

110TH CONGRESS
2D SESSION

H. R. 5449

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual health insurance coverage.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2008

Mr. KAGEN (for himself, Mr. BRALEY of Iowa, Mr. PERLMUTTER, Mr. COHEN, Mr. MCNERNEY, Ms. CASTOR, Mr. WALZ of Minnesota, Mr. JOHNSON of Georgia, Mr. GRJALVA, Ms. HIRONO, Mrs. NAPOLITANO, Ms. SUTTON, Ms. CLARKE, Mr. CONYERS, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, 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 the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual health insurance coverage.

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; PURPOSE.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “No Discrimination in Health Insurance Act of 2008”.

4 (b) **PURPOSE.**—It is the purpose of this Act to—

5 (1) eliminate the application of pre-existing con-
6 dition exclusions in all group health coverage policies
7 and all individual health insurance policies; and

8 (2) provide that all health insurance issuers de-
9 termine and openly disclose the premium price for
10 each and every group health insurance policy and
11 each and every individual health insurance policy,
12 such that within a specific metropolitan statistical
13 area, or other geographic area, all such premiums
14 and prices established by a given issuer shall be uni-
15 form.

16 **SEC. 2. NONDISCRIMINATION IN GROUP HEALTH COV-**
17 **ERAGE.**

18 (a) **APPLICATION UNDER THE EMPLOYEE RETIRE-**
19 **MENT 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—

24 (A) by amending the heading to read as
25 follows: “**ELIMINATION OF PREEXISTING**
26 **CONDITION EXCLUSIONS**”;

1 (B) by amending subsection (a) to read as
2 follows:

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

6 “(1) may not impose any pre-existing condition
7 exclusion; and

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

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

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

20 (D) by striking subsections (c), (d), (e),
21 and (g); and

22 (E) by redesignating subsection (f) (relat-
23 ing to special enrollment periods) as subsection
24 (c).

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

“Sec. 701. Elimination of pre-existing condition exclusions.”.

4 (b) APPLICATION UNDER THE INTERNAL REVENUE
5 CODE OF 1986.—

6 (1) ELIMINATION OF PREEXISTING CONDITION
7 EXCLUSIONS.—Section 9801 of the Internal Revenue
8 Code of 1986 is amended—

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

12 (B) by amending subsection (a) to read as
13 follows:

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

17 (C) by striking paragraph (3) of subsection
18 (b);

19 (D) by striking subsections (c), (d), and
20 (e); and

21 (E) by redesignating subsection (f) (relat-
22 ing to special enrollment periods) as subsection
23 (c).

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

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

4 (c) APPLICATION UNDER PUBLIC HEALTH SERVICE
5 ACT.—

6 (1) ELIMINATION OF PREEXISTING CONDITION
7 EXCLUSIONS.—Section 2701 of the Public Health
8 Service Act (42 U.S.C. 300gg) is amended—

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

12 (B) by amending subsection (a) to read as
13 follows:

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

17 “(1) may not impose any pre-existing condition
18 exclusion; and

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

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

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

6 (D) by striking subsections (c), (d), (e),
7 and (g); and

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

11 (2) GUARANTEED AVAILABILITY OF GROUP
12 HEALTH INSURANCE COVERAGE TO EMPLOYERS OF
13 ALL SIZES IN THE GROUP MARKET.—Section 2711
14 of such Act (42 U.S.C. 300gg–11) is amended—

15 (A) in subsection (a)—

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

18 (ii) in paragraph (1), by striking “(c)
19 through (f)” and inserting “(b) through
20 (d)”;

21 (iii) in paragraph (1), in the matter
22 before subparagraph (A), by striking
23 “small”;

1 (iv) in paragraph (1)(A), by striking
2 “small employer (as defined in section
3 2791(e)(4))” and inserting “employer”;

4 (v) in paragraph (2), by striking
5 “small” each place it appears; and

6 (vi) in paragraph (2), by striking
7 “coverage to a” and inserting “coverage to
8 an”;

9 (B) by striking subsection (b);

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

12 (D) by striking subsection (f).

13 (3) APPLICATION OF UNIFORM PREMIUMS.—
14 Section 2711 of such Act, as so amended, is amend-
15 ed by inserting after subsection (a) the following
16 new subsection:

17 “(b) APPLICATION OF UNIFORM PREMIUM.—

18 “(1) IN GENERAL.—Each and every health in-
19 surance issuer that offers health insurance coverage
20 in the group market in a State shall—

21 “(A) shall charge the same premium price
22 for the same coverage; and

23 “(B) shall openly disclose, in a manner
24 specified by the Secretary and including disclo-
25 sure through the Internet, the amount of the

1 premium price that is being charged for the
2 coverage involved.

3 “(2) UNIFORM APPLICATION TO FAMILY COV-
4 ERAGE AND TO DIFFERENT GEOGRAPHIC AREAS.—
5 Paragraph (1) shall be applied uniformly—

6 “(A) for coverage on the basis of such dif-
7 ferent family categories as the Secretary ap-
8 proves; and

9 “(B) for coverage within each metropolitan
10 statistical area and for coverage within the por-
11 tions of a State that are not within a metropoli-
12 tan statistical area.

13 “(3) APPLICATION.—Paragraph (1) shall not be
14 construed as preventing variations in premiums that
15 result from the application of a uniform monthly
16 premium over different policy years.”.

