

106TH CONGRESS  
1ST SESSION

# H. R. 2275

To amend title I of the Employee Retirement Income Security Act to ensure choice of physicians.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1999

Mr. FLETCHER (for himself, Mr. NORWOOD, and Mr. McKEON) 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 to ensure choice of physicians.

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 “Ensuring Physician  
5 Choice Act of 1999”.

6 **SEC. 2. CHOICE OF PHYSICIANS.**

7 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
8 B of title I of the Employee Retirement Income Security  
9 Act of 1974 is amended by adding at the end the following  
10 new section:

1 **“SEC. 715. CHOICE OF PHYSICIANS.**

2       “(a) REQUIREMENT TO OFFER COVERAGE OPTION  
3 TO CERTAIN EMPLOYEES.—Except as provided in sub-  
4 section (b), if a group health plan provides, directly or  
5 through insurance, for coverage of services in connection  
6 with the group health plan only if such services are fur-  
7 nished exclusively through health care professionals who  
8 are members of a closed panel of health care professionals,  
9 such plan shall make available a coverage option which  
10 provides for coverage of such services regardless of wheth-  
11 er or not the professionals are members of such a panel.

12       “(b) EXCEPTIONS.—

13               “(1) ALTERNATIVE GROUP HEALTH PLAN.—  
14 Subsection (a) shall not apply in the case of any  
15 group health plan with respect to coverage provided  
16 to any participant or beneficiary of such plan if any  
17 other group health plan maintained by the same  
18 plan sponsor offers to the same participant or bene-  
19 ficiary a coverage option that provides coverage for  
20 services that may be furnished by professionals  
21 whether or not they are members of such a panel.

22               “(2) SMALL EMPLOYER.—

23                       “(A) IN GENERAL.—Subsection (a) shall  
24 not apply to any group health plan (other than  
25 a plan under which all benefits consist of health  
26 insurance coverage) of a small employer, as de-

1           fined, for purposes of this paragraph, with re-  
2           spect to a calendar year and a plan year, as an  
3           employer who employed an average of at least  
4           2 but not more than 25 employees on business  
5           days during the preceding calendar year and  
6           who employs at least 2 employees on the first  
7           day of the plan year.

8           “(B) APPLICATION OF CERTAIN RULES IN  
9           DETERMINATION OF EMPLOYER SIZE.—For  
10          purposes of this paragraph—

11           “(i) APPLICATION OF AGGREGATION  
12          RULE FOR EMPLOYERS.—Rules similar to  
13          the rules under subsections (b), (c), (m),  
14          and (o) of section 414 of the Internal Rev-  
15          enue Code of 1986 shall apply for purposes  
16          of treating persons as a single employer.

17           “(ii) EMPLOYERS NOT IN EXISTENCE  
18          IN PRECEDING YEAR.—In the case of an  
19          employer which was not in existence  
20          throughout the preceding calendar year,  
21          the determination of whether such em-  
22          ployer is a small employer shall be based  
23          on the average number of employees that  
24          it is reasonably expected such employer

1 will employ on business days in the current  
2 calendar year.

3 “(iii) PREDECESSORS.—Any reference  
4 in this paragraph to an employer shall in-  
5 clude a reference to any predecessor of  
6 such employer.

7 “(c) CONSTRUCTION.—Nothing in this section shall  
8 be construed—

9 “(1) as requiring coverage for benefits for a  
10 particular type of health care provider;

11 “(2) as requiring an employer to pay any costs  
12 as a result of this section or to make equal contribu-  
13 tions with respect to different health coverage op-  
14 tions;

15 “(3) as preventing a group health plan or  
16 health insurance issuer from imposing higher pre-  
17 miums or cost-sharing on a participant for the exer-  
18 cise of a coverage option that provides coverage for  
19 services that may be furnished by professionals  
20 whether or not they are members of a closed panel;  
21 or

22 “(4) as applying to any excepted benefits as de-  
23 fined in section 733(c).

24 “(d) DEFINITIONS.—For purposes of this section:

1           “(1) COVERAGE THROUGH A CLOSED PANEL OF  
 2       HEALTH CARE PROFESSIONALS.—The term ‘cov-  
 3       erage through a closed panel of health care profes-  
 4       sionals’ means coverage of items or services which  
 5       are reimbursed for or provided only within a limited  
 6       network of such professionals.

7           “(2) HEALTH CARE PROFESSIONAL.—The term  
 8       ‘health care professional’ means a physician (as de-  
 9       fined in section 1861(r) of the Social Security Act)  
 10      or other health care professional if coverage for the  
 11      professional’s services is provided under the group  
 12      health plan for the services of the professional. Such  
 13      term includes a podiatrist, optometrist, chiropractor,  
 14      psychologist, dentist, physician assistant, physical or  
 15      occupational therapist and therapy assistant, speech-  
 16      language pathologist, audiologist, registered or li-  
 17      censed practical nurse (including nurse practitioner,  
 18      clinical nurse specialist, certified registered nurse  
 19      anesthetist, and certified nurse-midwife), licensed  
 20      certified social worker, registered respiratory thera-  
 21      pist, and certified respiratory therapy technician.”.

22      (b) CONFORMING AMENDMENT.—The table of con-  
 23      tents in section 1 of such Act is amended by adding at  
 24      the end of the items relating to subpart B of part 7 of  
 25      subtitle B of title I of such Act the following new item:

“Sec. 715. Ensuring choice of physicians.”.

1 **SEC. 3. EFFECTIVE DATE AND RELATED RULES.**

2 (a) IN GENERAL.—The amendments made by this  
3 Act shall apply with respect to plan years beginning on  
4 or after January 1 of the second calendar year following  
5 the date of the enactment of this Act, except that the Sec-  
6 retary of Labor may issue regulations before such date  
7 under such amendments. The Secretary shall first issue  
8 regulations necessary to carry out the amendments made  
9 by this Act before the effective date thereof.

10 (b) LIMITATION ON ENFORCEMENT ACTIONS.—No  
11 enforcement action shall be taken, pursuant to the amend-  
12 ments made by this Act, against a group health plan or  
13 health insurance issuer with respect to a violation of a re-  
14 quirement imposed by such amendments before the date  
15 of issuance of regulations issued in connection with such  
16 requirement, if the plan or issuer has sought to comply  
17 in good faith with such requirement.

18 (c) SPECIAL RULE FOR COLLECTIVE BARGAINING  
19 AGREEMENTS.—In the case of a group health plan main-  
20 tained pursuant to one or more collective bargaining  
21 agreements between employee representatives and one or  
22 more employers ratified before the date of the enactment  
23 of this Act, the amendments made by this Act shall not  
24 apply with respect to plan years beginning before the later  
25 of—

1           (1) the date on which the last of the collective  
2       bargaining agreements relating to the plan termi-  
3       nates (determined without regard to any extension  
4       thereof agreed to after the date of the enactment of  
5       this Act); or

6           (2) January 1, 2002.

7 For purposes of this subsection, any plan amendment  
8 made pursuant to a collective bargaining agreement relat-  
9 ing to the plan which amends the plan solely to conform  
10 to any requirement added by this Act shall not be treated  
11 as a termination of such collective bargaining agreement.

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