

106TH CONGRESS  
1ST SESSION

# S. 1142

To protect the right of a member of a health maintenance organization to receive continuing care at a facility selected by that member, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 27, 1999

Ms. MIKULSKI (for herself, Mr. DODD, Mr. HOLLINGS, Mr. JEFFORDS, Mr. KENNEDY, Mrs. MURRAY, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To protect the right of a member of a health maintenance organization to receive continuing care at a facility selected by that member, and for other purposes.

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 “Seniors’ Access to Con-  
5       tinuing Care Act of 1999”.

1 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**  
 2 **COME SECURITY ACT OF 1974.**

3 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
 4 B of title I of the Employee Retirement Income Security  
 5 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-  
 6 ing at the end the following new section:

7 **“SEC. 714. ENSURING CHOICE FOR CONTINUING CARE.**

8 “(a) IN GENERAL.—With respect to health insurance  
 9 coverage provided to participants or beneficiaries through  
 10 a managed care organization under a group health plan,  
 11 or through a health insurance issuer providing health in-  
 12 surance coverage in connection with a group health plan,  
 13 such plan or issuer may not deny coverage for services  
 14 provided to such participant or beneficiary by a continuing  
 15 care retirement community, skilled nursing facility, or  
 16 other qualified facility in which the participant or bene-  
 17 ficiary resided prior to a hospitalization, regardless of  
 18 whether such organization is under contract with such  
 19 community or facility if the requirements described in sub-  
 20 section (b) are met.

21 “(b) REQUIREMENTS.—The requirements of this sub-  
 22 section are that—

23 “(1) the service involved is a service for which  
 24 the managed care organization involved would be re-  
 25 quired to provide or pay for under its contract with  
 26 the participant or beneficiary if the continuing care

1 retirement community, skilled nursing facility, or  
2 other qualified facility were under contract with the  
3 organization;

4 “(2) the participant or beneficiary involved—

5 “(A) resided in the continuing care retire-  
6 ment community, skilled nursing facility, or  
7 other qualified facility prior to being hospital-  
8 ized;

9 “(B) had a contractual or other right to  
10 return to the facility after hospitalization; and

11 “(C) elects to return to the facility after  
12 hospitalization, whether or not the residence of  
13 the participant or beneficiary after returning  
14 from the hospital is the same part of the facility  
15 in which the beneficiary resided prior to hos-  
16 pitalization;

17 “(3) the continuing care retirement community,  
18 skilled nursing facility, or other qualified facility has  
19 the capacity to provide the services the participant  
20 or beneficiary needs;

21 “(4) the continuing care retirement community,  
22 skilled nursing facility, or other qualified facility is  
23 willing to accept substantially similar payment under  
24 the same terms and conditions that apply to simi-

1        larly situated health care facility providers under  
 2        contract with the organization involved.

3        “(c) SERVICES TO PREVENT HOSPITALIZATION.—A  
 4        group health plan or health insurance issuer to which this  
 5        section applies may not deny payment for a skilled nursing  
 6        service provided to a participant or beneficiary by a con-  
 7        tinuing care retirement community, skilled nursing facil-  
 8        ity, or other qualified facility in which the participant or  
 9        beneficiary resides, without a preceding hospital stay, re-  
 10       gardless of whether the organization is under contract  
 11       with such community or facility, if—

12                “(1) the plan or issuer has determined that the  
 13        service is necessary to prevent the hospitalization of  
 14        the participant or beneficiary; and

15                “(2) the service to prevent hospitalization is  
 16        provided as an additional benefit as described in sec-  
 17        tion 417.594 of title 42, Code of Federal Regula-  
 18        tions, and would otherwise be covered as provided  
 19        for in subsection (b)(1).

20        “(d) RIGHTS OF SPOUSES.—A group health plan or  
 21        health insurance issuer to which this section applies shall  
 22        not deny payment for services provided by a skilled nurs-  
 23        ing facility for the care of a participant or beneficiary, re-  
 24        gardless of whether the plan or issuer is under contract  
 25        with such facility, if the spouse of the participant or bene-

1 ficiary is already a resident of such facility and the re-  
 2 quirements described in subsection (b) are met.

