§ 146.120 Interaction with the Family and Medical Leave Act. [Reserved]

§ 146.121 Prohibiting discrimination against participants and beneficiaries based on a health factor.

(a) Health factors. (1) The term health factor means, in relation to an individual, any of the following health status-related factors:
   (i) Health status;
   (ii) Medical condition (including both physical and mental illnesses), as defined in §144.103 of this chapter;
   (iii) Claims experience;
   (iv) Receipt of health care;
   (v) Medical history;
   (vi) Genetic information, as defined in §146.122(a) of this subchapter;
   (vii) Evidence of insurability; or
   (viii) Disability.
   (2) Evidence of insurability includes—
      (i) Conditions arising out of acts of domestic violence; and
      (ii) Participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing, and other similar activities.
   (3) The decision whether health coverage is elected for an individual (including the time chosen to enroll, such as under special enrollment or late enrollment) is not, itself, within the scope of any health factor. (However, under §146.117, a plan or issuer must treat special enrollees the same as similarly situated individuals who are enrolled when first eligible.)

(b) Prohibited discrimination in rules for eligibility—(1) In general—(i) A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, may not establish any rule for eligibility (including continued eligibility) of any individual to enroll for benefits under the terms of the plan or group health insurance coverage that discriminates based on one or more health factors (including continued eligibility) of any individual to enroll for benefits under the terms of the plan or group health insurance coverage that discriminates based on any health factor that relates to that individual or a dependent of that individual. This rule is subject to the provisions of paragraph (b)(2) of this section (explaining how this rule applies to benefits), paragraph (d) of this section (allowing plans to impose certain preexisting condition exclusions), paragraph (e) of this section (containing rules for establishing groups of similarly situated individuals), paragraph (f) of this section (relating to wellness programs), and paragraph (g) of this section (permitting favorable treatment of individuals with adverse health factors).
      (ii) For purposes of this section, rules for eligibility include, but are not limited to, rules relating to—
         (A) Enrollment;
         (B) The effective date of coverage;
         (C) Waiting (or affiliation) periods;
         (D) Late and special enrollment;
         (E) Eligibility for benefit packages (including rules for individuals to change their selection among benefit packages);
         (F) Benefits (including rules relating to covered benefits, benefit restrictions, and cost-sharing mechanisms such as coinsurance, copayments, and deductibles), as described in paragraphs (b)(2) and (b)(3) of this section;
         (G) Continued eligibility; and
         (H) Terminating coverage (including disenrollment) of any individual under the plan.
      (iii) The rules of this paragraph (b)(1) are illustrated by the following examples:
         Example 1. (i) Facts. An employer sponsors a group health plan that is available to all employees who enroll within the first 30 days of their employment. However, employees who do not enroll within the first 30 days cannot enroll later unless they pass a physical examination.
         (ii) Conclusion. In this Example 1, the requirement to pass a physical examination in order to enroll in the plan is a rule for eligibility that discriminates based on one or more health factors and thus violates this paragraph (b)(1).
         Example 2. (i) Facts. Under an employer's group health plan, employees who enroll during the first 30 days of employment (and during special enrollment periods) may choose between two benefit packages: an indemnity option and an HMO option. However, employees who enroll during late enrollment are permitted to enroll only in the HMO option and only if they provide evidence of good health.
         (ii) Conclusion. In this Example 2, the requirement to provide evidence of good health in order to be eligible for late enrollment in the HMO option is a rule for eligibility that discriminates.