Order Code RL31527

Report for Congress
Received through the CRS Web

Genetic Non-Discrimination in Insurance and Employment: Side-by-Side Analysis of Leading Bills of the 107th Congress

Updated January 29, 2003

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Genetic Non-Discrimination in Insurance and Employment: Side-by-Side Analysis of Leading Bills of the 107th Congress

Summary

This report compares current law with provisions of leading House and Senate bills of the 107th Congress that would have limited the use of genetic information with respect to health insurance and employment. Those bills are S. 1995, the Genetic Information Nondiscrimination Act of 2002, sponsored by Senators Snowe, Frist and Jeffords on March 6, 2002 and H.R. 602, the Genetic Nondiscrimination in Health Insurance and Employment Act, introduced by Representative Slaughter February 13, 2001. The companion bill of H.R. 602, S. 318, was introduced by Senator Daschle the same day. The bills would have expanded upon the protections established by the Health Insurance Portability and Affordability Act (HIPAA) and established new protections for workers. Both bills sought to balance the privacy of patients' predictive genetic information (PGI) with the interests of employers and of health insurance companies that use information regarding the health care needs of covered groups so that policies are priced to reflect the costs of the coverage provided. Congressional action in genetic non-discrimination has been identified as a priority for the 108th Congress. The provisions of the leading bills from the 107th Congress are likely to represent a starting point for renewed activity in this area.

Both S. 1995 and H.R. 602/S. 318 would have made it unlawful to discriminate in enrollment into health plans and in setting premiums based on predictive genetic information but H.R. 602/S. 318 was interpreted to be more protective. Both bills would have prohibited insurers in the group market from adjusting a group's premiums based on an individual's genetic information, but only H.R. 602/S. 318 would have prohibited insurers from denying eligibility to a group based on an individual's genetic information. The two bills' health insurance protections also differed in their scope of applicability – H.R. 602/S. 318's provisions would have applied more broadly to supplemental Medicare policies such as Medigap, as well as all state and local government-sponsored plans – and whether confidentiality safeguards and enforcement provisions are included.

Differences in the definition of protected genetic information also extended to the employment provisions as well. Both S. 1995 and H.R. 602/S. 318 would have made it an unlawful employment practice for an employer to discriminate against an individual on the basis of "genetic information" (S. 1995) or "protected genetic information" (H.R. 602/S. 318). Both bills defined these terms as information concerning the genetic tests of individuals or their family members or concerning the occurrence of a disease or disorder in a family member of the individual but the definition of "genetic information" in S. 1995 also required that the information be used "to predict the risk of disease in asymptomatic or undiagnosed individuals." Another difference between the bills is the use of "intent" in S. 1995. For example, the provision limiting the collection of genetic information in S. 1995 would have made it an unlawful employment practice for an employer to "intentionally request, require, or purchase genetic information" while H.R. 602/S. 318 did not require intent and simply prohibited the collection of protected genetic information. This product will not be updated.

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On June 26, 2000, at a special ceremony at the White House, the completion of the "rough draft" of the human genome was announced. This milestone, which has been compared to the discoveries of Galileo, and other advances in genetics have created novel legal issues relating to genetic information.

President Clinton, on February 8, 2000, issued an executive order prohibiting discrimination against federal employees based on protected genetic information. There are currently, however, no federal laws that directly and comprehensively address the issues raised by the use of genetic information.[1] A few laws address parts of these issues. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, is the only federal law that directly addresses the issue of discrimination based on genetic information, albeit not in a comprehensive manner. Its protections are limited to certain situations involving health insurance, including employer-sponsored benefit plans that include health insurance. Under HIPAA's employer group market protections: 1) insurers operating in the small group market may not deny enrollment to most small groups; 2) group plans or insurance issuers may not deny enrollment to an individual enrolling as part of a group based on the individual's health status (which is defined to include genetic information); 3) group plans or insurance issuers may not charge individuals enrolling as part of a group more than others in the group based on health status. However, insurers may charge the entire group more based on the health status of an individual or individuals within the group. In the individual market, federal law permits insurers to set premiums based on an applicant's genetic information, or deny that applicant coverage if he/she is not HIPAA-protected although some states prohibit such activities.

With respect to employment, the Equal Employment Opportunity Commission (EEOC) has argued that the Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 *et seq.*, applies to discrimination based on a genetic trait but there is no case law on this issue and Supreme Court decisions discussing the definition of disability have raised doubts concerning the EEOC's interpretation.[2] Also, it is possible that Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., prohibiting

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[1] There are numerous state statutes. For charts examining the various state statutes see [http://www.ncsl.org/programs/health/genetics/ndiscrim.htm] and [http://www.nhgri.nih.gov/Policy_and_public_affairs/Legislation/workplace.htm].

[2] For a more detailed discussion of this issue and genetic discrimination generally see, CRS Report RL30006, *Genetic Information: Legal Issues Relating to Discrimination and Privacy*, by Nancy Lee Jones.

employment discrimination on the basis of race, sex and national origin, might be applicable to genetic discrimination based on a racially linked trait like sickle cell anemia.

