

111TH CONGRESS
1ST SESSION

S. 623

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 pre-existing condition exclusions in group health plans and in health insurance coverage in the group and individual markets.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2009

Mr. ROCKEFELLER (for himself, Mr. LAUTENBERG, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 pre-existing condition exclusions in group health plans and in 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pre-existing Condition
5 Patient Protection Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) According to the United States Census Bu-
4 reau, 45,700,000 individuals were uninsured in
5 2007.

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

11 (3) According to the Center for Disease Control
12 and Prevention, approximately 45 percent of Ameri-
13 cans have at least 1 chronic condition.

14 (4) Forty-four States currently allow insurance
15 companies to deny coverage for, limit coverage for,
16 or charge increased premiums for a pre-existing con-
17 dition.

18 (5) Over 26,000,000 individuals were enrolled
19 in private individual market health plans in 2007.
20 Under the amendments made by the Health Insur-
21 ance Portability and Accountability Act of 1996,
22 these individuals have no protections against pre-ex-
23 isting condition exclusions or waiting periods.

24 (6) When an individual has a 63-day gap in
25 health insurance coverage, pre-existing condition ex-
26 clusions, such as limiting coverage, can be placed on

1 them when they become insured under a new health
2 insurance policy.

3 (7) Eliminating pre-existing condition exclu-
4 sions for all individuals is a vital safeguard to ensur-
5 ing all Americans have access to health care when
6 in need.

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

13 **SEC. 3. ELIMINATION OF PRE-EXISTING CONDITION EXCLU-**
14 **SIONS UNDER GROUP HEALTH PLANS.**

15 (a) APPLICATION UNDER THE EMPLOYEE RETIRE-
16 MENT INCOME SECURITY ACT OF 1974.—

17 (1) ELIMINATION OF PRE-EXISTING CONDITION
18 EXCLUSIONS.—Section 701 of the Employee Retire-
19 ment Income Security Act of 1974 (29 U.S.C. 1181)
20 is amended—

21 (A) by amending the heading to read as
22 follows: “**ELIMINATION OF PRE-EXISTING**
23 **CONDITION EXCLUSIONS**”;

24 (B) by amending subsection (a) to read as
25 follows:

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

4 “(1) may not impose any pre-existing condition
5 exclusion; and

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

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

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

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

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

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

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

1 (b) APPLICATION UNDER PUBLIC HEALTH SERVICE
2 ACT.—

3 (1) ELIMINATION OF PRE-EXISTING CONDITION
4 EXCLUSIONS.—Section 2701 of the Public Health
5 Service Act (42 U.S.C. 300gg) is amended—

6 (A) by amending the heading to read as
7 follows: “Elimination **OF PRE-EXISTING CON-**
8 **DITION EXCLUSIONS**”;

9 (B) by amending subsection (a) to read as
10 follows:

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

14 “(1) may not impose any pre-existing condition
15 exclusion; and

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

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

23 “(3) AFFILIATION PERIOD.—The term ‘affili-
24 ation period’ means a period which, under the terms
25 of the health insurance coverage offered by the

health maintenance organization, must expire before
the health insurance coverage becomes effective.”;

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

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

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

(A) in subsection (a)—

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

(ii) in paragraph (1)—

(I) by striking “(c) through (f)”
and inserting “(b) through (d)”;

(II) in the matter before sub-
paragraph (A), by striking “small”;
and

(III) in subparagraph (A), by
striking “small employer (as defined
in section 2791(e)(4))” and inserting
“employer”; and

(iii) in paragraph (2)—

- 1 (I) by striking “small” each place
 2 it appears; and
 3 (II) by striking “coverage to a”
 4 and inserting “coverage to an”;
 5 (B) by striking subsection (b);
 6 (C) in subsections (c), (d), and (e), by
 7 striking “small” each place it appears; and
 8 (D) by striking subsection (f).

9 (c) APPLICATION UNDER THE INTERNAL REVENUE
 10 CODE OF 1986.—

11 (1) ELIMINATION OF PRE-EXISTING CONDITION
 12 EXCLUSIONS.—Section 9801 of the Internal Revenue
 13 Code of 1986 is amended—

14 (A) by amending the heading to read as
 15 follows: “Elimination **OF PRE-EXISTING CON-**
 16 **DITION EXCLUSIONS**”;

17 (B) by amending subsection (a) to read as
 18 follows:

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

22 (C) by striking paragraph (3) of subsection
 23 (b);

24 (D) by striking subsections (c), (d), and
 25 (e); 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 sections of chapter 100 of such Code relat-
 6 ing to section 9801 is amended to read as follows:

“Sec. 9801. Elimination of pre-existing condition exclusions.”.

