

111TH CONGRESS
1ST SESSION

H. R. 1558

To amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit preexisting condition exclusions in group health plans and health insurance coverage in the group and individual markets.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2009

Mr. COURTNEY (for himself, Mr. SCHIFF, Mrs. CAPPS, Ms. DELAURO, Ms. CLARKE, Mr. LANGEVIN, Ms. SCHAKOWSKY, Ms. SCHWARTZ, Mr. MASSA, Ms. BALDWIN, Ms. ROS-LEHTINEN, Ms. PINGREE of Maine, and Mrs. DAVIS of California) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit preexisting condition exclusions in group health plans and health insurance coverage in the group and individual markets.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Preexisting Condition
3 Patient Protection Act of 2009”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds as follows:

6 (1) According to the United States Census Bu-
7 reau, 45.7 million people were uninsured in 2007.

8 (2) According to a recent study by the Com-
9 monwealth Fund, the number of underinsured adults
10 aged 19 to 64 has jumped 60 percent over the last
11 4 years, from 16,000,000 in 2003 to 25,000,000 in
12 2007.

13 (3) According to the Centers for Disease Con-
14 trol and Prevention (CDC), approximately 45 per-
15 cent of Americans have at least one chronic condi-
16 tion.

17 (4) Forty-four States currently allow insurance
18 companies to deny coverage for, limit coverage for,
19 or charge increased premiums for a preexisting con-
20 dition.

21 (5) Over 26 million people were enrolled in pri-
22 vate individual market health plans in 2007. Under
23 the Health Insurance Portability and Accountability
24 Act of 1996 (HIPAA), these individuals have no
25 protections against pre-existing condition exclusions
26 or waiting periods.

1 (6) When a child or adult has a 63-day gap in
2 insurance coverage, pre-existing condition exclusions,
3 such as limiting coverage or instituting a waiting pe-
4 riod, can be placed on them when they become in-
5 sured under a new health insurance policy.

6 (7) Eliminating pre-existing condition exclu-
7 sions for all is a vital safeguard to ensuring that all
8 Americans have access to health care when in need.

9 (8) According to a Kaiser Family Foundation/
10 Harvard School of Public Health public opinion poll,
11 58 percent of Americans strongly favor the Federal
12 Government requiring health insurance companies to
13 cover anyone who applies for health coverage, even
14 if they have a prior illness.

15 **SEC. 3. AMENDMENTS RELATING TO PREEXISTING CONDI-**
16 **TION EXCLUSIONS UNDER GROUP HEALTH**
17 **PLANS.**

18 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
19 INCOME SECURITY ACT OF 1974.—

20 (1) ELIMINATION OF PREEXISTING CONDITION
21 EXCLUSIONS.—Section 701 of the Employee Retire-
22 ment Income Security Act of 1974 (29 U.S.C. 1181)
23 is amended—

1 (A) by amending the heading to read as
2 follows: “**ELIMINATION OF PREEXISTING**
3 **CONDITION EXCLUSIONS**”;

4 (B) by amending subsection (a) to read as
5 follows:

6 “(a) IN GENERAL.—A group health plan, and a
7 health insurance issuer offering group health insurance
8 coverage, with respect to a participant or beneficiary—

9 “(1) may not impose any preexisting condition
10 exclusion; and

11 “(2) in the case of a group health plan that of-
12 fers medical care through health insurance coverage
13 offered by a health maintenance organization, may
14 not provide for an affiliation period with respect to
15 coverage through the organization.”;

16 (C) in subsection (b), by striking para-
17 graph (3) and inserting the following:

18 “(3) AFFILIATION PERIOD.—The term ‘affili-
19 ation period’ means a period which, under the terms
20 of the health insurance coverage offered by the
21 health maintenance organization, must expire before
22 the health insurance coverage becomes effective.”;

23 (D) by striking subsections (c), (d), (e),
24 and (g); and

1 (E) by redesignating subsection (f) (relat-
2 ing to special enrollment periods) as subsection
3 (e).

