

UNITED STATES CODE SERVICE

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 6A. THE PUBLIC HEALTH SERVICE

REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

GROUP MARKET REFORMS; OTHER REQUIREMENTS (42 USCS § 300gg-4) (1999)

§ 300gg-4. Standards relating to benefits for mothers and newborns

(a) Requirements for minimum hospital stay following birth.

(1) In general. A group health plan, and a health insurance issuer offering group health insurance coverage, may not--

(A) except as provided in paragraph (2)--

(i) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 48 hours, or

(ii) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a cesarean section, to less than 96 hours, or

(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).

(2) Exception. Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the mother or her newborn child prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the mother.

(b) Prohibitions. A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not--

(1) deny to the mother or her newborn child eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;

(2) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under this section;

(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;

(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or

(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

(c) Rules of construction.

(1) Nothing in this section shall be construed to require a mother who is a participant or beneficiary--

(A) to give birth in a hospital; or

(B) to stay in the hospital for a fixed period of time following the birth of her child.

(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which

does not provide benefits for hospital lengths of stay in connection with childbirth for a mother or her newborn child.

(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

(d) Notice. A group health plan under this part shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1185(d)] with respect to the requirements of this section as if such section applied to such plan.

(e) Level and type of reimbursements. Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(f) Preemption; exception for health insurance coverage in certain States.

(1) In general. The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 2723(d)(1) [42 USCS § § 300gg-23(d)(1)]) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction. Section 2723(a)(1) [42 USCS § § 300gg-23(a)(1)] shall not be construed as superseding a State law described in paragraph (1).

HISTORY: (Act July 1, 1944, ch 373, Title XXVII, Part A, Subpart 2, § 2704, as added Sept. 26, 1996, P.L. 104-204, Title VI, § 604(a)(3), 110 Stat. 2939.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

A former § 2704 of Act July 1, 1944, ch 373, appeared as 42 USCS § 300aaa-3 prior to being redesignated and transferred by Act June 10, 1993, P.L. 103-43, Title XX, § 2010(a)(1)-(3), 107 Stat. 213. Such section was reclassified to 42 USCS § 238c.

Other provisions:

Findings with respect to length of post-delivery hospital stay. Act Sept. 26, 1996, P.L. 104-204, Title VI, § 602, 110 Stat. 2935, provides:

"Congress finds that--

"(1) the length of post-delivery hospital stay should be based on the unique characteristics of each mother and her newborn child, taking into consideration the health of the mother, the health and stability of the newborn,

the ability and confidence of the mother and the father to care for their newborn, the adequacy of support systems at home, and the access of the mother and her newborn to appropriate follow-up health care; and

"(2) the timing of the discharge of a mother and her newborn child from the hospital should be made by the attending provider in consultation with the mother."

Application of amendments made by § 604 of Act Sept. 26, 1996. Act Sept. 26, 1996, P.L. 104-204, Title VI, § 604(c), 110 Stat. 2941, provides: "The amendments made by this section [for full classification, consult USCS Tables volumes] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998."

Reports to Congress concerning childbirth. Act Sept. 26, 1996, P.L. 104-204, Title VI, § 606, 110 Stat. 2942, provides:

"(a) Findings. Congress finds that--

"(1) childbirth is one part of a continuum of experience that includes prepregnancy, pregnancy and prenatal care, labor and delivery, the immediate postpartum period, and a longer period of adjustment for the newborn, the mother, and the family;

"(2) health care practices across this continuum are changing in response to health care financing and delivery system changes, science and clinical research, and patient preferences; and

"(3) there is a need--

"(A) to examine the issues and consequences associated with the length of hospital stays following childbirth;

"(B) to examine the follow-up practices for mothers and newborns used in conjunction with shorter hospital stays;

"(C) to identify appropriate health care practices and procedures with regard to the hospital discharge of newborns and mothers;

"(D) to examine the extent to which such care is affected by family and environmental factors; and

"(E) to examine the content of care during hospital stays following childbirth.

"(b) Advisory panel.