7 (d) EFFECTIVE DATE.—

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

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

22 (A) the date on which the last of the col-
 23 lective bargaining agreements relating to the
 24 plan terminates (determined without regard to

1 any extension thereof agreed to after the date
2 of the enactment of this Act); or

3 (B) the date that is after the end of the
4 12th calendar month following the date of en-
5 actment of this Act.

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

13 **SEC. 4. NONDISCRIMINATION IN INDIVIDUAL HEALTH IN-**
14 **SURANCE.**

15 (a) IN GENERAL.—Section 2741 of the Public Health
16 Service Act (42 U.S.C. 300gg–41) is amended by striking
17 subsection (a) and inserting the following:

18 “(a) IN GENERAL.—

19 “(1) GUARANTEED ISSUE.—Subject to the suc-
20 ceeding subsections of this section, each health in-
21 surance issuer that offers health insurance coverage
22 (as defined in section 2791(b)(1)) in the individual
23 market to individuals residing in an area may not,
24 with respect to an eligible individual (as defined in

1 subsection (b)) residing in the area who desires to
 2 enroll in individual health insurance coverage—

3 “(A) decline to offer such coverage to, or
 4 deny enrollment of, such individual; or

5 “(B) impose any pre-existing condition ex-
 6 clusion (as defined in section 2701(b)(1)(A))
 7 with respect to such coverage.”.

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

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

15 (a) **REPORT ON ADVERSE SELECTION.**—Not later
 16 than 2 years after the date of enactment of this Act, the
 17 Secretary of Health and Human Services shall submit to
 18 Congress a report concerning the occurrence of adverse
 19 selection as a result of the enactment of this Act. Such
 20 report shall be based on the data reported under sub-
 21 section (b).

22 (b) **MANDATORY REPORTING.**—A health insurance
 23 issuer to which this Act applies, shall upon the request
 24 of the Secretary, submit to the Secretary of Health and
 25 Human Services, data concerning—

1 (1) the number of new enrollees in health plans
2 offered by the issuer during the year involved;

3 (2) the number of enrollees who re-enrolled in
4 health plans offered by the issuer during the year in-
5 volved;

6 (3) the demographic characteristics of enrollees;

7 (4) the number, nature, and dollar amount of
8 claims made by enrollees during the year involved;

9 (5) the number of enrollees who disenrolled or
10 declined to be re-enrolled during the year involved;
11 and

12 (6) any other information determined appro-
13 priate by such Secretary.

14 (c) ENFORCEMENT.—Part C of title XXVII of the
15 Public Health Service Act (42 U.S.C. 300gg–91 et seq.)
16 is amended by adding at the end the following:

17 **“SEC. 2793. PROVISION OF INFORMATION.**

18 “(a) IN GENERAL.—The Secretary shall require that
19 group health plans and health insurance issuers to which
20 this Act applies provide data to the Secretary, at such
21 times and in such manner as the Secretary may require,
22 in order to permit the Secretary to monitor compliance
23 with the requirements of this Act (including requirements
24 imposed under the Pre-existing Condition Patient Protec-
25 tion Act of 2009 (and the amendment made by that Act)).

1 “(b) CIVIL PENALTIES.—

2 “(1) IN GENERAL.—A group health plan or
3 health insurance issuer that fails to provide informa-
4 tion as required under subsection (a) shall be subject
5 to a civil money penalty under this section.

6 “(2) AMOUNT OF PENALTY.—

7 “(A) IN GENERAL.—The maximum
8 amount of penalty imposed under this para-
9 graph is \$100 per covered life for each day that
10 the plan or issuer fails to comply with this sec-
11 tion.

12 “(B) CONSIDERATION IN IMPOSITION.—In
13 determining the amount of any penalty to be
14 assessed under this paragraph, the Secretary
15 shall take into account the previous record of
16 compliance of the entity being assessed with
17 this section and the gravity of the violation.”.

18 **SEC. 6. REPORT ON AFFORDABLE HEALTH INSURANCE**
19 **COVERAGE.**

20 Not later than 12 months after the date of enactment
21 of this Act, the Government Accountability Office shall
22 submit to the Secretary of Health and Human Services
23 a report concerning the impact of this Act and other Fed-
24 eral laws relating to the regulation of health insurance and
25 its effect on the affordability of health insurance coverage

- 1 for individuals in all insurance markets and a description
- 2 of the effect of this Act on the expansion of coverage and
- 3 reductions in the number of uninsured and underinsured.

