

105TH CONGRESS
2D SESSION

H. R. 4419

To amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to permit physicians to prescribe non-formulary drugs when medically indicated.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. KLINK introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Education and the Workforce, 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 Public Health Service Act and the Employee Retirement Income Security Act of 1974 to permit physicians to prescribe non-formulary drugs when medically indicated.

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 “Prescription Guarantee
5 Act of 1998”.

6 **SEC. 2. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

7 (a) GROUP HEALTH PLANS.—

1 (1) AMENDMENTS TO THE PUBLIC HEALTH
2 SERVICE ACT.—

3 (A) IN GENERAL.—Subpart 2 of part A of
4 title XXVII of the Public Health Service Act is
5 amended by adding at the end the following
6 new section:

7 **“SEC. 2706. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

8 “(a) REQUIREMENT.—If a group health plan, or
9 health insurance issuer that offers health insurance cov-
10 erage in connection with a group health plan, provides
11 benefits with respect to prescription drugs but the plan
12 or coverage limits such benefits to (or provides more favor-
13 able benefits with respect to) drugs included in a for-
14 mulary, the plan or issuer shall—

15 “(1) upon request, make available to the public
16 in printed form a description of the nature of any
17 formulary restrictions; and

18 “(2) provide for exceptions from the formulary
19 restrictions limitation when the plan or beneficiary’s
20 physician, subject to reasonable review by the plan
21 or issuer, determines that a non-formulary alter-
22 native is medically beneficial based on a therapeutic
23 difference to the patient involved.

24 “(b) INCREASE COPAYMENTS PERMITTED FOR NON-
25 FORMULARY DRUGS.—If a participating physician pre-

1 scribes a non-formulary alternative prescription drug, a
 2 group health plan, or health insurance issuer may increase
 3 the copayment rate for such alternative to twice the rate
 4 applicable to comparable prescription drugs included in
 5 the formulary.

6 “(c) COVERAGE OF APPROVED DRUGS.—A group
 7 health plan (or health insurance coverage offered in con-
 8 nection with such a plan) that provides any coverage of
 9 prescription drugs shall not deny coverage of such a drug
 10 if the use is included in the labeling authorized by the
 11 application in effect for the drug pursuant to subsection
 12 (b) or (j) of section 505 of the Federal Food, Drug, and
 13 Cosmetic Act; or under subsection (f) of such section, or
 14 an application approved under section 515 of such Act.

15 “(d) NONDISCRIMINATION.—A group health plan, or
 16 health insurance issuer that offers health insurance cov-
 17 erage, shall not discriminate in participation, reimburse-
 18 ment, or indemnification against a health professional,
 19 who is acting within the scope of the health professional’s
 20 license or certification under applicable State law, solely
 21 based on the extent, type, or pattern of prescription drugs.

22 “(e) ANY WILLING PHARMACIST.—A group health
 23 plan, or health insurance issuer that offers health insur-
 24 ance coverage, shall not exclude a pharmacist from its net-
 25 work of providers if such pharmacist is willing to enter

1 into a contract with the plan or issuer to provide drugs
 2 at the rate prescribed by the plan or issuer.

3 “(f) NOTICE.—A group health plan under this part
 4 shall comply with the notice requirement under section
 5 713(f) of the Employee Retirement Income Security Act
 6 of 1974 with respect to the requirements of this section
 7 as if such section applied to such plan.”.

8 (B) CONFORMING AMENDMENT.—Section
 9 2723(c) of such Act (42 U.S.C. 300gg–23(c)) is
 10 amended by striking “section 2704” and insert-
 11 ing “sections 2704 and 2706”.

12 (2) AMENDMENTS TO THE EMPLOYEE RETIRE-
 13 MENT INCOME SECURITY ACT OF 1974.—

14 (A) IN GENERAL.—Subpart B of part 7 of
 15 subtitle B of title I of the Employee Retirement
 16 Income Security Act of 1974 is amended by
 17 adding at the end the following new section:

18 **“SEC. 713. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

19 “(a) REQUIREMENT.—If a group health plan, or
 20 health insurance issuer that offers health insurance cov-
 21 erage in connection with a group health plan, provides
 22 benefits with respect to prescription drugs but the plan
 23 or coverage limits such benefits to (or provides more favor-
 24 able benefits with respect to) drugs included in a for-
 25 mulary, the plan or issuer shall—

1 “(1) upon request, make available to the public
2 in printed form a description of the nature of any
3 formulary restrictions; and

4 “(2) provide for exceptions from the formulary
5 restrictions limitation when the plan or beneficiary’s
6 physician, subject to reasonable review by the plan
7 or issuer, determines that a non-formulary alter-
8 native is medically beneficial based on a therapeutic
9 difference to the patient involved.

10 “(b) INCREASE COPAYMENTS PERMITTED FOR NON-
11 FORMULARY DRUGS.—If a participating physician pre-
12 scribes a non-formulary alternative prescription drug, a
13 group health plan, or health insurance issuer may increase
14 the co-payment rate for such alternative to twice the rate
15 applicable to comparable prescription drugs included in
16 the formulary.