A medical privacy rule, issued on December 20, 2000 by the Department of Health and Human Services, establish safeguards with respect to the use and disclosure of individually identifiable health information, which includes genetic information.[3] Under the rule,[4] health care providers and health plans may share a patient's health information, including genetic information, with the patient's prior consent. Health plan requests for a provider to disclose genetic test results are subject to the rule's minimum necessary standard (i.e., the provider need only disclose the minimum amount of information necessary to satisfy the intended purpose of the request). The privacy rule does not in any way address the use of genetic information by health insurers in making enrollment decisions and setting premiums. The regulation went into effect on April 14, 2001 and since then changes have been proposed.

The chart that follows compares current law with the provisions of the leading House and Senate bills of the 107th Congress that would have limited the use of genetic information with respect to health insurance and employment: S. 1995, the Genetic Information Nondiscrimination Act of 2002, sponsored by Senators Snowe, Frist and Jeffords on March 6, 2002 and H.R. 602, the Genetic Nondiscrimination in Health Insurance and Employment Act, introduced by Representative Slaughter on February 13, 2001. The companion bill of H.R. 602, S. 318, was introduced by Senator Daschle introduced in the Senate on the same day. The bills would have expanded upon the protections that HIPAA offers and established new protections for workers. Both sought to balance the privacy of patients' genetic information with the interests of employers and of health insurance companies that use information regarding the health care needs of covered groups to adequately price their policies to cover the costs of the coverage provided. Congressional action in genetic non-discrimination has been identified as a priority for the 108th Congress. The provisions of the leading bills from the 107th Congress are likely to represent a starting point for renewed activity in this area.

Although there is no current law that directly addresses genetic discrimination in employment, the column described as "current law/comments" includes discussion of related federal statutes and other information. In addition, some of the differences in the bills have been indicated by placing the different words in a bold typeface. For example, this was done when S. 1995 uses the term "intentionally."

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[3] 65 *Federal Register* 82460 (December 20, 2000).

[4] For further information on the rule see CRS Report RS20934, *A Brief Summary of the Medical Privacy Rule*, by Gina Marie Stevens; CRS Report RS20500, *Medical Records Privacy: Questions and Answers on the HIPAA Final Rule*, by Stephen Redhead; and CRS Report RL30620, *Health Information Standards, Privacy, and Security: HIPAA's Administrative Simplification Regulations*, by Stephen Redhead.

Selected Differences Between S. 1995 and H.R. 602/S. 318

Health Insurance

Both S. 1995 and H.R. 602/S. 318 would have extended the protections offered under HIPAA and further limited the use and disclosure of genetic information, but H.R. 602/S. 318 was somewhat more protective. Both bills would have prohibited insurers in the group market from adjusting a group's premiums based on an individual's genetic information, but only H.R. 602/S. 318 would have prohibited insurers from denying eligibility to a group based on an individual's genetic information. In the individual market, both bills would have prohibited insurers from denying enrollment or adjusting an individual's premium based on genetic information.

Both bills included provisions that would have prohibited group plans or issuers from requiring an individual or his or her family member to *undergo a genetic test* and would have only allowed such plans or issuers to request a genetic test if the requestor is a health care professional who is providing health care services to that individual. S. 1995 also allowed individuals acting on behalf of a group health plan or a health insurance issuer to request that a plan enrollee (or a potential enrollee) or his or her family member undergo a genetic test. The agent of the plan or insurer would not, however, have been allowed to require the test.

H.R. 602/S. 318 prohibited insurers from requesting, requiring, collecting, or purchasing *genetic information* without a patient's authorization. S. 1995 included a similar provision but, in addition, included a second provision that appears to contradict the first. The second provision would have allowed insurers to condition their services on the receipt of such information. H.R. 602/S. 318 also prohibited insurers from disclosing genetic information to other plans, employers, etc., without a patient's authorization. There was no comparable provision in S. 1995. Finally, H.R. 602/S. 318 provided individuals with the right to sue, provides for civil penalties, and does not preempt more protective state laws. These provisions did not appear in S. 1995.

An important difference between the health insurance provisions of the two bills concerns how protected genetic information was defined. S. 1995 specified that protected genetic information is genetic information *used to predict risk of disease in asymptomatic or undiagnosed individuals*. Exempted from this definition were physical exams and clinical/ lab tests, including chemical, blood, and urine analysis, performed to detect and diagnose disease. H.R. 602/S. 318 regulated "protected genetic information" which it defined more broadly as genetic tests of family history of disease. While there was no reference to "predictive" genetic information, as in S. 1995, H.R. 602/S. 318 targeted predictive information by excluding from the definition of "protected genetic information" any *information that indicates the current health status of the individual.* The definition in S. 1995 clearly restricted the protection to predictive information, while H.R. 602/S. 318, through its exemptions, may have had the same impact, although the language was not as clear. The insurance industry expressed concerned that the definition in H.R. 602/S. 318

would have been interpreted broadly, preventing genetic information from being used in underwriting health insurance even when a diagnosis of illness has been made.

Finally, the two bills' health insurance protections also differed in their scope of applicability. Both bills' provisions applied to employer-sponsored health plans, health insurers and HMOs, plans sold in the individual market for insurance as well as state and local government sponsored plans, although S. 1995 would have allowed certain state and local government plans to opt out. In addition, the protections of H.R. 602/S. 318 would apply to supplemental Medicare policies such as Medigap plans.