4 (2) CLERICAL AMENDMENT.—The item in the
5 table of contents of such Act relating to section 701
6 is amended to read as follows:

“Sec. 701. Elimination of preexisting condition exclusions.”.

7 (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE
8 ACT.—

9 (1) IN GENERAL.—Section 2701 of the Public
10 Health Service Act (42 U.S.C. 300gg) is amended—

11 (A) by amending the heading to read as
12 follows: “**ELIMINATION OF PREEXISTING**
13 **CONDITION EXCLUSIONS**”;

14 (B) by amending subsection (a) to read as
15 follows:

16 “(a) IN GENERAL.—A group health plan, and a
17 health insurance issuer offering group health insurance
18 coverage, with respect to a participant or beneficiary—

19 “(1) may not impose any preexisting condition
20 exclusion; and

21 “(2) in the case of a group health plan that of-
22 fers medical care through health insurance coverage
23 offered by a health maintenance organization, may
24 not provide for an affiliation period with respect to
25 coverage through the organization.”;

1 (C) in subsection (b), by striking para-
2 graph (3) and inserting the following:

3 “(3) AFFILIATION PERIOD.—The term ‘affili-
4 ation period’ means a period which, under the terms
5 of the health insurance coverage offered by the
6 health maintenance organization, must expire before
7 the health insurance coverage becomes effective.”;

8 (D) by striking subsections (c), (d), (e),
9 and (g); and

10 (E) by redesignating subsection (f) (relat-
11 ing to special enrollment periods) as subsection
12 (c).

13 (2) TECHNICAL AMENDMENTS RELATING TO
14 EMPLOYER SIZE.—Section 2711 of such Act (42
15 U.S.C. 300gg-11) is amended—

16 (A) in subsection (a)—

17 (i) in the heading, by striking
18 “SMALL”;

19 (ii) in paragraph (1)—

20 (I) in the matter before subpara-
21 graph (A), by striking “(c) through
22 (f)” and inserting “(b) through (d)”
23 and by striking “small”; and

24 (II) in subparagraph (A), by
25 striking “small employer (as defined

1 in section 2791(e)(4))” and inserting
2 “employer”; and

3 (iii) in paragraph (2)—

4 (I) by striking “small” each place
5 it appears; and

6 (II) by striking “coverage to a”
7 and inserting “coverage to an”;

8 (B) by striking subsection (b);

9 (C) in subsections (c), (d), and (e), by
10 striking “small” each place it appears; and

11 (D) by striking subsection (f).

12 (c) AMENDMENTS TO THE INTERNAL REVENUE
13 CODE OF 1986.—

14 (1) ELIMINATION OF PREEXISTING CONDITION
15 EXCLUSIONS.—Section 9801 of the Internal Revenue
16 Code of 1986 is amended—

17 (A) by amending the heading to read as
18 follows: “**ELIMINATION OF PREEXISTING**
19 **CONDITION EXCLUSIONS**”;

20 (B) by amending subsection (a) to read as
21 follows:

22 “(a) IN GENERAL.—A group health plan with respect
23 to a participant or beneficiary may not impose any pre-
24 existing condition exclusion.”;

1 (C) by striking paragraph (3) of subsection
2 (b);
3 (D) by striking subsections (c), (d), and
4 (e); and
5 (E) by redesignating subsection (f) (relat-
6 ing to special enrollment periods) as subsection
7 (c).

8 (2) CLERICAL AMENDMENT.—The item in the
9 table of sections of chapter 100 of such Code relat-
10 ing to section 9801 is amended to read as follows:

“Sec. 9801. Elimination of preexisting condition exclusions.”.

11 (d) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), the amendments made by this section
14 shall apply with respect to group health plans for
15 plan years beginning after the end of the 12th cal-
16 endar month following the date of the enactment of
17 this Act.

