

**(3) Additional liability**

Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(A) for each eligible beneficiary described in such paragraph attributable to that operator.

**(4) Joint and several liability**

A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section. The provisions of section 9711(c)(2) shall apply to any last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704(j), or both) and if security meeting the requirements of section 9711(c)(3) is provided, the common parent described in section 9711(c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.

**(5) Deductibility**

Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

**(6) 1988 last signatory operator**

For purposes of this section, the term “1988 last signatory operator” means a last signatory operator which is a 1988 agreement operator.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3053; amended Pub. L. 109-432, div. C, title II, §§ 211(c), 212(b)(1)-(2)(B), Dec. 20, 2006, 120 Stat. 3023, 3025, 3026; Pub. L. 115-141, div. U, title IV, § 401(a)(348), Mar. 23, 2018, 132 Stat. 1201.)

**Editorial Notes**

## REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(C), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

## AMENDMENTS

2018—Subsec. (a)(4)(A). Pub. L. 115-141 inserted “section 402 of” after “subsections (h) and (i) of”.

2006—Subsec. (a)(3), (4). Pub. L. 109-432, § 212(b)(1), added pars. (3) and (4).

Subsec. (d)(1). Pub. L. 109-432, § 212(b)(2)(A), amended text of par. (1) generally. Prior to amendment, par. (1) provided that the contribution requirements of all 1988 last signatory operators include the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries, payment of a monthly per beneficiary premium, and provision of security.

Subsec. (d)(2)(B). Pub. L. 109-432, § 212(b)(2)(B)(i), substituted “backstop” for “prefunding”.

Subsec. (d)(3). Pub. L. 109-432, § 212(b)(2)(B)(ii), substituted “paragraph (1)(A)” for “paragraph (1)(B)”.

Subsec. (d)(4). Pub. L. 109-432, § 211(c), inserted at end “The provisions of section 9711(c)(2) shall apply to any

last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704(j), or both) and if security meeting the requirements of section 9711(c)(3) is provided, the common parent described in section 9711(c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.”

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. C, title II, § 212(b)(2)(C), Dec. 20, 2006, 120 Stat. 3026, provided that: “The amendments made by this paragraph [amending this section] shall apply to fiscal years beginning on or after October 1, 2010.”

**Subchapter D—Other Provisions**

Sec.  
9721. Civil enforcement.  
9722. Sham transactions.

**§ 9721. Civil enforcement**

The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply, in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act, to any claim—

(1) arising out of an obligation to pay any amount required to be paid by this chapter; or

(2) arising out of an obligation to pay any amount required by section 402(h)(5)(B)(ii) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(5)(B)(ii)).

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3055; amended Pub. L. 109-432, div. C, title II, § 213(b)(2), Dec. 20, 2006, 120 Stat. 3027.)

**Editorial Notes**

## REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended. Subtitle E of title IV of the Act is classified generally to subtitle E (§ 1381 et seq.) of subchapter III of chapter 18 of Title 29, Labor. Section 4301 of the Act is classified to section 1451 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

## AMENDMENTS

2006—Pub. L. 109-432 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers.”

**§ 9722. Sham transactions**

If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and such liability shall be imposed) without regard to such transaction.

(Added Pub. L. 102-486, title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3056.)

**Subtitle K—Group Health Plan Requirements**

Chapter	Sec. <sup>1</sup>
100. Group health plan requirements .....	9801

**Editorial Notes**

AMENDMENTS

1997—Pub. L. 105-34, title XV, § 1531(a)(1), Aug. 5, 1997, 111 Stat. 1080, struck out “Portability, Access, and Renewability” before “Requirements” in subtitle heading and made similar change in item for chapter 100.

**CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS**

Subchapter	Sec. <sup>1</sup>
A. Requirements relating to portability, access, and renewability .....	9801
B. Other requirements .....	9811
C. General provisions .....	9831

**Editorial Notes**

AMENDMENTS

1997—Pub. L. 105-34, title XV, § 1531(a)(1), Aug. 5, 1997, 111 Stat. 1080, struck out “PORTABILITY, ACCESS, AND RENEWABILITY” in chapter heading and added analysis for chapter.

**Subchapter A—Requirements Relating to Portability, Access, and Renewability**

Sec.	
9801.	Increased portability through limitation on preexisting condition exclusions.
9802.	Prohibiting discrimination against individual participants and beneficiaries based on health status.
9803.	Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements.
[9804-9806.	Renumbered.]

**Editorial Notes**

AMENDMENTS

1997—Pub. L. 105-34, title XV, § 1531(a)(1), Aug. 5, 1997, 111 Stat. 1081, added subchapter heading and items 9801 to 9803 and struck out former items 9801 “Increased portability through limitation on preexisting condition exclusions”, 9802 “Prohibiting discrimination against individual participants and beneficiaries based on health status”, 9803 “Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements”, 9804 “General exceptions”, 9805 “Definitions”, and 9806 “Regulations”.

**§ 9801. Increased portability through limitation on preexisting condition exclusions**

**(a) Limitation on preexisting condition exclusion period; crediting for periods of previous coverage**

Subject to subsection (d), a group health plan may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if—

- (1) such exclusion relates to a condition (whether physical or mental), regardless of the

<sup>1</sup> Section number editorially supplied.  
<sup>1</sup> Section numbers editorially supplied.

cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;

- (2) such exclusion extends for a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date; and

- (3) the period of any such preexisting condition exclusion is reduced by the length of the aggregate of the periods of creditable coverage (if any) applicable to the participant or beneficiary as of the enrollment date.

**(b) Definitions**

For purposes of this section—

**(1) Preexisting condition exclusion**

**(A) In general**

The term “preexisting condition exclusion” means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

**(B) Treatment of genetic information**

For purposes of this section, genetic information shall not be treated as a condition described in subsection (a)(1) in the absence of a diagnosis of the condition related to such information.

**(2) Enrollment date**

The term “enrollment date” means, with respect to an individual covered under a group health plan, the date of enrollment of the individual in the plan or, if earlier, the first day of the waiting period for such enrollment.

**(3) Late enrollee**

The term “late enrollee” means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during—

- (A) the first period in which the individual is eligible to enroll under the plan, or
- (B) a special enrollment period under subsection (f).

**(4) Waiting period**

The term “waiting period” means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

**(c) Rules relating to crediting previous coverage**

**(1) Creditable coverage defined**

For purposes of this part, the term “creditable coverage” means, with respect to an individual, coverage of the individual under any of the following:

- (A) A group health plan.
- (B) Health insurance coverage.
- (C) Part A or part B of title XVIII of the Social Security Act.
- (D) Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.