Employment

Both S. 1995 and H.R. 602/S. 318 would have made it an unlawful employment practice for an employer to discriminate against an individual on the basis of "genetic information" (S. 1995) or "protected genetic information" (H.R. 602/S. 318). The two bills, however, contained some significant differences. They defined some terms differently including the terms "genetic information" and "protected genetic information." Both bills defined these terms as information concerning the genetic tests of individuals or their family members or concerning the occurrence of a disease or disorder in a family member of the individual but the definition of "genetic information" in S. 1995 also required that the information "is used to predict the risk of disease in asymptomatic or undiagnosed individuals." The exceptions to these definitions regarding employment are the same as those discussed previously regarding health insurance except that the employment definition in H.R. 602/S. 318 did not specifically include an exception regarding information about physical exams of the individual and other information that indicates the current health status of the individual.

Another difference between the bills was in the use of "intent" in S. 1995. For example, the provision limiting the collection of genetic information in S. 1995 would have made it an unlawful employment practice for an employer to "intentionally request, require, or purchase genetic information" while H.R. 602/S. 318 would not have required intent, thereby prohibiting the collection of protected genetic information. Both bills provided for exceptions to this prohibition. S. 1995 in part excepted genetic monitoring that is required by federal, state, or local law. This exception which has no parallel provision in H.R. 602/S. 318, raised issues about what laws might fit this exception.[5] Another exception contained in S. 1995

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[5] Some state laws specifically allow an employer to require genetic testing. For example, Louisiana statutes provide that "any employer, labor organization, or employment agency may request or require protected genetic information with respect to an applicant who has been given a conditional offer of employment or to an employee if: (a) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder; (b) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and (c) the information will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical

(continued...)

that was not in H.R. 602/S. 318 concerns disparate impact. Under S. 1995, an employer would not have been considered to engage in an unlawful employment practice by applying a qualification standard, test or other selection criteria because of its disparate impact on protected individuals.

The enforcement provisions applicable to the employment sections of S. 1995 and H.R. 602/S. 318 both generally paralleled the enforcement provisions of Title VII of the Civil Rights Act of 1964 but also contained some differences. H.R. 602/S. 318, but not S. 1995, would have given the Equal Employment Opportunities Commission (EEOC) the powers under Section 717 of the Civil Rights Act of 1964 which concern federal employees. S. 1995, but not H.R. 602/S. 318, would have required the promulgation of regulations by the EEOC; H.R. 602/S. 318 allowed for the promulgation of regulations. S. 1995, but not H.R. 602/S. 318, would have specifically amended 42 U.S.C. §1981 to allow for the recovery of compensatory and punitive damages for intentional unlawful employment practices relating to genetic information.

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[5] (...continued)
condition or disorder." LA Rev. Stat. 23:368E. It is not clear whether this type of statute would be covered by the proposed section.

Genetic Discrimination - Health Insurance

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Scope	The Employment Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHSA), and the Internal Revenue Code (IRC) prohibit discrimination based on health status under limited circumstances, and guarantee renewability and availability of plans for certain groups and individuals. All insured and self-insured employer-based plans (ERISA), health insurers and HMOs (PHSA) and church-based plans (IRC) are subject to those rules.	Amends ERISA, PHSA, and, IRC.	Similar to S. 1995, but state and local government plans cannot opt out and includes supplemental Medicare policies such as Medigap plans.
	Federal government plans comply.	Federal government plans comply.	
	Certain state and local government plans can opt out of the group market protections if states' laws provide alternative protections.	Certain state and local government plans can opt out.	

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Enrollment in group plans	Prohibits group plans and issuers in the group market from establishing eligibility rules for an *individual enrolling in a group* plan based on health status (defined to include genetic information). Requires issuers offering coverage in the small group market to accept any small group (guaranteed availability – but allows exceptions).	No provision.	Prohibits health plans or issuers offering coverage in the group market from denying eligibility *to groups* based on predictive genetic information (PGI) concerning an *individual in the group* or a family member. (Sections 101a and 102a)
Enrollment in individual plans	Insurers operating in the individual market must offer (guaranteed availability) coverage *to eligible individuals* (those with prior creditable coverage) and must guarantee renewal for all individuals in the individual market.	Prohibits health insurance issuers offering coverage in the individual market *from using genetic information as a condition of eligibility* (including information about a request or receipt of genetic services).	Prohibits health insurance issuers offering coverage in the individual market *from establishing rules of eligibility* based on predictive genetic information. (Section 102b)
Premiums and contributions in employer group market	Group plans and issuers in the group market cannot charge individuals more or quote higher rates *for individuals in groups* based on health status (defined to include genetic information.)	Prohibits health plans or issuers offering coverage in the group market from adjusting premiums or contribution amounts *for a group* based on genetic information concerning an individual (or a family member) in the group, including information about a request for or receipt of genetic services.	Same as S. 1995. (Sections 101a and 102a)

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Premiums and contributions in individual market	No federal provision. Many states have enacted laws to protect citizens from discrimination based on genetic testing and information, by prohibiting insurers from mandating testing, inquiring about test results or using genetic information to determine insurance rates.	Prohibits health plans or issuers offering coverage in the individual market from adjusting premiums or contribution amounts for an individual based on genetic information concerning the individual (or a family member), including information about a request for or receipt of genetic services.	Same as S. 1995. (Section 102b)

