

106TH CONGRESS  
1ST SESSION

# H. R. 1777

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to assure access to covered emergency hospital services and emergency ambulance services under a prudent layperson test under group health plans and health insurance coverage.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1999

Mr. UPTON (for himself, Mr. TOWNS, and Mrs. EMERSON) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, and 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

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## A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to assure access to covered emergency hospital services and emergency ambulance services under a prudent layperson test under group health plans and health insurance coverage.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Emergency Ambulance  
3 Services Access Assurance Act of 1999”.

4 **SEC. 2. ASSURING ACCESS TO EMERGENCY SERVICES.**

5 (a) GROUP HEALTH PLANS.—

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

10 **“SEC. 2707. STANDARD RELATING TO ACCESS TO EMER-  
11 GENCY SERVICES AND EMERGENCY AMBU-  
12 LANCE SERVICES.**

13 “(a) COVERAGE OF EMERGENCY SERVICES.—

14 “(1) IN GENERAL.—If a group health plan, or  
15 health insurance coverage offered in connection with  
16 a health insurance issuer, provides any benefits with  
17 respect to emergency services (as defined in para-  
18 graph (2)(B)), the plan or issuer shall cover emer-  
19 gency services furnished under the plan or  
20 coverage—

21 “(A) without the need for any prior au-  
22 thorization determination;

23 “(B) whether or not the health care pro-  
24 vider furnishing such services is a participating  
25 provider with respect to such services;

“(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee by a nonparticipating health care provider without prior authorization by the plan or issuer, the participant, beneficiary, or enrollee is not liable for amounts that exceed the amounts of liability that would be incurred if the services were provided by a participating health care provider with prior authorization by the plan or issuer; and

“(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of this Act, section 701 of the Employee Retirement Income Security Act of 1974, or section 9801 of the Internal Revenue Code of 1986, and other than applicable cost-sharing).

“(2) DEFINITIONS.—In this section:

“(A) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON STANDARD.—The term ‘emergency medical condition’ means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who

1 possesses an average knowledge of health and  
2 medicine, could reasonably expect the absence  
3 of immediate medical attention to result in a  
4 condition described in clause (i), (ii), or (iii) of  
5 section 1867(e)(1)(A) of the Social Security  
6 Act.

7 “(B) EMERGENCY SERVICES.—The term  
8 ‘emergency services’ means—

9 “(i) a medical screening examination  
10 (as required under section 1867 of the So-  
11 cial Security Act) that is within the capa-  
12 bility of the emergency department of a  
13 hospital, including ancillary services rou-  
14 tinely available to the emergency depart-  
15 ment to evaluate an emergency medical  
16 condition (as defined in subparagraph  
17 (A)), and

18 “(ii) within the capabilities of the  
19 staff and facilities available at the hospital,  
20 such further medical examination and  
21 treatment as are required under section  
22 1867 of such Act to stabilize the patient.

23 “(C) NONPARTICIPATING.—The term ‘non-  
24 participating’ means, with respect to a health  
25 care provider that provides health care items

1 and services to a participant, beneficiary, or en-  
2 rollee under group health plan or health insur-  
3 ance coverage, a health care provider that is not  
4 a participating health care provider with respect  
5 to such items and services.

6 “(D) PARTICIPATING.—The term ‘partici-  
7 pating’ means, with respect to a health care  
8 provider that provides health care items and  
9 services to a participant, beneficiary, or enrollee  
10 under group health plan or health insurance  
11 coverage offered by a health insurance issuer, a  
12 health care provider that furnishes such items  
13 and services under a contract or other arrange-  
14 ment with the plan or issuer.

15 “(b) COVERAGE OF EMERGENCY AMBULANCE SERV-  
16 ICES.—

17 “(1) IN GENERAL.—If a group health plan, or  
18 health insurance coverage offered in connection with  
19 a group health plan by a health insurance issuer,  
20 provides any benefits with respect to ambulance  
21 services and emergency services, the plan or issuer  
22 shall cover emergency ambulance services (as defined  
23 in paragraph (2))) furnished under the plan or cov-  
24 erage under the same terms and conditions under  
25 subparagraphs (A) through (D) of subsection (a)(1)

1 under which coverage is provided for emergency  
2 services.

3 “(2) EMERGENCY AMBULANCE SERVICES.—For  
4 purposes of this subsection, the term ‘emergency  
5 ambulance services’ means ambulance services (as  
6 defined for purposes of section 1861(s)(7) of the So-  
7 cial Security Act) furnished to transport an indi-  
8 vidual who has an emergency medical condition (as  
9 defined in subsection (a)(2)(A)) to a hospital for the  
10 receipt of emergency services (as defined in sub-  
11 section (a)(2)(B)) in a case in which the emergency  
12 services are covered under the plan or coverage pur-  
13 suant to subsection (a)(1) and a prudent layperson,  
14 with an average knowledge of health and medicine,  
15 could reasonably expect that the absence of such  
16 transport would result in placing the health of the  
17 individual in serious jeopardy, serious impairment of  
18 bodily function, or serious dysfunction of any bodily  
19 organ or part.

