conditions, or privileges of employment. For example, an employer that fires an employee because of anticipated high health claims based on genetic information remains subject to liability under Title II. On the other hand, health plan or issuer provisions or actions related to the imposition of a preexisting condition exclusion; a health plan’s or issuer’s discrimination in health plan eligibility, benefits, or premiums based on genetic information; a health plan’s or issuer’s request that an individual undergo a genetic test; and/or a health plan’s or issuer’s collection of genetic information remain subject to enforcement under Title I exclusively. For example:

(i) If an employer contracts with a health insurance issuer to request genetic information, the employer has committed a Title II violation. In addition, the issuer may have violated Title I of GINA.

(ii) If an employer directs his employees to undergo mandatory genetic testing in order to be eligible for health benefits, the employer has committed a Title II violation.

(iii) If an employer or union amends a health plan to require an individual to undergo a genetic test, then the employer or union is liable for a violation of Title II. In addition, the health plan’s implementation of the requirement may subject the health plan to liability under Title I.

(c) Relationship to authorities under GINA Title I. GINA Title II does not prohibit any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan from engaging in any action that is authorized under any provision of law noted in §1635.11(b) of this part, including any implementing regulations noted in §1635.11(b).

(d) Relationship to HIPAA Privacy Regulations. This part does not apply to genetic information that is protected health information subject to the regulations issued by the Secretary of Health and Human Services pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996.