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Collecting predictive genetic information	No provision.	Prohibits group plans or issuers from requiring an individual or family member to undergo a genetic test as well as from requesting or requiring PGI concerning an individual or family member (including information about a request for or receipt of genetic services). Allows an individual who is acting on behalf of a group health plan or health insurance issuer, to request, but not require, that such individual or family member of such individual undergo a genetic test. Allows group plan or issuers to request an individual or family member to disclose or authorize the collection or disclosure of such information if for diagnosis, treatment, or payment relating to the provision of health care items or services for such individual. Such requests shall include a notice of confidentiality safeguards.	Prohibits group plans or issuers from requesting or requiring an individual or family member to undergo a genetic test except for health care professionals who are providing treatment to the individual. Those health care professionals may request but not require such a genetic test. Other differences include 1) prohibits the purchase of PGI, 2) specifies that plans and issuers are prohibited from disclosing PGI to other insurers or plan sponsors, agents, third party administrators or any other entities subject to state insurance laws, any entities that collect such PGI, the individual's employer or plan sponsor or any other person as specified by the Secretary in regulation, 3) does not require inclusion of notice of confidentiality safeguards with requests for PGI, and 4) prohibitions against collection and disclosure do not apply if an individual provides prior, knowing, voluntary and written authorization for such.

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Notice of confidentiality practices	No provision.	Requires group plans or issuers to post or provide in writing, notice of the confidentiality practices including; 1) a description of an individual's rights with respect to PGI, 2) procedures established to ensure those rights, and 3) the right to obtain a copy of the notice on confidentiality practices.	No provision.
Safeguards	No provision.	Requires group plans or issuers (in connection with group plans) to establish and maintain administrative, technical and physical safeguards to protect the confidentiality, security, accuracy and integrity of PGI. Plans or issuers would be deemed in compliance with this requirement if they comply with standards created by the Secretary of HHS.	No provision.

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Definition of genetic information		*Genetic information* – Information concerning the genetic tests of individuals or their family members or concerning the occurrence of a disease or disorder in a family member of the individual that is used to **predict risk of disease in asymptomatic or undiagnosed individuals.**	*Protected genetic information* (PGI) – Information about an individual's genetic tests, or family members of the individual, or information about the occurrence of a disease or disorder in family members. *Genetic information* – Information about genes, gene products, or inherited characteristics that may derive from an individual or a family member of such individual (including about a request for or the receipt of genetic services by such individual or family member of such individual).
		Exceptions – Does not include information about the sex, age of the individual, information derived from clinical and laboratory tests such as chemical, blood, or urine analyses including cholesterol tests, used to determine health status or detect illness or diagnose disease, and information about physical exams of an individual.	Exceptions – PGI does not include information about the sex or age of the individual; information about chemical, blood, or urine analyses of the individual, unless these analyses are genetic tests; about physical exams of the individual, **and other information that indicates the current health status of an individual**.

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Other definitions		*Genetic test:* The analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. Does not include information described in the exceptions to the definition of genetic information. *Genetic services:* health services provided for genetic education and counseling.	*Genetic test:* Similar to S. 1995 but does not include metabolic tests that are not intended to reveal PGI. *Genetic services:* health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes and for genetic education and counseling.

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Effective dates		Effective for plan years beginning 18 months after the date of enactment.	For group plans and issuers offering coverage in connection with a group plan, plan years beginning after October 1, 2002. For collectively bargained agreements ratified before the date of enactment, the latter of the dates when the last agreement terminates or October 1, 2002. For states that require legislation to conform its regulatory program to these standards and do not have a legislature scheduled to meet in 2002, the effective date is the first day of the first calendar quarter after the close of the first legislative session that begins on or after July 1, 2002.
Enforcement	Under current ERISA, claimants can sue employer benefit plans for benefits due and other limited fees. Under current IRC, the Internal Revenue Service can fine a noncomplying employer $100 per day per violation.	No new provision.	Courts may award any appropriate legal or equitable relief and attorney fees in any case in which a plan sponsor, health insurance issuer or any third party acting on behalf of a plan or issuer) violates the aforementioned provisions. Civil penalties in an amount not to exceed $50,000 for a first violation; and $100,000 for any subsequent violation may be awarded. Such penalties would be paid to the general fund of the Treasury.

Provision	Current Law	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Coordination with state laws	Generally, the federal protections do not supersede state laws in those areas relating to health insurance issuers in connection with group plans except to the extent that such laws would prevent the application of the federal laws.	No new provision. Current law preemption provisions would apply.	Does not supercede state laws that more completely protect the confidentiality of genetic information.

Genetic Discrimination - Employment

Provision	Current Law/Comments	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
Definitions		*Commission* means the Equal Employment Opportunity Commission.	
	Section 717 of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16, concerns employment by the federal government.	*Employee, employer, employment agency, and labor organization* have the meanings given in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. §2000e). *Employee and member* as used with respect to a labor organization include an applicant for employment and an applicant for membership in a labor organization respectively.	Same as S. 1995 except that the terms employee and employer shall also include the meanings given those terms in Section 717 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-16).
		Family Member means spouse, dependant child who is born to or placed for adoption with the individual and all other individuals related by blood to the individual or the spouse or the dependant child.	Same as S. 1995.
		Genetic information – Information concerning the genetic tests of individuals or their family members or concerning the occurrence of a disease or disorder in a family member of the individual **and that is used to predict the risk of disease in asymptomatic or undiagnosed individuals.**	*Protected Genetic Information* – Information concerning the genetic tests of individuals or their family members or concerning the occurrence of a disease or disorder in a family member of the individual.

