

105TH CONGRESS  
2D SESSION

# H. R. 4225

To amend title I of the Employee Retirement Income Security Act of 1974 to establish liability for individuals practicing medicine without a license in connection with a group health plan.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1998

Mr. KENNEDY of Rhode Island introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to establish liability for individuals practicing medicine without a license in connection with a group health plan.

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; PURPOSE.**

4       (a) SHORT TITLE.—This Act may be cited as the

5       “No Practice of Medicine Without a License Act of 1998”.

6       (b) PURPOSE.—It is the purpose of this Act to estab-

7       lish a cause of action against the practice of medicine by

1 unlicensed persons in the provision of benefits under a  
2 group health plan.

3 **SEC. 2. RECOVERY OF DAMAGES FOR UNAUTHORIZED**  
4 **PRACTICE OF MEDICINE IN CONNECTION**  
5 **WITH A GROUP HEALTH PLAN.**

6 Section 502(c) of the Employee Retirement Income  
7 Security Act of 1974 (29 U.S.C. 1132(c)) is amended—  
8 (1) by redesignating paragraph (7) as para-  
9 graph (8); and

10 (2) by inserting after paragraph (6) the follow-  
11 ing new paragraph:

12 “(7)(A) In any case in which a person engages in any  
13 activity in connection with a group health plan that con-  
14 stitutes the unauthorized practice of medicine, such per-  
15 son—

16 (i) shall be liable to any participant or bene-  
17 ficiary aggrieved by such activity for actual damages  
18 (including compensatory and consequential damages  
19 proximately caused by such activity), and

20 (ii) may be liable to such participant or bene-  
21 ficiary for punitive or exemplary damages in addi-  
22 tion to the damages described in clause (i).

23 (B) For purposes of this paragraph, the term ‘unau-  
24 thorized practice of medicine’ means any of the following

1 acts performed by an individual who is not authorized  
2 under applicable State law to perform such an act:

3                 “(i) Offering or undertaking to diagnose, treat,  
4                 cure, or correct, to prescribe, recommend, or direct  
5                 treatment for, or to consult or advise regarding any  
6                 human disease, ailment, injury, infirmity, deformity,  
7                 pain, or other condition, physical or mental, real or  
8                 imaginary, by any means or instrumentality.

9                 “(ii) Directing a group health plan to withhold  
10                 or alter medical care that the physician of a partici-  
11                 pant or beneficiary has ordered.

12                 “(iii) Performing, for compensation, a service  
13                 constituting the healing arts that would effect the  
14                 diagnosis or treatment of an individual, through the  
15                 use of any medium (including an electronic me-  
16                 dium), in a State other than a State in which the  
17                 individual is authorized by applicable State law to  
18                 perform such service.

19                 “(iv) Maintaining an office or place of business  
20                 for the purpose of doing any of the acts described  
21                 in clauses (i) through (iii), whether or not for com-  
22                 pensation.

23                 “(v) In the case of an individual who is not li-  
24                 censed under applicable State law as a physician or  
25                 surgeon—

1                   “(I) using, in the conduct of any occupa-  
2                   tion or profession pertaining to the diagnosis or  
3                   treatment of human diseases or conditions, in  
4                   any printed material, stationery, letterhead, or  
5                   envelope, the designation ‘doctor’, ‘doctor of  
6                   medicine’, ‘physician’, or ‘surgeon’, the designa-  
7                   tion of ‘Dr.’, ‘MD’, or any combinations of  
8                   these designations, in any manner which might  
9                   cause a reasonable person to believe that the in-  
10                   dividual is a licensed physician and surgeon,  
11                   and

12                   “(II) if the individual using any designa-  
13                   tion described in subclause (I) is not so licensed  
14                   in connection with a particular branch of the  
15                   healing arts, failing to disclose the lack of such  
16                   a license.

17                   “(C) A person referred to in subparagraph (A) may  
18                   include an agent or employee in connection with a health  
19                   maintenance organization, managed care organization, or  
20                   other health insurance issuer that manages, oversees, ad-  
21                   vises, makes decisions regarding, performs utilization re-  
22                   view services for, or offers health insurance coverage in  
23                   connection with the group health plan.

1       “(D) For purposes of this paragraph, terms used in  
2 this paragraph which are defined in section 733 shall have  
3 the meanings provided such terms in such section.

4       “(E) The remedies provided under this paragraph  
5 shall be in addition to remedies otherwise provided under  
6 this section.”.

7 **SEC. 3. EFFECTIVE DATE.**

8       The amendment made by section 2 shall apply with  
9 respect to activities engaged in after the date of the enact-  
10 ment of this Act.