3 “(e) EXCEPTIONS.—Subsection (a) shall not apply—

4 “(1) where the attending acute care provider  
 5 and the participant or beneficiary (or a designated  
 6 representative of the participant or beneficiary where  
 7 the participant or beneficiary is physically or men-  
 8 tally incapable of making an election under this  
 9 paragraph) do not elect to pursue a course of treat-  
 10 ment necessitating continuing care; or

11 “(2) unless the community or facility involved—

12 “(A) meets all applicable licensing and cer-  
 13 tification requirements of the State in which it  
 14 is located; and

15 “(B) agrees to reimbursement for the care  
 16 of the participant or beneficiary at a rate simi-  
 17 lar to the rate negotiated by the managed care  
 18 organization with similar providers of care for  
 19 similar services.

20 “(f) PROHIBITIONS.—A group health plan and a  
 21 health insurance issuer providing health insurance cov-  
 22 erage in connection with a group health plan may not—

23 “(1) deny to an individual eligibility, or contin-  
 24 ued eligibility, to enroll or to renew coverage with a  
 25 managed care organization under the plan, solely for

1 the purpose of avoiding the requirements of this sec-  
 2 tion;

3 “(2) provide monetary payments or rebates to  
 4 enrollees to encourage such enrollees to accept less  
 5 than the minimum protections available under this  
 6 section;

7 “(3) penalize or otherwise reduce or limit the  
 8 reimbursement of an attending physician because  
 9 such physician provided care to a participant or ben-  
 10 eficiary in accordance with this section; or

11 “(4) provide incentives (monetary or otherwise)  
 12 to an attending physician to induce such physician  
 13 to provide care to a participant or beneficiary in a  
 14 manner inconsistent with this section.

15 “(g) RULES OF CONSTRUCTION.—

16 “(1) HMO NOT OFFERING BENEFITS.—This  
 17 section shall not apply with respect to any managed  
 18 care organization under a group health plan, or  
 19 through a health insurance issuer providing health  
 20 insurance coverage in connection with a group health  
 21 plan, that does not provide benefits for stays in a  
 22 continuing care retirement community, skilled nurs-  
 23 ing facility, or other qualified facility.

24 “(2) COST-SHARING.—Nothing in this section  
 25 shall be construed as preventing a managed care or-

1       ganization under a group health plan, or through a  
 2       health insurance issuer providing health insurance  
 3       coverage in connection with a group health plan,  
 4       from imposing deductibles, coinsurance, or other  
 5       cost-sharing in relation to benefits for care in a con-  
 6       tinuing care facility.

7       “(h) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
 8       ANCE COVERAGE IN CERTAIN STATES.—

9               “(1) IN GENERAL.—The requirements of this  
 10       section shall not apply with respect to health insur-  
 11       ance coverage to the extent that a State law (as de-  
 12       fined in section 2723(d)(1) of the Public Health  
 13       Service Act) applies to such coverage and is de-  
 14       scribed in any of the following subparagraphs:

15               “(A) Such State law requires such cov-  
 16       erage to provide for referral to a continuing  
 17       care retirement community, skilled nursing fa-  
 18       cility, or other qualified facility in a manner  
 19       that is more protective of participants or bene-  
 20       ficiaries than the provisions of this section.

21               “(B) Such State law expands the range of  
 22       services or facilities covered under this section  
 23       and is otherwise more protective of the rights of  
 24       participants or beneficiaries than the provisions  
 25       of this section.

1           “(2) CONSTRUCTION.—Section 731(a)(1) shall  
 2           not be construed to provide that any requirement of  
 3           this section applies with respect to health insurance  
 4           coverage, to the extent that a State law described in  
 5           paragraph (1) applies to such coverage.

6           “(i) PENALTIES.—A participant or beneficiary may  
 7           enforce the provisions of this section in an appropriate  
 8           Federal district court. An action for injunctive relief or  
 9           damages may be commenced on behalf of the participant  
 10          or beneficiary by the participant’s or beneficiary’s legal  
 11          representative. The court may award reasonable attorneys’  
 12          fees to the prevailing party. If a beneficiary dies before  
 13          conclusion of an action under this section, the action may  
 14          be maintained by a representative of the participant’s or  
 15          beneficiary’s estate.