Provision	Current Law/Comments	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
		Exceptions – Does not include information about the sex or age of the individual, information derived from clinical and laboratory tests such as the chemical, blood, or urine analyses of the individual including cholesterol tests, **used to determine health status or detect illness or diagnose disease, and information about physical exams of the individual.**	Exceptions – Does not include information about the sex or age of the individual, information about chemical, blood, or urine analyses of individuals, **unless these analyses are genetic tests.** (Section 202)
		Genetic Monitoring – The term genetic monitoring means the periodic examination of employees to evaluate acquired modifications to their genetic material that may have developed in the course of employment due to exposure to toxic substances in the workplace in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.	Same as S. 1995.
		Genetic Services – Genetic services means health services provided for genetic education and counseling.	*Genetic Services* – Genetic services means health services, **including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes**, and for genetic education and counseling.

Provision	Current Law/Comments	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
		Genetic Test – Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. It does not include information described in the exceptions to the definition of genetic information. (Section 201)	*Genetic Test* – Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes except that the conducting of metabolic tests that are not intended to reveal protected genetic information shall not be considered to be a violation of §§203(a)(3), 204(3), 205(3), or 206(3) regardless of the results of the tests. Test results that are protected genetic information shall be subject to the applicable provisions of this title. (Section 201)
Employer practices	The language in the bills parallels that in Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2. The language in the ADA is somewhat similar but is more detailed, including, for example, a requirement for the provision of reasonable accommodations. See 42 U.S.C. §12112.	*Use of Genetic Information* – It shall be an unlawful employment practice for an employer to (1) fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or (2) limit, segregate, or classify the employees of the	*In General* – Same as S. 1995 except where S. 1995 references "genetic information", H.R. 602/S. 318 references "protected genetic information."

Provision	Current Law/Comments	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
		employer in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).	
	Regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA) provide detailed privacy protections and prohibit companies that sponsor health plans from accessing personal health information for employment purposes unless the patient consents. See 65 *Federal Register* 82461 (December 20, 2000). However, on March 27, 2002, the Department of Health and Human Resources proposed changes to this rule that removed certain provisions requiring consent. See [http://www.hhs.gov/ocr/hipaa] For a more detailed discussion of privacy issues generally see: CRS Report RS20500, *Medical Records Privacy: Questions and Answers on the December 2000 Federal*	*Limitation on the Collection of Genetic Information* – It shall be an unlawful employment practice for an employer to **intentionally** request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family of such employee) except (1) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if (A) the employer provides written notice of the genetic monitoring to the employee, (B) the employee provides prior, knowing, voluntary, and written authorization or the genetic	*Restriction on the Collection of Genetic Information* – It shall be an unlawful employment practice for an employer to request, require, **collect** or purchase **protected** genetic information with respect to an individual or a family member of the individual except (A) where used for genetic monitoring of biological effects of toxic substances in the workplace, but only if (i) the employee has provided prior, knowing, voluntary and written authorization, (ii) the employee is informed of individual monitoring results, (iii) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor under the Occupational Safety and Health Act (OSHA) or the Federal Mine Safety and Health

Provision	Current Law/Comments	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
	Regulations, by Stephen Redhead and CRS Report RS20934, *A Brief Summary of the Medical Privacy Rule*, by Gina Marie Stevens.	monitoring is required by **federal, state or local law,** (C) the employee is informed of individual monitoring results, (D) the monitoring conforms to any **federal or state genetic** monitoring regulations including any regulations that may be promulgated by the Secretary of Labor under the Occupational Safety and Health Act (OSHA) or the Federal Mine Safety and Health Act; and (E) the employer, except for a licensed health care professional who is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees; (2) where health or genetic services are offered by the employer, the employee provides prior, knowing, voluntary, and written authorization and only the employee or family member and the licensed or certified heath care professionals involved in providing such services receive individually identifiable information concerning the results of such services; or (3) where the request or requirement is necessary to comply with federal, state, or local law. The protected	Act, and (iv) the employer, except for a licensed health care professional who is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees; or (B) where health or genetic services are offered by the employer and the employee provides prior, knowing, voluntary, and written authorization, and only the employee or family member of such employee receives the results; or (C) with respect to an applicant who has been given a conditional offer of employment or to an employee, an employer may request, require, collect or purchase the protected genetic information if (i) the request is consistent with the Americans with Disabilities Act (ADA) or the Rehabilitation Act, (ii) the information obtained is to be used solely to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, and such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position desired to be held; and (iii) the

Provision	Current Law/Comments	S. 1995: Genetic Information Nondiscrimination Act of 2002	H.R. 602/S. 318: Genetic Nondiscrimination in Health Insurance and Employment Act
		genetic information which may be obtained in this manner may not be used to violate the prohibitions of unlawful employment practices.	information described in such section will not be disclosed to persons other than certain medical personnel. The protected genetic information which may be obtained in this manner may not be used to violate the prohibitions of unlawful employment practices.
	Disparate Impact – The Supreme Court first enunciated the concept of disparate impact in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), where the Court found that Title VII of the Civil Rights Act of 1964 prohibited not only overt discrimination but also practices that are discriminatory in operation. This concept was codified by the Civil Rights Act of 1991, P.L. 102-166, which amended 42 U.S.C. §2000e-2 to include a new subsection (k) regarding disparate impact. The ADA provides that the powers and remedies provided under Title VII also apply to the ADA. However, disparate impact may not be applied to other statutes such as the Age Discrimination in Employment Act (ADEA). The Supreme Court granted *certiorari* and heard oral argument in *Adams v. Florida Power Corp.*, No 01-584, to determine this issue but	*Exception* – An employer shall not be considered to engage in an unlawful employment practice because of its **disparate impact**, on the basis that the employer applies a qualification standard, test, or other selection criterion that screens out or tends to screen out an individual if the selection criterion has been shown to be job-related and consistent with business necessity. The qualification standard may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.	No comparable provision.

