

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

- Sec.
- 1635.1 Purpose.
- 1635.2 Definitions—general.
- 1635.3 Definitions specific to GINA.
- 1635.4 Prohibited practices—in general.
- 1635.5 Limiting, segregating, and classifying.
- 1635.6 Causing a covered entity to discriminate.
- 1635.7 Retaliation.
- 1635.8 Acquisition of genetic information.
- 1635.9 Confidentiality.
- 1635.10 Enforcement and remedies.
- 1635.11 Construction.
- 1635.12 Medical information that is not genetic information.

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§ 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 former employee. An employee, including an applicant for employment and a former employee, is:

(1) As defined by section 701 of the Civil Rights Act of 1964, 42 U.S.C. 2000e, an individual employed by a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and any agent of such a person;

(2) As defined by section 304(a) of the Government Employee Rights Act, 42 U.S.C. 2000e-16c(a), a person chosen or appointed by an individual elected to public office by a State or political subdivision of a State to serve as part of the personal staff of the elected official, to serve the elected official on a policy-making level, or to serve the