20 “(c) NOTICE.—A group health plan under this part  
21 shall comply with the notice requirement under section  
22 714(b) of the Employee Retirement Income Security Act  
23 of 1974 with respect to the requirements of this section  
24 as if such section applied to such plan.”.

1           (2) Section 2723(c) of such Act (42 U.S.C.  
2           300gg-23(c)) is amended by striking “section 2704”  
3           and inserting “sections 2704 and 2707”.

4           (3) ERISA AMENDMENTS.—(A) Subpart B of  
5           part 7 of subtitle B of title I of the Employee Re-  
6           tirement Income Security Act of 1974 is amended by  
7           adding at the end the following new section:

8   **“SEC. 714. STANDARD RELATING TO ACCESS TO EMER-**  
9                   **GENCY SERVICES AND EMERGENCY AMBU-**  
10                  **LANCE SERVICES.**

11          “(a) COVERAGE OF EMERGENCY SERVICES.—

12               “(1) IN GENERAL.—If a group health plan, or  
13               health insurance coverage offered in connection with  
14               a health insurance issuer, provides any benefits with  
15               respect to emergency services (as defined in para-  
16               graph (2)(B)), the plan or issuer shall cover emer-  
17               gency services furnished under the plan or  
18               coverage—

19                   “(A) without the need for any prior au-  
20                   thorization determination;

21                   “(B) whether or not the health care pro-  
22                   vider furnishing such services is a participating  
23                   provider with respect to such services;

24                   “(C) in a manner so that, if such services  
25                   are provided to a participant, beneficiary, or en-

rollee by a nonparticipating health care provider without prior authorization by the plan or issuer, the participant, beneficiary, or enrollee is not liable for amounts that exceed the amounts of liability that would be incurred if the services were provided by a participating health care provider with prior authorization by the plan or issuer; and

“(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of the Public Health Service Act, section 701 of this Act, or section 9801 of the Internal Revenue Code of 1986, and other than applicable cost-sharing).

“(2) DEFINITIONS.—In this section:

“(A) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON STANDARD.—The term ‘emergency medical condition’ means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence



1 of immediate medical attention to result in a  
2 condition described in clause (i), (ii), or (iii) of  
3 section 1867(e)(1)(A) of the Social Security  
4 Act.

5 “(B) EMERGENCY SERVICES.—The term  
6 ‘emergency services’ means—

7 “(i) a medical screening examination  
8 (as required under section 1867 of the So-  
9 cial Security Act) that is within the capa-  
10 bility of the emergency department of a  
11 hospital, including ancillary services rou-  
12 tinely available to the emergency depart-  
13 ment to evaluate an emergency medical  
14 condition (as defined in subparagraph  
15 (A)), and

16 “(ii) within the capabilities of the  
17 staff and facilities available at the hospital,  
18 such further medical examination and  
19 treatment as are required under section  
20 1867 of such Act to stabilize the patient.

21 “(C) NONPARTICIPATING.—The term ‘non-  
22 participating’ means, with respect to a health  
23 care provider that provides health care items  
24 and services to a participant, beneficiary, or en-  
25 rollee under group health plan or health insur-

1           ance coverage, a health care provider that is not  
2           a participating health care provider with respect  
3           to such items and services.

4           “(D) PARTICIPATING.—The term ‘partici-  
5           pating’ means, with respect to a health care  
6           provider that provides health care items and  
7           services to a participant, beneficiary, or enrollee  
8           under group health plan or health insurance  
9           coverage offered by a health insurance issuer, a  
10          health care provider that furnishes such items  
11          and services under a contract or other arrange-  
12          ment with the plan or issuer.

13          “(b) COVERAGE OF EMERGENCY AMBULANCE SERV-  
14          ICES.—

15               “(1) IN GENERAL.—If a group health plan, or  
16          health insurance coverage offered in connection with  
17          a group health plan by a health insurance issuer,  
18          provides any benefits with respect to ambulance  
19          services and emergency services, the plan or issuer  
20          shall cover emergency ambulance services (as defined  
21          in paragraph (2))) furnished under the plan or cov-  
22          erage under the same terms and conditions under  
23          subparagraphs (A) through (D) of subsection (a)(1)  
24          under which coverage is provided for emergency  
25          services.