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	dismissed the case on April 1, 2002 as "improvidently granted." The federal judicial circuits are currently split concerning whether disparate impact may be applied to the ADEA.	*Rule of Construction Relating to Group Health Plans* – A group health plan is not prohibited from making a request regarding the collection of genetic information if the request is consistent with provisions of ERISA, the Public Health Services Act, and the Internal Revenue Code. (Section 202)	No comparable provision. (Section 203)
Employment agency practices	These provisions generally track those in §703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2.	*Use of Genetic Information* – It shall be an unlawful employment practice for an employment agency (1) to fail or refuse to refer for employment, or otherwise discriminate against any individual because of genetic information with respect to the individual or because of information about a request for genetic services by the individual or family member or the receipt of genetic services by a family member, or (2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any	*Unlawful Employment Practices* – Same as S. 1995 except H.R. 602/S. 318 uses the term "protected genetic information" instead of "genetic information."

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		individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee because of genetic information with respect to the individual or because of information about a request for genetic services by the individual or family member or the receipt of genetic services by a family member.	
	See comments above concerning the collection of genetic information under employer practices.	*Limitation on the Collection of Genetic Information* – It shall be an unlawful employment practice for an employment agency to **intentionally** request, require, or purchase genetic information with respect to an **employee** or family member of the employee, or information about a request for or the receipt of genetic services by such **employee** or family member of such **employee** except that the provisions of Section 202(b) (limitation on the collection of genetic information by employers) shall apply with respect to employment agencies and employees (and their family members) in the same manner and to the same extent as such provisions apply to employers and	*Collection of Genetic Information* - It shall be an unlawful employment practice for an employment agency to request, require, **collect** or purchase **protected** genetic information with respect to an **individual**, or information about a request for or the receipt of genetic services by such **individual** or family member of such **individual**.

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		employees (and the family members of employees). *Causing Employer Discrimination* It shall be an unlawful employment practice for an employment agency to cause or attempt to cause an employer to discriminate against an individual in violation of this title.	 *Causing Employer Discrimination* Same as S. 1995.
	Section 202(d) of S. 1995 provides an exception to unlawful employment practices concerning disparate impact.	*Limitation and Exception* – Subsections (c) and (d) of Section 202 shall apply with respect to employment agencies and employees (and the family members of the employees) under this section like those provisions apply to employers and employees (and the family members of employees) under Section 202. (Section 203)	No comparable provision (Section 204)
Labor organization practices	These provisions generally track those in §703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2.	*Use of Genetic Information* – It shall be an unlawful employment practice for a labor organization to exclude or to expel from membership of the organization, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such	*Unlawful Employment Practices* – Same as S. 1995 except H.R. 602/S. 318 uses the term "protected genetic information" instead of "genetic information."

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		individual or family member of such an individual); or to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).	
	See comments above concerning the collection of genetic information under employer practices.	*Limitation on the Collection of Genetic Information* – It shall be an unlawful employment practice for a labor organization to **intentionally** request, require, or purchase genetic information with respect to an individual **who is a member of a labor organization** or a family member of the individual, or information about a request for or the receipt of genetic services by such individual or family member of such individual except that the provisions of Section 202(b) (limitation on the collection of genetic information by employers)	*Collection of Genetic Information* - It shall be an unlawful employment practice for a labor organization to request, require, **collect** or purchase **protected** genetic information with respect to an individual or information about a request for or the receipt of genetic services by such individual or family member of such individual.

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		shall apply with respect to labor organizations and such individuals (and their family members) in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of employees).	
		Causing Employer Discrimination It shall be an unlawful employment practice for a labor organization to cause or attempt to cause an employer to discriminate against an individual in violation of this title.	*Causing Employer Discrimination* Same as S. 1995.
	Section 202(d) of S. 1995 provides an exception to unlawful employment practices concerning disparate impact.	*Limitation and Exception* – Subsections (c) and (d) of Section 202 shall apply with respect to labor organizations and individuals who are members of labor organizations (and the family members of such individuals) under this section like those provisions apply to employers and employees (and the family members of employees) under Section 202.	No comparable provision.
		(Section 204)	(Section 205)
Training programs	These provisions generally track those in §703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2.	*Use of Genetic Information* – It shall be an unlawful employment practice for any employer, labor organization, or joint labor-	*Unlawful Employment Practices* – It shall be an unlawful employment practice for any employer, labor organization, or joint labor-

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		management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual **or a family member of such individual)** in admission to, or employment in, any program established to provide apprenticeship or other training or retraining; or to limit, segregate, or classify **the applicants for or participants in such apprenticeship or other training or retraining**, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual.)	management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of **protected** genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining; or to limit, segregate, or classify the **members of the organization,** or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, **or would limit the employment opportunities,** or otherwise adversely affect the status of the individual as an employee, because of **protected** genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual.)

