

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 626*
Commerce Committee Substitute Adopted 4/5/05**

Short Title: HIPAA Compliance and Fairness.-AB

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO BRING NORTH CAROLINA LAW INTO COMPLIANCE WITH THE
3 FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY
4 ACT; TO PROVIDE SPECIAL ENROLLMENT PERIODS WITHOUT PENALTY
5 FOR PERSONS ENROLLED UNDER A GROUP PLAN WHOSE COVERAGE IS
6 TERMINATED WHEN AN INSURER DISCONTINUES WRITING A CERTAIN
7 TYPE OF GROUP HEALTH INSURANCE COVERAGE THROUGHOUT THAT
8 ENTIRE SMALL OR LARGE GROUP MARKET; AND TO PROVIDE
9 CONTINUED GUARANTEED ISSUE RIGHTS TO A PERSON WHO IS HIPAA
10 ELIGIBLE, WHO IS INSURED IN THE INDIVIDUAL MARKET, AND WHOSE
11 INSURER DISCONTINUES WRITING A CERTAIN TYPE OF HEALTH
12 INSURANCE COVERAGE THROUGHOUT THE ENTIRE INDIVIDUAL
13 MARKET.

14 The General Assembly of North Carolina enacts:

15 **SECTION 1.** G.S. 58-68-30(c) reads as rewritten:

16 "(c) Rules Relating to Crediting Previous Coverage. –

17 (1) Creditable coverage defined. – For the purposes of this Article,
18 "creditable coverage" means, with respect to an individual, coverage of
19 the individual under any of the following:

- 20 a. A self-funded employer group health plan under the Employee
21 Retirement Income Security Act of 1974.
22 b. Group or individual health insurance coverage.
23 c. Part A or part B of title XVIII of the Social Security Act.
24 d. Title XIX of the Social Security Act, other than coverage
25 consisting solely of benefits under section 1928.
26 e. Chapter 55 of title 10, United States Code.
27 f. A medical care program of the Indian Health Service or of a
28 tribal organization.
29 g. A State health benefits risk pool.

- 1 h. A health plan offered under chapter 89 of title 5, United States
2 Code.
3 i. A public health plan (as defined in federal regulations).
4 j. A health benefit plan under section 5(e) of the Peace Corps Act
5 (22 U.S.C. § 2504(e)).
6 k. ~~The Health Insurance Program for Children established in Part~~
7 ~~8 of Chapter 108A of the General Statutes, or any successor~~
8 ~~program.~~ Title XXI of the Social Security Act (State Children's
9 Health Insurance Program).

10 "Creditable coverage" does not include coverage consisting solely of
11 coverage of excepted benefits. However, short-term limited-duration
12 health insurance coverage shall be considered creditable coverage for
13 purposes of this section and G.S. 58-51-15(a)(2)b.

- 14 (2) Not counting periods before significant breaks in coverage. –
15 a. In general. – A period of creditable coverage shall not be
16 counted, with respect to enrollment of an individual under a
17 group health insurance plan, if, after the period and before the
18 enrollment date, there was a 63-day period during all of which
19 the individual was not covered under any creditable coverage.
20 b. Waiting period not treated as a break in coverage. – For the
21 purposes of sub-subdivision a. of this subdivision and
22 subdivision (d)(4) of this subsection, any period that an
23 individual is in a waiting period for any coverage under a group
24 health insurance plan or is in an affiliation period shall not be
25 taken into account in determining the continuous period under
26 sub-subdivision a. of this subdivision.
27 c. Time spent on short term limited duration health insurance not
28 treated as a break in coverage. – For the purposes of
29 sub-subdivision a. of this subdivision, any period that an
30 individual is enrolled on a short term limited duration health
31 insurance policy shall not be taken into account in determining
32 the continuous period under sub-subdivision. a. of this
33 subdivision so long as the period of time spent on the short term
34 limited duration health insurance policy or policies does not
35 exceed 12 months.
36 d. For an individual who elects COBRA continuation coverage
37 during the second election period provided under the Trade Act
38 of 2002, the days between the date the individual lost group
39 health plan coverage and the first day of the second COBRA
40 election period are not taken into account in determining
41 whether a significant break in coverage has occurred.
- 42 (3) Method of crediting coverage. –
43 a. Standard method. – Except as otherwise provided under
44 sub-subdivision b. of this subdivision for the purposes of

1 applying subdivision (a)(3) of this subsection, a group health
2 insurer shall count a period of creditable coverage without
3 regard to the specific benefits covered during the period.