1           “(2) EMERGENCY AMBULANCE SERVICES.—For  
2       purposes of this subsection, the term ‘emergency  
3       ambulance services’ means ambulance services (as  
4       defined for purposes of section 1861(s)(7) of the So-  
5       cial Security Act) furnished to transport an indi-  
6       vidual who has an emergency medical condition (as  
7       defined in subsection (a)(2)(A)) to a hospital for the  
8       receipt of emergency services (as defined in sub-  
9       section (a)(2)(B)) in a case in which the emergency  
10      services are covered under the plan or coverage pur-  
11      suant to subsection (a)(1) and a prudent layperson,  
12      with an average knowledge of health and medicine,  
13      could reasonably expect that the absence of such  
14      transport would result in placing the health of the  
15      individual in serious jeopardy, serious impairment of  
16      bodily function, or serious dysfunction of any bodily  
17      organ or part.

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

1 after the first day of the first plan year in which such  
2 requirement apply.”.

3 (B) Section 731(c) of such Act (29 U.S.C.  
4 1191(c)) is amended by striking “section 711” and  
5 inserting “sections 711 and 714”.

6 (C) The table of contents in section 1 of such  
7 Act is amended by inserting after the item relating  
8 to section 713 the following new item:

“Sec. 714. Standard relating to access to emergency services and emergency ambulance services.”.

9 (4) INTERNAL REVENUE CODE AMEND-  
10 MENTS.—

11 (A) IN GENERAL.—Subchapter B of chap-  
12 ter 100 of the Internal Revenue Code of 1986  
13 is amended by inserting after section 9812 the  
14 following new section:

15 **“SEC. 9813. STANDARD RELATING TO ACCESS TO EMER-**  
16 **GENCY SERVICES AND EMERGENCY AMBU-**  
17 **LANCE SERVICES.**

18 “(a) COVERAGE OF EMERGENCY SERVICES.—

19 “(1) IN GENERAL.—If a group health plan pro-  
20 vides any benefits with respect to emergency services  
21 (as defined in paragraph (2)(B)), the plan shall  
22 cover emergency services furnished under the plan—

23 “(A) without the need for any prior au-  
24 thorization determination;

1           “(B) whether or not the health care pro-  
2           vider furnishing such services is a participating  
3           provider with respect to such services;

4           “(C) in a manner so that, if such services  
5           are provided to a participant or beneficiary by  
6           a nonparticipating health care provider without  
7           prior authorization by the plan, the participant  
8           or beneficiary is not liable for amounts that ex-  
9           ceed the amounts of liability that would be in-  
10          curred if the services were provided by a par-  
11          ticipating health care provider with prior au-  
12          thorization by the plan; and

13          “(D) without regard to any other term or  
14          condition of such coverage (other than exclusion  
15          or coordination of benefits, or an affiliation or  
16          waiting period, permitted under section 2701 of  
17          the Public Health Service Act, section 701 of  
18          the Employee Retirement Income Security Act  
19          of 1974, or section 9801 of this Code, and  
20          other than applicable cost-sharing).

21          “(2) DEFINITIONS.—In this section:

22                 “(A) EMERGENCY MEDICAL CONDITION  
23                 BASED ON PRUDENT LAYPERSON STANDARD.—  
24                 The term ‘emergency medical condition’ means  
25                 a medical condition manifesting itself by acute

1 symptoms of sufficient severity (including se-  
2 vere pain) such that a prudent layperson, who  
3 possesses an average knowledge of health and  
4 medicine, could reasonably expect the absence  
5 of immediate medical attention to result in a  
6 condition described in clause (i), (ii), or (iii) of  
7 section 1867(e)(1)(A) of the Social Security  
8 Act.

9 “(B) EMERGENCY SERVICES.—The term  
10 ‘emergency services’ means—

11 “(i) a medical screening examination  
12 (as required under section 1867 of the So-  
13 cial Security Act) that is within the capa-  
14 bility of the emergency department of a  
15 hospital, including ancillary services rou-  
16 tinely available to the emergency depart-  
17 ment to evaluate an emergency medical  
18 condition (as defined in subparagraph  
19 (A)), and

20 “(ii) within the capabilities of the  
21 staff and facilities available at the hospital,  
22 such further medical examination and  
23 treatment as are required under section  
24 1867 of such Act to stabilize the patient.

1           “(C) NONPARTICIPATING.—The term ‘non-  
2           participating’ means, with respect to a health  
3           care provider that provides health care items  
4           and services to a participant or beneficiary  
5           under group health plan, a health care provider  
6           that is not a participating health care provider  
7           with respect to such items and services.

8           “(D) PARTICIPATING.—The term ‘partici-  
9           pating’ means, with respect to a health care  
10          provider that provides health care items and  
11          services to a participant or beneficiary under  
12          group health plan, a health care provider that  
13          furnishes such items and services under a con-  
14          tract or other arrangement with the plan.