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	See comments above concerning the collection of genetic information under employer practices.	*Limitation on the Collection of Genetic Information* – It shall be an unlawful employment practice for an employer, labor organization or joint labor-management committee to **intentionally** request, require, or purchase genetic information with respect to an individual **who is an applicant for or a participant in such apprenticeship or other training or retraining,** or information about a request for or the receipt of genetic services by such individual or family member of such individual except that the provisions of Section 202(b) (limitation on the collection of genetic information by employers) shall apply with respect to such employers, labor organizations, and joint labor-management committees and to such individuals (and their family members) in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of employees). *Causing Employer Discrimination* It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management	*Collection of Genetic Information* – It shall be an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training to request, require, **collect** or purchase **protected** genetic information with respect to an individual or information about a request for or the receipt of genetic services by such individual or family member of such individual. *Causing Employer Discrimination* It shall be an unlawful employment practice for any employer, labor organization or joint labor-management committee controlling

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		committee controlling apprenticeship or other training or retraining, including on-the-job training to cause or attempt to cause an employer to discriminate **against an applicant for or a participant in such apprenticeship or other training** in violation of this title.	apprenticeship or other training or retraining, including on-the-job training to cause or attempt to cause an employer to discriminate **against an individual** in violation of this title.
	Section 202(d) of S. 1995 provides an exception to unlawful employment practices concerning disparate impact.	*Limitation and Exception* – Subsections (c) and (d) of Section 202 shall apply with respect to employers, labor organizations or joint labor-management committees and to individuals who are applicants for or participants in apprenticeships or other training or retraining (and the family members of such individuals) under this section like those provisions apply to employers and employees (and the family members of employees) under Section 202. (Section 205)	No comparable provision (Section 206)
Confidentiality of genetic information	See comments above concerning the collection of genetic information under employer practices.	*Confidentiality of Genetic Information* – If an employer, **employment agency, labor organization, or joint labor-management committee** possesses genetic information about an employee **or member** (or	*Maintenance of Protected Genetic Information* – If an employer, possesses **protected** genetic information about an employee or (or information about a request for or receipt of genetic services by such employee or family member

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		information about a request for or receipt of genetic services by such employee **or member** or family member of such employee or **member**), such information shall be treated and maintained as part of the employee's or **member's** confidential files.	of such employee), such information shall be treated and maintained as part of the employee's confidential files.
		Limitation on Disclosure – An employer, **employment agency, labor organization, or joint labor-management committee** shall not disclose genetic information concerning an employee or **member** (or information about a request for or receipt of genetic information by such employee or **member** or family member of such employee or **member**) except (A) to the employee (or family member if the family member is receiving the genetic services) or **member at the request of the employee or member;** (B) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided under 45 C.F.R. Part 46 (HHS policy regarding the protection of human research subjects) **or any corresponding similar regulation or rule;** (C) under	*Disclosure of Protected Genetic Information* – An employer shall not disclose **protected** genetic information (or information about a request for or receipt of genetic services by such employee or family member of such employee) except (1) to the employee who is the subject of the information at the request of the employee; (2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided under 45 C.F.R. Part 46; (3) under legal compulsion of a federal court order, except that if the court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the court order **unless the court order also imposes confidentiality requirements**; (4) to government officials who are

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		legal compulsion of a federal **or state** court order, except that if the court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the court order; (D) to government officials who are investigating compliance with this **title** if the information is relevant to the investigation; (E) to the extent that such disclosure is necessary to comply with federal, state or local law; and (F) as otherwise provided for in this title.	investigating compliance with this **act** if the information is relevant to the investigation.
		Rule of Construction Relating to Group Health Plans – Nothing in this section shall be construed to prohibit a group health plan (as such term is defined in Section 733(a) or ERISA, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, from using or PGI if such use of disclosure is consistent with the provisions of Part 7 of subtitle B of Title I of ERISA, Title XXVII of the Public Health Service Act, and Chapter 100 of the Internal Revenue Code of 1986 (limitations on the use of genetic information by employer based	No comparable provision.

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		health plans and health insurance issuers.) (Section 206)	 (Section 207)
Enforcement/Civil Actions	The enforcement sections of the two bills generally parallel the enforcement provisions of Title VII of the Civil Rights Act of 1964. The ADA also referenced the Title VII provisions regarding enforcement for Title I of the ADA relating to employment. Generally, Title VII of the Civil Rights Act of 1964 authorizes compensatory and punitive damages in cases involving unlawful intentional discrimination but does not provide for damages in disparate impact cases, 42 U.S.C. §§2000e-4, 2000e-5, 2000e-6, 2000e-8 and 2000e-9 (Sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964). P.L. 102-166, the Civil Rights Act of 1991, authorized compensatory and punitive damages in cases of intentional discrimination. 42 U.S.C. §1981a(a)(1). Like Title VII, plaintiffs under Title I of the ADA are required to exhaust administrative remedies. The addition of compensatory and punitive damages made by the Civil Rights Act of 1991 was made	*Enforcement* No comparable provision *Enforcement* – The powers, remedies, and procedures set forth in Sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 shall be the powers, remedies, and procedures that this title provides to the Commission, **to the Attorney General, or to any person alleging an unlawful employment practice in violation of Section 202 (other than subsection (e) of such Section, 203, 204, 205, or 206(a) or the regulations promulgated under Section 210 concerning employment.** (Section 207)	*Civil Action In General* – One or more employees, members of a labor organization, or participants in training programs or a labor organization may bring an action in a federal or state court of competent jurisdiction against an employer, employment agency, labor organization, or joint labor-management committee or training program who commits a violation of this title. *Enforcement by the Equal Employment Opportunity Commission – In general.* The powers, remedies, and procedures set forth in Sections 705, 706, 707, 709, and 710 **and 717** of the Civil Rights Act of 1964 shall be the powers, remedies, and procedures **provided to the Equal Employment Opportunity Commission to enforce this title.** (Section 208)