4 b. Election of alternative method. – A group health insurer may
5 elect to apply subdivision (a)(3) of this subsection based on
6 coverage of benefits within each of several classes or categories
7 of benefits specified in federal regulations rather than as
8 provided under sub-subdivision a. of this subdivision. This
9 election shall be made on a uniform basis for all participants
10 and beneficiaries. Under this election a group health insurer
11 shall count a period of creditable coverage with respect to any
12 class or category of benefits if any level of benefits is covered
13 within the class or category.

14 c. Health insurer notice. – In the case of an election under
15 sub-subdivision b. of this subdivision with respect to health
16 insurance coverage in the small or large group market, the
17 health insurer: (i) shall prominently state in any disclosure
18 statements concerning the coverage, and to each employer at
19 the time of the offer or sale of the coverage, that the health
20 insurer has made the election, and (ii) shall include in the
21 statements a description of the effect of the election.

22 (4) Establishment of period. – Periods of creditable coverage for an
23 individual shall be established through presentation of certifications
24 described in subsection (e) of this section or in another manner that is
25 specified in federal regulations."

26 **SECTION 2.** G.S. 58-68-30(f)(1) reads as rewritten:

27 "(1) Individuals losing other coverage. – A group health insurer shall
28 permit an employee who is eligible, but not enrolled, for coverage
29 under the terms of the plan (or a dependent of the employee if the
30 dependent is eligible, but not enrolled, for coverage under the terms) to
31 enroll for coverage under the terms of the plan if each of the following
32 conditions is met:

33 a. The employee or dependent was covered under an ERISA
34 group health plan or had health insurance coverage at the time
35 coverage was previously offered to the employee or dependent.

36 b. The employee stated in writing at the time that coverage under
37 the group health plan or health insurance coverage was the
38 reason for declining enrollment, but only if the health insurer
39 required the statement at the time and provided the employee
40 with notice of the requirement and the consequences of the
41 requirement at the time.

42 c. The employee's or dependent's coverage described in
43 sub-subdivision a.: (i) was under a COBRA continuation
44 provision and the coverage under the provision was exhausted;

1 (ii) was not under that provision and either the coverage was
2 terminated because of loss of eligibility for the coverage,
3 including legal separation, divorce, ~~death~~, cessation of
4 dependent status (such as attaining the maximum age to be
5 eligible as a dependent child under the plan), death of an
6 employee, termination of employment, ~~or~~—reduction in the
7 number of hours of ~~employment~~; employment, and any loss of
8 eligibility for coverage after a period that is measured by
9 reference to any of the foregoing; ~~or~~—(iii) employer
10 contributions toward the coverage were ~~terminated~~; terminated;
11 (iv) was terminated by the health insurer pursuant to
12 G.S. 58-68-45(c)(2); (v) in the case of coverage offered through
13 an arrangement that does not provide benefits to individuals
14 who no longer reside, live, or work in a service area, loss of
15 coverage because an individual no longer resides, lives, or
16 works in the service area (whether or not within the choice of
17 the individual), and no other benefit package is available to the
18 individual; (vi) in the case of a situation in which an individual
19 incurs a claim that would meet or exceed a lifetime limit on all
20 benefits; or (vii) a situation in which a plan no longer offers any
21 benefits to the class of similarly situated individuals that
22 includes the individual.