16          “(j) DEFINITIONS.—In this section:

17               “(1) ATTENDING ACUTE CARE PROVIDER.—The  
 18               term ‘attending acute care provider’ means anyone  
 19               licensed or certified under State law to provide  
 20               health care services who is operating within the  
 21               scope of such license and who is primarily respon-  
 22               sible for the care of the enrollee.

23               “(2) CONTINUING CARE RETIREMENT COMMU-  
 24               NITY.—The term ‘continuing care retirement com-  
 25               munity’ means an organization that provides or ar-



1 ranges for the provision of housing and health-re-  
2 lated services to an older person under an agreement  
3 effective for the life of the person or for a specified  
4 period greater than 1 year.

5 “(3) MANAGED CARE ORGANIZATION.—The  
6 term ‘managed care organization’ means an organi-  
7 zation that provides comprehensive health services to  
8 participants or beneficiaries, directly or under con-  
9 tract or other agreement, on a prepayment basis to  
10 such individuals. For purposes of this section, the  
11 following shall be considered as managed care orga-  
12 nizations:

13 “(A) A Medicare+Choice plan authorized  
14 under section 1851(a) of the Social Security  
15 Act (42 U.S.C. 1395w–21(a)).

16 “(B) Any other entity that manages the  
17 cost, utilization, and delivery of health care  
18 through the use of predetermined periodic pay-  
19 ments to health care providers employed by or  
20 under contract or other agreement, directly or  
21 indirectly, with the entity.

22 “(4) OTHER QUALIFIED FACILITY.—The term  
23 ‘other qualified facility’ means any facility that can  
24 provide the services required by the participant or  
25 beneficiary consistent with State and Federal law.

1           “(5) SKILLED NURSING FACILITY.—The term  
 2           ‘skilled nursing facility’ means a facility that meets  
 3           the requirements of section 1819 of the Social Secu-  
 4           rity Act (42 U.S.C. 1395i–3).”.

5           (b) CLERICAL AMENDMENT.—The table of contents  
 6           in section 1 of the Employee Retirement Income Security  
 7           Act of 1974 is amended by inserting after the items relat-  
 8           ing to subpart B of part 7 of subtitle B of title I the fol-  
 9           lowing new item:

          “Sec. 714. Ensuring choice for continuing care.”.

10          (c) EFFECTIVE DATE.—The amendments made by  
 11          this section shall apply with respect to plan years begin-  
 12          ning on or after January 1, 2000.

13       **SEC. 3. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
 14                               **ACT RELATING TO THE GROUP MARKET.**

15          (a) IN GENERAL.—Subpart 2 of part A of title  
 16          XXVII of the Public Health Service Act (42 U.S.C.  
 17          300gg–4 et seq.) is amended by adding at the end the  
 18          following new section:

19       **“SEC. 2707. ENSURING CHOICE FOR CONTINUING CARE.**

20               “(a) IN GENERAL.—With respect to health insurance  
 21          coverage provided to enrollees through a managed care or-  
 22          ganization under a group health plan, or through a health  
 23          insurance issuer providing health insurance coverage in  
 24          connection with a group health plan, such plan or issuer  
 25          may not deny coverage for services provided to such en-

1 rollee by a continuing care retirement community, skilled  
 2 nursing facility, or other qualified facility in which the en-  
 3 rollee resided prior to a hospitalization, regardless of  
 4 whether such organization is under contract with such  
 5 community or facility if the requirements described in sub-  
 6 section (b) are met.

7 “(b) REQUIREMENTS.—The requirements of this sub-  
 8 section are that—

9 “(1) the service involved is a service for which  
 10 the managed care organization involved would be re-  
 11 quired to provide or pay for under its contract with  
 12 the enrollee if the continuing care retirement com-  
 13 munity, skilled nursing facility, or other qualified fa-  
 14 cility were under contract with the organization;

15 “(2) the enrollee involved—

16 “(A) resided in the continuing care retire-  
 17 ment community, skilled nursing facility, or  
 18 other qualified facility prior to being hospital-  
 19 ized;

20 “(B) had a contractual or other right to  
 21 return to the facility after hospitalization; and

22 “(C) elects to return to the facility after  
 23 hospitalization, whether or not the residence of  
 24 the enrollee after returning from the hospital is

1           the same part of the facility in which the bene-  
2           ficiary resided prior to hospitalization;

3           “(3) the continuing care retirement community,  
4           skilled nursing facility, or other qualified facility has  
5           the capacity to provide the services the enrollee  
6           needs;

7           “(4) the continuing care retirement community,  
8           skilled nursing facility, or other qualified facility is  
9           willing to accept substantially similar payment under  
10          the same terms and conditions that apply to simi-  
11          larly situated health care facility providers under  
12          contract with the organization involved.

