

106TH CONGRESS  
1ST SESSION

# H. R. 2021

To amend title I of the Employee Retirement Income Security Act of 1974 and title XXVII of the Public Health Service Act to require group health plans and health insurance issuers to provide coverage for human leukocyte antigen testing.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 1999

Mr. KENNEDY of Rhode Island (for himself and Mr. BROWN of California) 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

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and title XXVII of the Public Health Service Act to require group health plans and health insurance issuers to provide coverage for human leukocyte antigen testing.

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 “Bone Marrow Blood  
5 Testing Coverage Act of 1999”.

1 **SEC. 2. COVERAGE OF HUMAN ANTIGEN TESTING.**

2 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
3 INCOME SECURITY ACT OF 1974.—

4 (1) IN GENERAL.—Subpart B of part 7 of sub-  
5 title B of title I of the Employee Retirement Income  
6 Security Act of 1974 is amended by adding at the  
7 end the following new section:

8 **“SEC. 714. COVERAGE OF HUMAN ANTIGEN TESTING.**

9 “(a) REQUIREMENT.—A group health plan, and a  
10 health insurance issuer offering group health insurance  
11 coverage, may not deny coverage and payment for human  
12 antigen testing if—

13 “(1) the testing is provided by an entity that is  
14 licensed under the Clinical Laboratory Improvement  
15 Act of 1967 (42 U.S.C. 263a) and accredited by the  
16 American Association of Blood Banks; and

17 “(2) the participant or beneficiary undergoing  
18 such testing signs an informed consent which allows  
19 the results of the test to be used for participation in  
20 the National Marrow Donor Registry established  
21 under section 274k of title 42, United States Code.

22 “(b) DEFINITION.—For purposes of this section, the  
23 term “human antigen testing” means human leukocyte  
24 antigen testing for A,B, and DR antigens for utilization  
25 in bone marrow transplantation.”.

1           (2) CONFORMING AMENDMENT.—Section  
2           732(a) of such Act (29 U.S.C. 1191a(a)) is amended  
3           by striking “section 711” and inserting “sections  
4           711 and 714”.

5           (3) CLERICAL AMENDMENT.—The table of con-  
6           tents in section 1 of such Act is amended by adding  
7           at the end of the items relating to subpart B of part  
8           7 of subtitle B of title I of such Act the following  
9           new item:

“Sec. 714. Coverage of human antigen testing.”.

10          (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE  
11          ACT.—

12           (1) GROUP HEALTH INSURANCE COVERAGE.—  
13           Subpart 2 of part A of title XXVII of the Public  
14           Health Service Act is amended by adding at the end  
15           the following new section:

16          **“SEC. 2707. COVERAGE OF HUMAN ANTIGEN TESTING.**

17           “(a) REQUIREMENT.—A group health plan, and a  
18           health insurance issuer offering group health insurance  
19           coverage, may not deny coverage and payment for human  
20           antigen testing if—

21           “(1) the testing is provided by an entity that is  
22           licensed under the Clinical Laboratory Improvement  
23           Act of 1967 (42 U.S.C. 263a) and accredited by the  
24           American Association of Blood Banks; and

1           “(2) the participant or beneficiary undergoing  
2           such testing signs an informed consent which allows  
3           the results of the test to be used for participation in  
4           the National Marrow Donor Program.

5           “(b) DEFINITION.—For purposes of this section, the  
6           term “human antigen testing” means human leukocyte  
7           antigen testing for A,B, and DR antigens for utilization  
8           in bone marrow transplantation.”.

9           (2) INDIVIDUAL HEALTH INSURANCE COV-  
10          ERAGE.—Part B of title XXVII of such Act is  
11          amended by inserting after section 2752 the fol-  
12          lowing new section:

13       **“SEC. 2753. COVERAGE OF HUMAN ANTIGEN TESTING.**

14       “‘The provisions of section 2707 shall apply to health  
15       insurance coverage offered by a health insurance issuer  
16       in the individual market in the same manner as they apply  
17       to health insurance coverage offered by a health insurance  
18       issuer in connection with a group health plan in the small  
19       or large group market.’”.

20       (c) EFFECTIVE DATES AND RELATED RULES.—

21           (1) GROUP HEALTH PLANS AND GROUP  
22       HEALTH INSURANCE COVERAGE.—

23           (A) IN GENERAL.—Subject to subpara-  
24       graph (B), the amendments made by sub-  
25       sections (a) and (b)(1) apply with respect to

1 group health plans for plan years beginning on  
2 or after the first day of the first month that be-  
3 gins more than 1 year after the date of the en-  
4 actment of this Act.

5 (B) COLLECTIVE BARGAINING EXCEP-  
6 TION.—In the case of a group health plan  
7 maintained pursuant to 1 or more collective  
8 bargaining agreements between employee rep-  
9 resentatives and 1 or more employers ratified  
10 before the date of enactment of this Act, the  
11 amendments made subsections (a) and (b)(1)  
12 shall not apply to plan years beginning before  
13 the later of—

14 (i) the date on which the last collec-  
15 tive bargaining agreements relating to the  
16 plan terminates (determined without re-  
17 gard to any extension thereof agreed to  
18 after the date of enactment of this Act), or

19 (ii) the first day described in subpara-  
20 graph (A).

21 For purposes of clause (i), any plan amendment  
22 made pursuant to a collective bargaining agree-  
23 ment relating to the plan which amends the  
24 plan solely to conform to any requirement  
25 added by subsection (a) or (b)(1) shall not be

1           treated as a termination of such collective bar-  
2           gaining agreement.

3           (2) INDIVIDUAL HEALTH INSURANCE COV-  
4           ERAGE.—The amendment made by subsection (b)(2)  
5           applies with respect to health insurance coverage of-  
6           fered, sold, issued, renewed, in effect, or operated in  
7           the individual market on or after the first day of the  
8           first month that begins more than 1 year after the  
9           date of the enactment of this Act.

10          (3) LIMITATION ON ENFORCEMENT ACTIONS.—  
11          No enforcement action shall be taken, pursuant to  
12          the amendments made by this section, against a  
13          group health plan or health insurance issuer with re-  
14          spect to a violation of a requirement imposed by  
15          such amendments, and no penalty shall be imposed  
16          on any failure by such plan to comply with any re-  
17          quirement imposed by such amendments, to the ex-  
18          tent that violation or failure occurs before the date  
19          of issuance of final regulations issued in connection  
20          with such requirement, if the plan or issuer has  
21          sought to comply in good faith with such require-  
22          ment.

23 **SEC. 3. COORDINATION OF ADMINISTRATION.**

24          The Secretary of Labor and the Secretary of Health  
25          and Human Services shall ensure, through the execution

1 of an interagency memorandum of understanding among  
2 such Secretaries, that—

3           (1) regulations, rulings, and interpretations  
4 issued by such Secretaries relating to the same mat-  
5 ter over which both such Secretaries have responsi-  
6 bility under the provisions of this Act (and the  
7 amendments made thereby) are administered so as  
8 to have the same effect at all times; and

9           (2) coordination of policies relating to enforcing  
10 the same requirements through such Secretaries in  
11 order to have a coordinated enforcement strategy  
12 that avoids duplication of enforcement efforts and  
13 assigns priorities in enforcement.

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