

HEALTH INSURANCE RESTRICTIONS AND LIMITATIONS
CLARIFICATION ACT OF 2009

MARCH 30, 2009.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 1253]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom as referred the bill (H.R. 1253) to require that limitations and restrictions on coverage under group health plans be timely disclosed to group health plan sponsors and timely communicated to participants and beneficiaries under such plans in a form that is easily understandable, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	2
Committee Consideration	2
Committee Votes	2
Committee Oversight Findings	3
Statement of General Performance Goals and Objectives	3
New Budget Authority, Entitlement Authority, and Tax Expenditures	3
Earmarks and Tax and Tariff Benefits	3
Committee Cost Estimate	3
Congressional Budget Office Estimate	3
Federal Mandates Statement	4
Advisory Committee Statement	4
Constitutional Authority Statement	5
Applicability to Legislative Branch	5
Section-by-Section Analysis of the Legislation	5
Changes in Existing Law Made by the Bill, as Reported	5

PURPOSE AND SUMMARY

The purpose of H.R. 1253, the “Health Insurance Restrictions and Limitations Clarification Act of 2009”, is to improve transparency in health insurance benefit restrictions and limitations. H.R. 1253 amends the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHSA), and the Internal Revenue Code (IRC) to require that any limitations on benefits of health insurers be explicit and clear; that they be disclosed to plan sponsors in advance of the point of sale; and that they be disclosed to participants and beneficiaries in a manner that is easily understandable in advance of enrollment and after enrollment.

BACKGROUND AND NEED FOR LEGISLATION

In January 2001, the Department of Labor, the Internal Revenue Service and the Health Care Financing Administration issued a rule in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The rule states that “[w]hile a person cannot be excluded from a plan for engaging in certain recreational activities, benefits for a particular injury can, in some cases, be excluded based on the source of the injury.”

This rule resulted in situations where a health insurance beneficiary was unaware that injuries resulting from certain recreational activities could result in non-payment for necessary medical services. In many situations the exclusions were unclear or very broad.

The lack of clarity underlying coverage of benefits has created a confusing situation for individuals who may ride motorcycles, horses, snowmobiles, or participate in other legal activities that could result in an injury. To the extent plan limitations or restrictions are permitted, such limitations or restrictions should be explicit and clear before a person enrolls in a plan.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

The Committee on Energy and Commerce met in open markup session on Wednesday, March 4, 2009, and, pursuant to a motion by Mr. Waxman, agreed by unanimous consent to consider and approve H.R. 1253 and several other bills en bloc. H.R. 1253 was ordered favorably reported to the House by a voice vote. No amendments were offered during full Committee consideration of H.R. 1253.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no recorded votes taken during consideration or ordering H.R. 1253 reported to the House.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The objective of H.R. 1253 is to ensure that consumers are informed of any limitations and restrictions on their health insurance coverage.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1253 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1253 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 1253 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 20, 2009.

Hon. HENRY A. WAXMAN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1253, the Health Insurance Restrictions and Limitations Clarification Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Stewart.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1253—Health Insurance Restrictions and Limitations Clarification Act of 2009

H.R. 1253, the Health Insurance Restrictions and Limitations Clarification Act of 2009, would require that group health plans disclose the limitations and restrictions on health insurance coverage in a timely manner to health plan sponsors and participants. The bill would amend the Employee Retirement and Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code to reflect this new requirement. The bill would require that health insurance coverage limitations and restrictions be explicit and clear prior to the time of sale or enrollment. CBO estimates that H.R. 1253 would have no significant impact on the federal budget.

H.R. 1253 would impose private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on issuers of group health insurance coverage and sponsors of group health insurance plans. CBO estimates that the aggregate cost of complying with those mandates would not exceed the threshold established by UMRA for private-sector mandates (\$139 million in 2009, annually adjusted for inflation). CBO estimates that the direct costs of meeting the bill's requirements would be small because the issuers and sponsors of group health insurance plans generally make such information available and already discuss plan information before and after enrollment. Making that information more easily understood would only generate negligible costs.

H.R. 1253 contains no intergovernmental mandates as defined in UMRA. An existing provision in the Public Health Service Act would allow state, local, and tribal governments, as employers that provide health benefits to their employees, to opt out of the requirements of this bill. Consequently, provisions of the bill that would require plans to disclose coverage limits for injuries by source would not impose an intergovernmental mandate as defined in UMRA. The bill would affect the budgets of those governments only if they choose to comply with the requirements for their group health plans.

