Department of Health and Human Services. If you have questions regarding your rights under an employer-sponsored group health plan, contact the following:

1-866-444-EBSA - Ask for a copy of *Health Coverage Portability* and a list of all publications from the Employee Benefits Security Administration.

www.dol.gov/ebsa - Click on *About EBSA*, for a link to the addresses of the 15 field offices that can assist you with health-related questions. Also view EBSA's publications on health.

www.naic.org - The address of the National Association of Insurance Commissioners. Click on *State Insurance Regulators*, then the state of your choice for the office in your state.

www.cms.gov - The address of the Centers for Medicare and Medicaid Services.

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