

105TH CONGRESS  
2D SESSION

# H. R. 4600

To amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to allow group and individual health insurance coverage and group health plans to charge higher premiums to smokers.

---

## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1998

Mr. KING of New York 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 allow group and individual health insurance coverage and group health plans to charge higher premiums to smokers.

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 “Common Sense Smok-  
5 ing Prevention Act of 1998”.

1 **SEC. 2. PENALTY FOR SMOKERS.**

2 (a) GROUP HEALTH PLANS.—

3 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
4 MENTS.—(A) Subpart 2 of part A of title XXVII of  
5 the Public Health Service Act is amended by adding  
6 at the end the following new section:

7 **“SEC. 2706. STANDARD RELATING TO SMOKERS.**

8 “(a) REQUIREMENT.—In the case of benefits consist-  
9 ing of medical care provided under a group health plan,  
10 or in the case of group health insurance coverage offered  
11 by a health insurance issuer in connection with a group  
12 health plan, the plan or issuer—

13 “(1) shall deny, cancel, or refuse to renew such  
14 benefits or such coverage on the basis that a partici-  
15 pant or beneficiary (or family member of a partici-  
16 pant or beneficiary) refuses testing by a licensed  
17 physician to determine whether or not such partici-  
18 pant or beneficiary is a smoker; and

19 “(2) shall increase the premiums for such bene-  
20 fits or coverage by 10 percent for any participant or  
21 beneficiary under the plan on the basis that a li-  
22 censed physician has determined that the participant  
23 or beneficiary (or family member of the participant  
24 or beneficiary) is a smoker.

25 “(b) DEFINITION OF FAMILY MEMBER.—For pur-  
26 poses of this section the term ‘family member’ means, with

1 respect to an individual, a spouse or child of the individ-  
 2 ual.

3 “(c) NOTICE.—A group health plan under this part  
 4 shall comply with the notice requirement under section  
 5 713(b) 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) Section 2723(c) of such Act (42 U.S.C.  
 9 300gg-23(c)), as amended by section 604(b)(2) of  
 10 Public Law 104-204, is amended by striking “sec-  
 11 tion 2704” and inserting “sections 2704 and 2706”.

12 (2) ERISA AMENDMENTS.—(A) Subpart B of  
 13 part 7 of subtitle B of title I of the Employee Re-  
 14 tirement Income Security Act of 1974 is amended by  
 15 adding at the end the following new section:

16 **“SEC. 713. STANDARD RELATING SMOKERS.**

17 “(a) REQUIREMENT.—In the case of benefits consist-  
 18 ing of medical care provided under a group health plan,  
 19 or in the case of group health insurance coverage offered  
 20 by a health insurance issuer in connection with a group  
 21 health plan, the plan or issuer—

22 “(1) shall deny, cancel, or refuse to renew such  
 23 benefits or such coverage on the basis that a partici-  
 24 pant or beneficiary (or family member of a partici-  
 25 pant or beneficiary) refuses testing by a licensed

1 physician to determine whether or not such partici-  
2 pant or beneficiary is a smoker; and

3 “(2) shall increase the premiums for such bene-  
4 fits or coverage by 10 percent for any participant or  
5 beneficiary under the plan on the basis that a li-  
6 censed physician has determined that the participant  
7 or beneficiary (or family member of the participant  
8 or beneficiary) is a smoker.

9 “(b) DEFINITION OF FAMILY MEMBER.—For pur-  
10 poses of this section the term ‘family member’ means, with  
11 respect to an individual, a spouse or child of the individ-  
12 ual.

13 “(c) NOTICE UNDER GROUP HEALTH PLAN.—The  
14 imposition of the requirement of this section shall be treat-  
15 ed as a material modification in the terms of the plan de-  
16 scribed in section 102(a)(1), for purposes of assuring no-  
17 tice of such requirements under the plan; except that the  
18 summary description required to be provided under the  
19 last sentence of section 104(b)(1) with respect to such  
20 modification shall be provided by not later than 60 days  
21 after the first day of the first plan year in which such  
22 requirement apply.”.

23 (B) Section 731(c) of such Act (29 U.S.C.  
24 1191(c)), as amended by section 603(b)(1) of Public

1 Law 104–204, is amended by striking “section 711”  
2 and inserting “sections 711 and 713”.

3 (C) Section 732(a) of such Act (29 U.S.C.  
4 1191a(a)), as amended by section 603(b)(2) of Pub-  
5 lic Law 104–204, is amended by striking “section  
6 711” and inserting “sections 711 and 713”.

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

“Sec. 713. Standard relating to smokers.”.

10 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
11 of title XXVII of the Public Health Service Act is amend-  
12 ed by inserting after section 2751 the following new sec-  
13 tion:

14 **“SEC. 2752. STANDARD RELATING TO SMOKERS.**

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

22 “(b) NOTICE.—A health insurance issuer under this  
23 part shall comply with the notice requirement under sec-  
24 tion 713(b) of the Employee Retirement Income Security  
25 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) Section 2762(b)(2) of such Act (42 U.S.C.  
4 300gg-62(b)(2)), as added by section 605(b)(3)(B) of  
5 Public Law 104-204, is amended by striking “section  
6 2751” and inserting “sections 2751 and 2752”.

7 (c) EFFECTIVE DATES.—(1) Subject to paragraph  
8 (3), the amendments made by subsection (a) shall apply  
9 with respect to group health plans for plan years begin-  
10 ning on or after January 1, 1999.

11 (2) The amendment made by subsection (b) shall  
12 apply with respect to health insurance coverage offered,  
13 sold, issued, renewed, in effect, or operated in the individ-  
14 ual market on or after such date.

15 (3) In the case of a group health plan maintained  
16 pursuant to 1 or more collective bargaining agreements  
17 between employee representatives and 1 or more employ-  
18 ers ratified before the date of enactment of this Act, the  
19 amendments made subsection (a) shall not apply to plan  
20 years beginning before the later of—

21 (A) the date on which the last collective bar-  
22 gaining agreements relating to the plan terminates  
23 (determined without regard to any extension thereof  
24 agreed to after the date of enactment of this Act),  
25 or

1 (B) January 1, 1999.

2 For purposes of subparagraph (A), any plan amendment  
3 made pursuant to a collective bargaining agreement relat-  
4 ing to the plan which amends the plan solely to conform  
5 to any requirement added by subsection (a) shall not be  
6 treated as a termination of such collective bargaining  
7 agreement.

8 (d) COORDINATED REGULATIONS.—Section 104(1)  
9 of Health Insurance Portability and Accountability Act of  
10 1996 is amended by striking “this subtitle (and the  
11 amendments made by this subtitle and section 401)” and  
12 inserting “the provisions of part 7 of subtitle B of title  
13 I of the Employee Retirement Income Security Act of  
14 1974, the provisions of parts A and C of title XXVII of  
15 the Public Health Service Act, and chapter 100 of the In-  
16 ternal Revenue Code of 1986”.

○