(1) In general. Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall establish an advisory panel (referred to in this section as the 'advisory panel')--

"(A) to guide and review methods, procedures, and data collection necessary to conduct the study described in subsection (c) in a manner that is intended to enhance the quality, safety, and effectiveness of health care services provided to mothers and newborns;

"(B) to develop a consensus among the members of the advisory panel regarding the appropriateness of the specific requirements of this title; and

"(C) to prepare and submit to the Secretary, as part of the report of the Secretary submitted under subsection (d), a report summarizing the consensus (if any) developed under subparagraph (B) or the reasons for not reaching such a consensus.

"(2) Participation.

(A) Department representatives. The Secretary shall ensure that representatives from within the Department of Health and Human Services that have expertise in the area of maternal and child health or in outcomes research are appointed to the advisory panel.

"(B) Representatives of public and private sector entities.

(i) In general. The Secretary shall ensure that members of the advisory panel include representatives of public and private sector entities having knowledge or experience in one or more of the following areas:

"(I) Patient care.

"(II) Patient education.

"(III) Quality assurance.

"(IV) Outcomes research.

"(V) Consumer issues.

"(ii) Requirement. The panel shall include representatives of each of the following categories:

"(I) Health care practitioners.

"(II) Health plans.

"(III) Hospitals.

"(IV) Employers.

"(V) States.

"(VI) Consumers.

"(c) Studies.

(1) In general. The Secretary shall conduct a study of--

"(A) the factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth;

"(B) the factors determining the length of hospital stay following childbirth;

"(C) the diversity of negative or positive outcomes affecting mothers, infants, and families;

"(D) the manner in which post natal care has changed over time and the manner in which that care has adapted or related to changes in the length of hospital stay, taking into account--

"(i) the types of post natal care available and the extent to which such care is accessed; and

"(ii) the challenges associated with providing post natal care to all populations, including vulnerable populations, and solutions for overcoming these challenges; and

"(E) the financial incentives that may--

"(i) impact the health of newborns and mothers; and

"(ii) influence the clinical decisionmaking of health care providers.

"(2) Resources. The Secretary shall provide to the advisory panel the resources necessary to carry out the duties of the advisory panel.

"(d) Reports.

(1) In general. The Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Commerce of the House of Representatives a report that contains--

"(A) a summary of the study conducted under subsection (c);

"(B) a summary of the best practices used in the public and private sectors for the care of newborns and mothers;

"(C) recommendations for improvements in prenatal care, post natal care, delivery and follow-up care, and whether the implementation of such improvements should be accomplished by the private health care sector, Federal or State governments, or any combination thereof; and

"(D) limitations on the databases in existence on the date of the enactment of this Act.

"(2) Deadlines. The Secretary shall prepare and submit to the Committees referred to in paragraph (1)--

"(A) an initial report concerning the study conducted under subsection (c) and elements described in paragraph (1), not later than 18 months after the date of the enactment of this Act;

"(B) an interim report concerning such study and elements not later than 3 years after the date of the enactment of this Act; and

"(C) a final report concerning such study and elements not later than 5 years after the date of the enactment of this Act.

"(e) Termination of panel. The advisory panel shall terminate on the date that occurs 60 days after the date on which the last report is submitted under subsection (d).".

INDIVIDUAL MARKET RULES; OTHER REQUIREMENTS (42 USCS § 300gg-51) (1999)

§ 300gg-51. Standards relating to benefits for mothers and newborns

(a) In general. The provisions of section 2704 [42 USCS § 300gg-4] (other than subsections (d) and (f)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

(b) Notice requirement. A health insurance issuer under this part shall comply with the notice requirement under section 711(d) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1185(d)] with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.

(c) Preemption; exception for health insurance coverage in certain States.

(1) In general. The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 2723(d)(1) [42 USCS § 300gg-23(d)(1)]) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction. Section 2762(a) [42 USCS § § 300gg-62(a)] shall not be construed as superseding a State law described in paragraph (1).

HISTORY: (Act July 1, 1944, ch 373, Title XXVII, Part B, Subpart[2] 3, § 2751, as added Sept. 26, 1996, P.L. 104-204, Title VI, § 605(a)(4), 110 Stat. 2941.)