

Equal Employment Opportunity Comm.

§ 1635.2

The purpose of this provision is to permit the development and administration of benefit plans in accordance with accepted principles of risk assessment. This provision is not intended to disrupt the current regulatory structure for self-insured employers. These employers may establish, sponsor, observe, or administer the terms of a bona fide benefit plan not subject to State laws that regulate insurance. This provision is also not intended to disrupt the current nature of insurance underwriting, or current insurance industry practices in sales, underwriting, pricing, administrative and other services, claims and similar insurance related activities based on classification of risks as regulated by the States.

The activities permitted by this provision do not violate part 1630 even if they result in limitations on individuals with disabilities, provided that these activities are not used as a subterfuge to evade the purposes of this part. Whether or not these activities are being used as a subterfuge is to be determined without regard to the date the insurance plan or employee benefit plan was adopted.

However, an employer or other covered entity cannot deny an individual with a disability who is qualified equal access to insurance or subject an individual with a disability who is qualified to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks. Part 1630 requires that decisions not based on risk classification be made in conformity with non-discrimination requirements. See Senate Report at 84-86; House Labor Report at 136-138; House Judiciary Report at 70-71. See the discussion of §1630.5 Limiting, Segregating and Classifying.

[56 FR 35734, July 26, 1991, as amended at 65 FR 36327, June 8, 2000; 76 FR 17003, Mar. 25, 2011; 81 FR 31140, May 17, 2016]

PART 1635—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

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AUTHORITY: 29 U.S.C. 2000ff.

SOURCE: 75 FR 68932, Nov. 9, 2010, unless otherwise noted.

§ 1635.1 Purpose.

(a) The purpose of this part is to implement Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff, *et seq.* Title II of GINA:

- (1) Prohibits use of genetic information in employment decision-making;
- (2) Restricts employers and other entities subject to Title II of GINA from requesting, requiring, or purchasing genetic information;
- (3) Requires that genetic information be maintained as a confidential medical record, and places strict limits on disclosure of genetic information; and
- (4) Provides remedies for individuals whose genetic information is acquired, used, or disclosed in violation of its protections.

(b) This part does not apply to actions of covered entities that do not pertain to an individual's status as an employee, member of a labor organization, or participant in an apprenticeship program. For example, this part would not apply to:

- (1) A medical examination of an individual for the purpose of diagnosis and treatment unrelated to employment, which is conducted by a health care professional at the hospital or other health care facility where the individual is an employee; or
- (2) Activities of a covered entity carried on in its capacity as a law enforcement agency investigating criminal conduct, even where the subject of the investigation is an employee of the covered entity.

§ 1635.2 Definitions—general.

(a) *Commission* means the Equal Employment Opportunity Commission, as established by section 705 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-4.

(b) *Covered Entity* means an employer, employing office, employment agency, labor organization, or joint labor-management committee.

(c) *Employee* means an individual employed by a covered entity, as well as an applicant for employment and a