18 (2) SPECIAL RULE FOR COLLECTIVE BAR-
19 GAINING AGREEMENTS.—In the case of a group
20 health plan maintained pursuant to one or more col-
21 lective bargaining agreements between employee rep-
22 resentatives and one or more employers ratified be-
23 fore the date of the enactment of this Act, the
24 amendments made by this section shall not apply to
25 plan years beginning before the later of—

1 (A) the date on which the last of the col-
2 lective bargaining agreements relating to the
3 plan terminates (determined without regard to
4 any extension thereof agreed to after the date
5 of the enactment of this Act), or

6 (B) the date that is after the end of the
7 12th calendar month following the date of the
8 enactment of this Act.

9 For purposes of subparagraph (A), any plan amend-
10 ment made pursuant to a collective bargaining
11 agreement relating to the plan which amends the
12 plan solely to conform to any requirement added by
13 the amendments made by this section shall not be
14 treated as a termination of such collective bar-
15 gaining agreement.

16 **SEC. 4. PROHIBITION OF PREEXISTING CONDITION EXCLU-**
17 **SIONS IN HEALTH INSURANCE COVERAGE IN**
18 **THE INDIVIDUAL MARKET.**

19 (a) IN GENERAL.—Section 2741 of the Public Health
20 Service Act (42 U.S.C. 300gg–41) is amended—

21 (1) in subsection (a)(1), by striking “with re-
22 spect to an eligible individual” and all that follows
23 and inserting the following: “with respect to—

24 “(A) an eligible individual (as defined in
25 subsection (b)) desiring to enroll in individual

1 health insurance coverage decline to offer such
2 coverage to, or deny enrollment of, such indi-
3 vidual; and

4 “(B) any individual desiring to enroll in
5 such coverage impose any preexisting condition
6 exclusion (as defined in section 2701(b)(1)(A))
7 with respect to such coverage.”; and

8 (2) in subsection (a)(2), by striking “paragraph
9 (1)” and inserting “paragraph (1)(A)”.

10 (b) **EFFECTIVE DATE.**—The amendments made by
11 this section shall apply with respect to health insurance
12 coverage offered, sold, issued, renewed, in effect, or oper-
13 ated in the individual market on or after the end of the
14 12th month following the date of the enactment of this
15 Act.

16 **SEC. 5. TRANSPARENCY IN CLAIMS DATA.**

17 (a) **IN GENERAL.**—Not later than 2 years after the
18 date of the enactment of this Act, the Secretary of Health
19 and Human Services shall submit to Congress a report
20 on the impact of this Act on health benefits coverage.

21 (b) **EXAMINATION OF CLAIMS EXPERIENCE AND**
22 **OTHER DATA.**—In preparing the report under subsection
23 (a), the Secretary may request from group health plans
24 and health insurance issuers—

1 (1) data on claims experience under the plan or
2 health insurance coverage issued by such issuers,
3 such as the number, nature, and dollar amount of
4 claims made by enrollees during the period involved;

5 (2) data relating to enrollees in the plan or
6 under such coverage, such as number of new enroll-
7 ees, number of individuals reenrolling (or dis-
8 continuing enrollment) after the first year of cov-
9 erage, and changes in the demographic composition
10 of enrollees; and

11 (3) such other information as the Secretary
12 deems appropriate.

13 The provisions of section 2722(b) of the Public Health
14 Service Act shall apply to a failure of a group health plan
15 or health insurance issuer to provide data or information
16 requested by the Secretary under this subsection in the
17 same manner as such provisions apply to the enforcement
18 of a provision of part A of title XXVIII of such Act, except
19 that any reference to an individual in paragraph (1)(C)(i)
20 of such section shall be deemed for this purpose a ref-
21 erence to a covered life under the plan or health insurance
22 coverage involved.

23 **SEC. 6. GAO REPORT.**

24 Not later than 1 year after the date of the enactment
25 of this Act, the Comptroller General of the United States

1 shall submit to Congress a report on the impact of this
2 Act (and other Federal laws regarding the regulation of
3 health insurance and health benefits coverage) on the re-
4 duction in the number of uninsured and underinsured in-
5 dividuals in the group market and the individual market
6 and on the affordability of coverage in such markets.

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