15       “(b) COVERAGE OF EMERGENCY AMBULANCE SERV-  
16       ICES.—

17           “(1) IN GENERAL.—If a group health plan pro-  
18       vides any benefits with respect to ambulance services  
19       and emergency services, the plan shall cover emer-  
20       gency ambulance services (as defined in paragraph  
21       (2))) furnished under the coverage under the same  
22       terms and conditions under subparagraphs (A)  
23       through (D) of subsection (a)(1) under which cov-  
24       erage is provided for emergency services.

(B) CLERICAL AMENDMENT.—The table of sections of such subchapter is amended by inserting after the item relating to section 9812 the following new item:

(b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B of title XXVII of the Public Health Service Act is amend-



1 ed by inserting after section 2752 the following new sec-  
2 tion:

3 **“SEC. 2753. STANDARD RELATING TO ACCESS TO EMER-**  
4 **GENCY SERVICES AND EMERGENCY AMBU-**  
5 **LANCE SERVICES.**

6 “(a) IN GENERAL.—The provisions of subsections (a)  
7 and (b) of section 2707 shall apply to health insurance  
8 coverage offered by a health insurance issuer in the indi-  
9 vidual market in the same manner as they apply to health  
10 insurance coverage offered by a health insurance issuer  
11 in connection with a group health plan in the small or  
12 large group market.

13 “(b) NOTICE.—A health insurance issuer under this  
14 part shall comply with the notice requirement under sec-  
15 tion 714(b) of the Employee Retirement Income Security  
16 Act of 1974 with respect to the requirements referred to  
17 in subsection (a) as if such section applied to such issuer  
18 and such issuer were a group health plan.”.

19 (2) Section 2762(b)(2) of such Act (42 U.S.C.  
20 300gg–62(b)(2)) is amended by striking “section 2751”  
21 and inserting “sections 2751 and 2753”.

22 (c) EFFECTIVE DATES.—

23 (1) GROUP HEALTH PLANS AND GROUP  
24 HEALTH INSURANCE COVERAGE.—Subject to para-  
25 graph (3), the amendments made by subsection (a)

1       apply with respect to group health plans for plan  
2       years beginning on or after January 1, 2000.

3               (2) INDIVIDUAL HEALTH INSURANCE COV-  
4       ERAGE.—The amendments made by subsection (b)  
5       apply with respect to health insurance coverage of-  
6       fered, sold, issued, renewed, in effect, or operated in  
7       the individual market on or after such date.

8               (3) COLLECTIVE BARGAINING EXCEPTION.—In  
9       the case of a group health plan maintained pursuant  
10      to 1 or more collective bargaining agreements be-  
11      tween employee representatives and 1 or more em-  
12      ployers ratified before the date of enactment of this  
13      Act, the amendments made subsection (a) shall not  
14      apply to plan years beginning before the later of—

15              (A) the date on which the last collective  
16              bargaining agreements relating to the plan ter-  
17              minates (determined without regard to any ex-  
18              tension thereof agreed to after the date of en-  
19              actment of this Act), or

20              (B) January 1, 2000.

21      For purposes of subparagraph (A), any plan amend-  
22      ment made pursuant to a collective bargaining  
23      agreement relating to the plan which amends the  
24      plan solely to conform to any requirement added by

1 subsection (a) shall not be treated as a termination  
2 of such collective bargaining agreement.

3 (4) LIMITATION ON ENFORCEMENT ACTIONS.—

4 No enforcement action shall be taken, pursuant to  
5 the amendments made by this subsections (a) and  
6 (b), against a group health plan or health insurance  
7 issuer with respect to a violation of a requirement  
8 imposed by such amendments, to the extent that vio-  
9 lation or failure occurs before the date of issuance  
10 of regulations issued in connection with such re-  
11 quirement, if the plan or issuer has sought to com-  
12 ply in good faith with such requirement.

13 (d) COORDINATION OF ADMINISTRATION.—The Sec-  
14 retary of Labor, the Secretary of the Treasury, and the  
15 Secretary of Health and Human Services shall ensure,  
16 through the execution of an interagency memorandum of  
17 understanding among such Secretaries, that—

18 (1) regulations, rulings, and interpretations  
19 issued by such Secretaries relating to the same mat-  
20 ter over which two or more such Secretaries have re-  
21 sponsibility under the provisions of this Act (and the  
22 amendments made thereby) are administered so as  
23 to have the same effect at all times; and

24 (2) coordination of policies relating to enforcing  
25 the same requirements through such Secretaries in

- 1 order to have a coordinated enforcement strategy
- 2 that avoids duplication of enforcement efforts and
- 3 assigns priorities in enforcement.

○