23 d. Under the terms of the plan, the employee requests the
24 enrollment not later than 30 days after the date of exhaustion of
25 coverage described in sub-subdivision c.(i) of this subdivision
26 or termination of coverage or employer contribution described
27 in sub-subdivision c.(ii) of this subdivision."

28 **SECTION 3.** G.S. 58-68-60 is amended by adding the following new
29 subsections to read:

30 "(i) Rights of Replacement Coverage Upon Termination. – Subsection (a) of this
31 section shall apply to an eligible individual whose coverage issued pursuant to this
32 section is terminated by a health insurer pursuant to G.S. 58-68-65(c)(2) provided the
33 application for the replacement coverage is dated not more than 63 days following the
34 termination date.

35 (j) Waiting Period. – In determining the length of any break in coverage for an
36 individual as prescribed in G.S. 58-68-60(b)(1)(i), a significant break in coverage does
37 not occur during the waiting period. The "waiting period" is defined as the period that
38 begins on the date the individual submits a substantially complete application for
39 coverage and ends on:

- 40 (1) If the application results in coverage, the date coverage begins; or
41 (2) If the application does not result in coverage, the date on which the
42 application is denied by the issuer or the date on which the offer for
43 coverage lapses."

44 **SECTION 4.** G.S. 58-68-30(b) reads as rewritten:

- 1 "(b) Definitions. – For the purposes of this Part:
- 2 (1) Enrollment date. – With respect to an individual covered under a group
- 3 health insurance plan, the date of enrollment of the individual in the
- 4 coverage or, if earlier, the first day of the waiting period for the
- 5 enrollment. If an individual receiving benefits under a group health
- 6 insurance plan changes benefit packages, or if the plan changes health
- 7 insurer, the individual's enrollment date does not change.
- 8 (2) Late enrollee. – With respect to coverage under a group health
- 9 insurance plan, a participant or beneficiary who enrolls under the plan
- 10 other than during:
- 11 a. The first period in which the individual is eligible to enroll
- 12 under the plan, or
- 13 b. A special enrollment period under subsection (f) of this section.
- 14 (3) Preexisting condition exclusion. –
- 15 a. In general. – "Preexisting condition exclusion" means, with
- 16 respect to coverage, a limitation or exclusion of benefits
- 17 relating to a condition based on the fact that the condition was
- 18 present before the ~~date of enrollment for the coverage, effective~~
- 19 date of coverage under a group health plan or group health
- 20 insurance coverage, whether or not any medical advice,
- 21 diagnosis, care, or treatment was recommended or received
- 22 before the date that day. A preexisting condition exclusion
- 23 includes any exclusion applicable to an individual as a result of
- 24 information relating to an individual's health status before the
- 25 individual's effective date of coverage under a group health
- 26 plan or group health insurance coverage, such as a condition
- 27 identified as a result of a preenrollment questionnaire or
- 28 physical examination given to the individual, or review of
- 29 medical records relating to the preenrollment period.
- 30 b. Treatment of genetic information. – Genetic information shall
- 31 not be treated as a condition described in subdivision (a)(1) of
- 32 this subsection in the absence of a diagnosis of the condition
- 33 related to the information.
- 34 (4) Waiting period. – With respect to a group health insurance plan and an
- 35 individual who is a potential participant or beneficiary in the plan, the
- 36 period that must pass with respect to the individual before the
- 37 individual is eligible to be covered for benefits under the terms of the
- 38 plan.
- 39 a. If an employee or dependent enrolls as a late enrollee or special
- 40 enrollee, any period before such late or special enrollment is not
- 41 a waiting period.
- 42 b. If an individual seeks individual health insurance coverage, a
- 43 waiting period begins on the date the individual submits a
- 44 substantially complete application and ends on: (i) if the

1 application results in coverage, the date coverage begins; or (ii)
2 if the application does not result in coverage, the date on which
3 the application is denied by the health insurer or the date on
4 which the offer for coverage lapses."

5 **SECTION 5.** This act is effective when it becomes law.