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	specifically applicable to the ADA and there is a provision not allowing damages where the covered entity demonstrates good faith efforts, in consultation with the person with a disability, regarding a reasonable accommodation. 42 U.S.C. §1981a(a)(3). There are also caps for the sum total of compensatory and punitive damages depending on the workforce size of the employer. 42 U.S.C. §1981a(b)(3). Punitive damages are specifically not allowed for a government, government agency or political subdivision. 42 U.S.C. §1981a(b)(1). Section 717 of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16, concerns employment by the federal government and is referenced by H.R. 602/S. 318 but not S. 1995. The ADA section requiring the promulgation of regulations regarding employment discrimination by the EEOC contains a specific requirement for the regulations to be in an accessible format.		

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		Regulations – Not later than one year after the date of enactment of this title, the Commission **shall** issue final regulations **in an accessible format** to carry out this title. (Section 210)	*Regulations* – The Commission **may** promulgate regulations to implement these powers, remedies and procedures. (Section 208)
		No comparable provision.	*Exhaustion of Remedies* – Nothing in this subsection shall be construed to require that an individual exhaust the administrative remedies available through the EEOC prior to commencing a civil action under this section, except that if an individual files a charge of discrimination with the Commission that alleges a violation of this title, the individual shall exhaust the administrative remedies available through the Commission prior to commencing a civil action under this section.
		No comparable provision.	*Remedy* – A federal or state court may award any appropriate legal or equitable relief under this section. Such relief may include a requirement for the payment of attorneys' fees and costs, including the cost of experts. (Section 208)

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Amendment to the revised statutes		*Right of Recovery* – 42 U.S.C. §1981a(a) is amended by adding at the end: (4) Genetic information – In an action brought by a complaining party under the powers, remedies, and procedures set forth in Section 706 of the Civil Rights Act of 1964 as authorized under Section 207 of this act, against a respondent who is engaging (or who has engaged) in an **intentional** unlawful employment practice prohibited by Section 202 (other than subsection (e) of such Section), 203, 204, 205, or 206(a) of this act against an individual (other than an action involving an employment practice that is allegedly unlawful because of its disparate impact), **the complaining party may recover compensatory and punitive damages as permitted under subsection (b)**, in addition to any relief otherwise provided for under Section 706(g) of the Civil Rights Act of 1964 from the respondent. Conforming amendments to 42 U.S.C. §1981 are added. (Section 208)	No comparable provision.

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Construction		Nothing in this title shall be construed to (1) limit the rights or protections of an individual under the Americans with Disabilities Act, including coverage afforded to individuals under Section 102 of such act, or under the Rehabilitation Act of 1973, **except that an individual may not bring an action against an employer, employment agency, labor organization, or joint labor-management committee pursuant to this title and also pursuant to the ADA or the Rehabilitation Act of 1973 if the actions are predicated on the same facts or a common occurrence; (2) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title, except that an individual may not bring an action against such an employer, employment agency, labor organization, or joint labor-management committee, with respect to a group health plan or a health insurance issuer offering health insurance coverage in connection with a**	Nothing in this title shall be construed to (1) limit the rights or protections of an individual under the Americans with Disabilities Act, including coverage afforded to individuals under Section 102 of such act; (2) limit the rights or protections of an individual under the Rehabilitation Act of 1973; (3) limit the rights or protections of an individual under any other federal or state statute that provides equal or greater protection to an individual than the rights or protections provided for under this act; (4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains; or (5) limit the statutory or regulatory authority of the Occupational Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

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		group health plan, under this title if the action is based on a violation of a provision of the amendments made by Title I; (3) limit the rights or protections of an individual under any other federal or state statute that provides equal or greater protection to an individual than the rights or protections provided for under this **title**; (4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains; **(5) limit the authority of a federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in 45 C.F.R. Part 46 (or any corresponding or similar regulation or rule);** and (6) limit the statutory or regulatory authority of the Occupational Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations. 45 C.F.R. Part 46 sets forth the HHS policy regarding the protection of human research subjects. (Section 209)	(Section 209)

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Severability		If any provision of this **title**, an amendment made by this **title**, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this **title**, the amendments made by this **title**, and the application of such provisions to any person or circumstance shall not be affected thereby. (Section 211)	If any provision of this **act,** an amendment made by this **act**, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this **act**, the amendments made by this **act**, and the application of such provisions to any person or circumstance shall not be affected thereby. (Section 301)
Authorization of Appropriations		There are authorized to be appropriated such sums as may be necessary to carry out this title. (Section 212)	Same as S. 1995. (Section 210)
Effective Date		This title takes effect on the date that is 18 months after the enactment of the act; however, no enforcement action shall be commenced under Section 207 until the date on which the Commission issues final regulations under Section 210. (Section 213)	This title shall become effective on October 1, 2002. (Section 211)