The CBO staff contacts for this estimate are Robert Stewart (for federal costs), Lisa Ramirez-Branum (for the impact on state, local, and tribal governments), and Keisuke Nakagawa (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates regarding H.R. 1253 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by H.R. 1253.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 1253 is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several states, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 1253 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the Act as the “Health Insurance Restrictions and Limitations Clarification Act of 2009”.

Section 2. Disclosure requirements

Section 2(a) amends the Employee Retirement Income Security Act of 1974. This provision is not within the jurisdiction of the Committee.

Section 2(b) amends the Public Health Service Act relating to the group market. It amends section 2702 (relating to prohibiting discrimination against individual participants and beneficiaries based on health status) in subsection (a)(2)(B) to provide that paragraph (1) of subsection (a) shall not be construed to prevent a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage so long as:

- Such limitations and restrictions are explicit and clear;
- Such limitations and restrictions have been disclosed to the plan sponsor of the group health plan in advance of the point of sale to the group health plan;
 - The plan sponsor and issuer make available to participants and beneficiaries in an easily understandable manner a description of the limitations and restrictions in advance of the point of their enrollment under the plan; and
 - The plan sponsor and issuer make available to participants and beneficiaries in an easily understandable manner a description of the limitations and restrictions upon their enrollment.

Section 2(c) amends the Internal Revenue Code of 1986. This provision is not within the jurisdiction of the Committee.

Section 2(d) makes these changes applicable with respect to plan years beginning 1 year after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic

and existing law in which no change is proposed is shown in roman):

SECTION 702 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 702. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

(a) IN ELIGIBILITY TO ENROLL.—

(1) * * *

(2) NO APPLICATION TO BENEFITS OR EXCLUSIONS.—To the extent consistent with section 701, paragraph (1) shall not be construed—

(A) * * *

(B) to prevent such a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage *so long as*—

(i) such limitations and restrictions are explicit and clear;

(ii) in the case of such limitations and restrictions in health insurance coverage offered in connection with the group health plan, such limitations and restrictions have been disclosed in writing to the plan sponsor in advance of the point of sale to the plan;

(iii) the plan sponsor of the health insurance coverage provide, to participants and beneficiaries in the plan in advance of the point of their enrollment under the plan, a description of such limitations and restrictions in a form that is easily understandable by such participants and beneficiaries; and

(iv) the plan sponsor and the issuer of the coverage provide such description to participants and beneficiaries upon their enrollment under the plan at the earliest opportunity that other materials are provided..

* * * * *

SECTION 2702 OF THE PUBLIC HEALTH SERVICE ACT

SEC. 2702. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

(a) IN ELIGIBILITY TO ENROLL.—

(1) * * *

(2) NO APPLICATION TO BENEFITS OR EXCLUSIONS.—To the extent consistent with section 701, paragraph (1) shall not be construed—

(A) * * *

(B) to prevent such a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage *so long as*—

(i) such limitations and restrictions are explicit and clear;

(ii) in the case of such limitations and restrictions in health insurance coverage offered in connection with the group health plan, such limitations and restrictions have been disclosed in writing to the plan sponsor in advance of the point of sale to the plan;

(iii) the plan sponsor and the issuer of the group health insurance coverage make available, to participants and beneficiaries in the plan in advance of the point of their enrollment under the plan, a description of such limitations and restrictions in a form that is easily understandable by such participants and beneficiaries; and

(iv) the plan sponsor and the issuer of the coverage provides such description to participants and beneficiaries upon their enrollment under the plan at the earliest opportunity that other materials are provided..

* * * * *

SECTION 9802 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 9802. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

(a) IN ELIGIBILITY TO ENROLL.—

(1) * * *

(2) NO APPLICATION TO BENEFITS OR EXCLUSIONS.—To the extent consistent with section 9801, paragraph (1) shall not be construed—

(A) * * *

(B) to prevent such a plan from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage so long as—

(i) such limitations and restrictions are explicit and clear;

(ii) the group health plan makes available, to participants and beneficiaries in the plan in advance of the point of their enrollment under the plan, a description of such limitations and restrictions in a form that is easily understandable by such participants and beneficiaries; and

(iii) the plan provides such description to participants and beneficiaries upon their enrollment under the plan at the earliest opportunity that other materials are provided..

* * * * *