13          “(c) SERVICES TO PREVENT HOSPITALIZATION.—A  
14          group health plan or health insurance issuer to which this  
15          section applies may not deny payment for a skilled nursing  
16          service provided to a enrollee by a continuing care retire-  
17          ment community, skilled nursing facility, or other quali-  
18          fied facility in which the enrollee resides, without a pre-  
19          ceding hospital stay, regardless of whether the plan or  
20          issuer is under contract with such community or facility,  
21          if—

22                 “(1) the plan or issuer has determined that the  
23                 service is necessary to prevent the hospitalization of  
24                 the enrollee; and

1           “(2) the service to prevent hospitalization is  
 2           provided as an additional benefit as described in sec-  
 3           tion 417.594 of title 42, Code of Federal Regula-  
 4           tions, and would be covered as provided for in sub-  
 5           section (b)(1).

6           “(d) RIGHTS OF SPOUSES.—A group health plan or  
 7           health insurance issuer to which this section applies shall  
 8           not deny payment for services provided by a skilled nurs-  
 9           ing facility for the care of an enrollee, regardless of wheth-  
 10          er the plan or issuer is under contract with such facility,  
 11          if the spouse of the enrollee is already a resident of such  
 12          facility and the requirements described in subsection (b)  
 13          are met.

14          “(e) EXCEPTIONS.—Subsection (a) shall not apply—

15               “(1) where the attending acute care provider  
 16               and the enrollee (or a designated representative of  
 17               the enrollee where the enrollee is physically or men-  
 18               tally incapable of making an election under this  
 19               paragraph) do not elect to pursue a course of treat-  
 20               ment necessitating continuing care; or

21               “(2) unless the community or facility involved—

22                       “(A) meets all applicable licensing and cer-  
 23                       tification requirements of the State in which it  
 24                       is located; and

1           “(B) agrees to reimbursement for the care  
2           of the enrollee at a rate similar to the rate ne-  
3           gotiated by the managed care organization with  
4           similar providers of care for similar services.

5           “(f) PROHIBITIONS.—A group health plan and a  
6 health insurance issuer providing health insurance cov-  
7 erage in connection with a group health plan may not—

8           “(1) deny to an individual eligibility, or contin-  
9           ued eligibility, to enroll or to renew coverage with a  
10          managed care organization under the plan, solely for  
11          the purpose of avoiding the requirements of this sec-  
12          tion;

13          “(2) provide monetary payments or rebates to  
14          enrollees to encourage such enrollees to accept less  
15          than the minimum protections available under this  
16          section;

17          “(3) penalize or otherwise reduce or limit the  
18          reimbursement of an attending physician because  
19          such physician provided care to a enrollee in accord-  
20          ance with this section; or

21          “(4) provide incentives (monetary or otherwise)  
22          to an attending physician to induce such physician  
23          to provide care to an enrollee in a manner incon-  
24          sistent with this section.

25          “(g) RULES OF CONSTRUCTION.—

1           “(1) HMO NOT OFFERING BENEFITS.—This  
 2           section shall not apply with respect to any managed  
 3           care organization under a group health plan, or  
 4           through a health insurance issuer providing health  
 5           insurance coverage in connection with a group health  
 6           plan, that does not provide benefits for stays in a  
 7           continuing care retirement community, skilled nurs-  
 8           ing facility, or other qualified facility.

9           “(2) COST-SHARING.—Nothing in this section  
 10          shall be construed as preventing a managed care or-  
 11          ganization under a group health plan, or through a  
 12          health insurance issuer providing health insurance  
 13          coverage in connection with a group health plan,  
 14          from imposing deductibles, coinsurance, or other  
 15          cost-sharing in relation to benefits for care in a con-  
 16          tinuing care facility.