17 “(c) COVERAGE OF APPROVED DRUGS.—A group
18 health plan (or health insurance coverage offered in con-
19 nection with such a plan) that provides any coverage of
20 prescription drugs shall not deny coverage of such a drug
21 if the use is included in the labeling authorized by the
22 application in effect for the drug pursuant to subsection
23 (b) or (j) of section 505 of the Federal Food, Drug, and
24 Cosmetic Act; or under subsection (f) of such section, or
25 an application approved under section 515 of such Act.

1 “(d) NONDISCRIMINATION.—A group health plan, or
2 health insurance issuer that offers health insurance cov-
3 erage, shall not discriminate in participation, reimburse-
4 ment, or indemnification against a health professional,
5 who is acting within the scope of the health professional’s
6 license or certification under applicable State law, solely
7 based on the extent, type, or pattern of prescription drugs.

8 “(e) ANY WILLING PHARMACIST.—A group health
9 plan, or health insurance issuer that offers health insur-
10 ance coverage, shall not exclude a pharmacist from its net-
11 work of providers if such pharmacist is willing to enter
12 into a contract with the plan or issuer to provide drugs
13 at the rate prescribed by the plan or issuer.

14 “(f) NOTICE UNDER GROUP HEALTH PLAN.—The
15 imposition of the requirements of this section shall be
16 treated as a material modification in the terms of the plan
17 described in section 102(a)(1), for purposes of assuring
18 notice of such requirements under the plan; except that
19 the summary description required to be provided under the
20 last sentence of section 104(b)(1) with respect to such
21 modification shall be provided by not later than 60 days
22 after the first day of the first plan year in which such
23 requirements apply.”.

24 (B) CONFORMING AND CLERICAL AMEND-
25 MENTS.—(i) Section 731(c) of such Act (29

1 U.S.C. 1191(c)) is amended by striking “sec-
 2 tion 711” and inserting “sections 711 and
 3 713”.

4 (ii) Section 732(a) of such Act (29 U.S.C.
 5 1191a(a)) is amended by striking “section 711”
 6 and inserting “sections 711 and 713”.

7 (iii) The table of contents in section 1 of
 8 such Act is amended by inserting after the item
 9 relating to section 712 the following new item:

“Sec. 713. Access to needed prescription drugs.”.

10 (b) INDIVIDUAL HEALTH INSURANCE.—

11 (1) IN GENERAL.—Subpart 3 of part B of title
 12 XXVII of the Public Health Service Act is amended
 13 by adding at the end the following new section:

14 **“SEC. 2752. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

15 “(a) IN GENERAL.—The provisions of section 2706
 16 shall apply to health insurance coverage offered by a
 17 health insurance issuer in the individual market in the
 18 same manner as they apply to health insurance coverage
 19 offered by a health insurance issuer in connection with a
 20 group health plan in the small or large group market.

21 “(b) NOTICE.—A health insurance issuer under this
 22 part shall comply with the notice requirement under sec-
 23 tion 713(f) of the Employee Retirement Income Security
 24 Act of 1974 with respect to the requirements referred to

1 in subsection (a) as if such section applied to such issuer
2 and such issuer were a group health plan.”.

3 (2) CONFORMING AMENDMENT.—Section
4 2762(b)(2) of such Act (42 U.S.C. 300gg-62(b)(2))
5 is amended by striking “section 2751” and inserting
6 “sections 2751 and 2752”.

7 (d) EFFECTIVE DATES.—

8 (1) GROUP MARKET REFORMS.—

9 (A) IN GENERAL.—The amendments made
10 by subsection (a) shall apply with respect to
11 plan years beginning on or after January 1,
12 1999.

13 (B) SPECIAL RULE FOR COLLECTIVE BAR-
14 GAINING AGREEMENTS.—In the case of a group
15 health plan maintained pursuant to 1 or more
16 collective bargaining agreements between em-
17 ployee representatives and 1 or more employers
18 ratified before such date, the amendments made
19 by such subsections shall not apply to plan
20 years beginning before the later of—

21 (i) the date on which the last collec-
22 tive bargaining agreements relating to the
23 plan terminates (determined without re-
24 gard to any extension thereof agreed to
25 after the date of enactment of this Act), or

1 (ii) January 1, 1999.

2 For purposes of clause (i), any plan amendment
3 made pursuant to a collective bargaining agree-
4 ment relating to the plan which amends the
5 plan solely to conform to any requirement
6 added by such clause shall not be treated as a
7 termination of such collective bargaining agree-
8 ment.

9 (2) INDIVIDUAL MARKET AMENDMENTS.—The
10 amendments made by subsection (c) shall apply with
11 respect to health insurance coverage offered, sold,
12 issued, renewed, in effect, or operated in the individ-
13 ual market on or after January 1, 1999.

14 (e) COORDINATED REGULATIONS.—Section 104(1) of
15 Health Insurance Portability and Accountability Act of
16 1996 is amended by striking “this subtitle (and the
17 amendments made by this subtitle and section 401)” and
18 inserting “the provisions of part 7 of subtitle B of title
19 I of the Employee Retirement Income Security Act of
20 1974, the provisions of parts A and C of title XXVII of
21 the Public Health Service Act, and chapter 100 of the In-
22 ternal Revenue Code of 1986”.

○