

Health Factor Discrimination Prohibited

Under HIPAA, an individual cannot be denied eligibility for benefits or charged more for coverage because of any health factor. "Health factors" include:

- Health status;
- Medical condition, including both physical and mental illnesses;
- Claims experience;
- Receipt of health care;
- Medical history;
- Genetic information;
- Evidence of insurability; or
- Disability.

[Click here](#) to read the federal regulations on the health factor discrimination prohibition.

Bona Fide Employment-Based Classifications May Be Permitted

Under [federal regulations](#), distinctions among groups of **similarly situated participants** in a health plan based on **bona fide employment-based classifications** consistent with the employer's usual business practice may be permissible. Examples of classifications that, based on all the relevant facts and circumstances, may be bona fide include:

- Full-time versus part-time status;
- Employees working in different geographic locations;
- Employees with different dates of hire or lengths of service;
- Current employee versus former employee status;
- Employees with different occupations; and
- Employees that are members of collective bargaining units.

Employees in different bona fide employment-based classifications can have different eligibility provisions, different benefit restrictions, or different costs, provided the distinction is consistent with the employer's usual business practice. Please note, however, that such distinctions must still comply with other federal and state nondiscrimination laws (for example, waiting periods cannot exceed 90 days [under the Affordable Care Act](#)).

Nondiscrimination Rules Related to Medicare-Eligible Individuals

Group health plans of employers with **20 or more employees** are [required](#) by law to offer workers and their spouses who are age 65 (or older) the same health benefits that are provided to younger employees.

In addition, the Medicare Secondary Payer provisions [prohibit](#) employers from **encouraging or offering incentives to individuals who are eligible for, or already enrolled in, Medicare to elect enrollment in Medicare instead of enrolling in the group health plan** (including a self-insured plan) that would otherwise be "primary" to Medicare. A group health plan is the primary payer when:

- An individual is age **65 or older**, and covered by a group health plan through his or her current employment or his or her spouse's current employment; and
- The employer has **20 or more employees** (or the employer is part of a multi-employer group with at least one employer that employs 20 or more individuals).

Medicare Premium Reimbursements & Federal Nondiscrimination Laws

According to an [informal discussion letter](#) from the U.S. Equal Employment Opportunity Commission (EEOC), giving eligible employees a choice between remaining on employer-provided group health insurance or receiving employer-provided payment of Medicare Part B premiums generally would not constitute an impermissible adverse action against older workers under the [Age Discrimination in Employment Act](#) (ADEA) **if it creates an advantageous option available only to them.**

Whether a specific plan provides advantageous options, or imposes an adverse action, is dependent on the facts and circumstances. (Note: Under the specific facts addressed in the letter, employees were also required to provide written acknowledgement that they had reviewed both options and had voluntarily chosen to withdraw from employer-provided group health insurance.)

If the Medicare Part B reimbursement plan were to create an adverse action for older workers, it would be lawful only if it met an ADEA exemption or defense. A further discussion of exemptions and defenses is available in the letter. **The letter is not a formal opinion and does not address Medicare or federal tax issues.**

Other Nondiscrimination Rules

It is also important to remember that various [federal](#), state, and local laws prohibit discrimination in the provision of benefits based upon race, sex, age (over 40), and certain other factors.

Additional Information

- [IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits](#)
- [IRS Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans](#)



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