17 (4) APPLICATION OF NONDISCRIMINATION
18 RULES TO NONFEDERAL GOVERNMENTAL PLANS.—
19 Section 2721(b)(2)(A) of such Act (42 U.S.C.
20 300gg–21(b)(2)(A)) is amended by striking “sub-
21 parts 1 through 3” and “such subparts” and insert-
22 ing “subpart 2” and “such subpart”, respectively.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by
25 this section shall apply to plan years beginning on

1 or after January 1, 2009, regardless of whether an
2 individual is provided coverage under a group health
3 plan before such date.

4 (2) SPECIAL RULE FOR COLLECTIVE BAR-
5 GAINING AGREEMENTS.—In the case of a group
6 health plan maintained pursuant to one or more col-
7 lective bargaining agreements between employee rep-
8 resentatives and one or more employers ratified be-
9 fore the date of the enactment of this Act, the
10 amendments made by this section shall not apply to
11 plan years beginning before the later of—

12 (A) the date on which the last of the col-
13 lective bargaining agreements relating to the
14 plan terminates (determined without regard to
15 any extension thereof agreed to after the date
16 of the enactment of this Act), or

17 (B) January 1, 2010.

18 For purposes of subparagraph (A), any plan amend-
19 ment made pursuant to a collective bargaining
20 agreement relating to the plan which amends the
21 plan solely to conform to any requirement under the
22 amendments made by this section shall not be treat-
23 ed as a termination of such collective bargaining
24 agreement.

1 **SEC. 3. NONDISCRIMINATION IN INDIVIDUAL HEALTH IN-**
2 **SURANCE.**

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

5 (1) by amending the heading to read as follows:

6 **“GUARANTEED ISSUE OF INDIVIDUAL HEALTH**
7 **INSURANCE COVERAGE; UNIFORM PREMIUMS”**;

8 (2) by amending subsections (a) and (b) to read
9 as follows:

10 **“(a) IN GENERAL.—**

11 **“(1) GUARANTEED ISSUE.—**Subject to the suc-
12 ceeding subsections of this section, each and every
13 health insurance issuer that offers health insurance
14 coverage (as defined in section 2791(b)(1)) in the in-
15 dividual market to individuals residing in an area
16 may not, with respect to an eligible individual (as
17 defined in subsection (b)) residing in the area who
18 desires to enroll in individual health insurance cov-
19 erage—

20 **“(A) decline to offer such coverage to, or**
21 **deny enrollment of, such individual; or**

22 **“(B) impose any preexisting condition ex-**
23 **clusion (as defined in section 2701(b)(1)(A))**
24 **with respect to such coverage.**

25 **“(2) APPLICATION OF UNIFORM PREMIUM.—**

1 “(A) IN GENERAL.—Each and every health
2 insurance issuer that offers health insurance
3 coverage in the individual market in a State—

4 “(i) shall charge the same premium
5 price for the same coverage;

6 “(ii) if the issuer offers such coverage
7 in the group market in the State, shall
8 charge the same premium for the same
9 coverage offered in the group market; and

10 “(iii) shall openly disclose, in a man-
11 ner specified by the Secretary and includ-
12 ing disclosure through the Internet, the
13 amount of the premium price that is being
14 charged for the coverage involved.

15 “(B) UNIFORM APPLICATION TO FAMILY
16 COVERAGE AND TO DIFFERENT GEOGRAPHIC
17 AREAS.—Subparagraph (A) shall be applied
18 uniformly—

19 “(i) for coverage on the basis of such
20 different family categories as the Secretary
21 approves; and

22 “(ii) for coverage within each metro-
23 politan statistical area and for coverage
24 within the portions of a State that are not
25 within a metropolitan statistical area.

1 “(C) APPLICATION.—Subparagraph (A)
2 shall not be construed as preventing variations
3 in premiums that result from the application of
4 a uniform monthly premium over different pol-
5 icy years.

6 “(b) ELIGIBLE INDIVIDUAL DEFINED.—In this part,
7 the term ‘eligible individual’ means, with respect to an
8 area, an individual who resides in such area, without re-
9 gard to the period of such residency, and who is—

10 “(1) a citizen or national of the United States;

11 “(2) an alien lawfully admitted to the United
12 States for permanent residence; or

13 “(3) an alien who is otherwise lawfully residing
14 in the United States.”;

15 (3) by striking subsection (c);

16 (4) by redesignating subsection (d) and the first
17 subsection (e) (relating to application of financial ca-
18 pacity limits) as subsections (c) and (d), respec-
19 tively;

20 (5) in paragraph (1) of the subsection (e) relat-
21 ing to market requirements, by striking “or through
22 one or more bona fide associations, or both”; and

23 (6) by striking subsection (f) and inserting the
24 following:

1 “(f) UNIFORM RULES TO RESPOND TO ADVERSE SE-
2 LECTION.—

3 “(1) IN GENERAL.—The Secretary may estab-
4 lish rules for uniform application that are designed
5 to deter individuals—

6 “(A) from enrolling in individual health in-
7 surance coverage only after they develop an ill-
8 ness or injury for which such coverage applies;
9 and

10 “(B) from disenrolling from health insur-
11 ance coverage for periods in which they are un-
12 likely (or less likely) to require such coverage.

13 “(2) CONSIDERATIONS.—Such rules may take
14 into account the financial and other circumstances
15 of individuals for not being so enrolled or for so
16 disenrolling.”.

17 (b) CONFORMING AMENDMENT.—Section 2742(b) of
18 such Act (42 U.S.C. 300gg–42(b)) is amended by striking
19 paragraph (5).

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to health insurance
22 coverage offered, sold, issued, renewed, in effect, or oper-
23 ated in the individual market after December 31, 2008.

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