17          “(h) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
 18          ANCE COVERAGE IN CERTAIN STATES.—

19               “(1) IN GENERAL.—The requirements of this  
 20               section shall not apply with respect to health insur-  
 21               ance coverage to the extent that a State law (as de-  
 22               fined in section 2723(d)(1)) applies to such coverage  
 23               and is described in any of the following subpara-  
 24               graphs:

1           “(A) Such State law requires such cov-  
 2           erage to provide for referral to a continuing  
 3           care retirement community, skilled nursing fa-  
 4           cility, or other qualified facility in a manner  
 5           that is more protective of the enrollee than the  
 6           provisions of this section.

7           “(B) Such State law expands the range of  
 8           services or facilities covered under this section  
 9           and is otherwise more protective of enrollee  
 10          rights than the provisions of this section.

11          “(2) CONSTRUCTION.—Section 2723(a)(1) shall  
 12          not be construed to provide that any requirement of  
 13          this section applies with respect to health insurance  
 14          coverage, to the extent that a State law described in  
 15          paragraph (1) applies to such coverage.

16          “(i) PENALTIES.—An enrollee may enforce the provi-  
 17          sions of this section in an appropriate Federal district  
 18          court. An action for injunctive relief or damages may be  
 19          commenced on behalf of the enrollee by the enrollee’s legal  
 20          representative. The court may award reasonable attorneys’  
 21          fees to the prevailing party. If a beneficiary dies before  
 22          conclusion of an action under this section, the action may  
 23          be maintained by a representative of the enrollee’s estate.

24          “(j) DEFINITIONS.—In this section:



1           “(1) ATTENDING ACUTE CARE PROVIDER.—The  
 2           term ‘attending acute care provider’ means anyone  
 3           licensed or certified under State law to provide  
 4           health care services who is operating within the  
 5           scope of such license and who is primarily respon-  
 6           sible for the care of the enrollee.

7           “(2) CONTINUING CARE RETIREMENT COMMU-  
 8           NITY.—The term ‘continuing care retirement com-  
 9           munity’ means an organization that provides or ar-  
 10          ranges for the provision of housing and health-re-  
 11          lated services to an older person under an agreement  
 12          effective for the life of the person or for a specified  
 13          period greater than 1 year.

14          “(3) MANAGED CARE ORGANIZATION.—The  
 15          term ‘managed care organization’ means an organi-  
 16          zation that provides comprehensive health services to  
 17          enrollees, directly or under contract or other agree-  
 18          ment, on a prepayment basis to such individuals.  
 19          For purposes of this section, the following shall be  
 20          considered as managed care organizations:

21                 “(A) A Medicare+Choice plan authorized  
 22                 under section 1851(a) of the Social Security  
 23                 Act (42 U.S.C. 1395w-21(a)).

24                 “(B) Any other entity that manages the  
 25                 cost, utilization, and delivery of health care

1 through the use of predetermined periodic pay-  
 2 ments to health care providers employed by or  
 3 under contract or other agreement, directly or  
 4 indirectly, with the entity.

5 “(4) OTHER QUALIFIED FACILITY.—The term  
 6 ‘other qualified facility’ means any facility that can  
 7 provide the services required by the enrollee con-  
 8 sistent with State and Federal law.

9 “(5) SKILLED NURSING FACILITY.—The term  
 10 ‘skilled nursing facility’ means a facility that meets  
 11 the requirements of section 1819 of the Social Secu-  
 12 rity Act (42 U.S.C. 1395i–3).”.

13 (b) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply with respect to group health plans  
 15 for plan years beginning on or after January 1, 2000.

16 **SEC. 4. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**  
 17 **RELATING TO THE INDIVIDUAL MARKET.**

18 (a) IN GENERAL.—The first subpart 3 of part B of  
 19 title XXVII of the Public Health Service Act (42 U.S.C.  
 20 300gg–51 et seq.) (relating to other requirements) is  
 21 amended—

22 (1) by redesignating such subpart as subpart 2;

23 and

24 (2) by adding at the end the following new sec-  
 25 tion:

1 **“SEC. 2753. ENSURING CHOICE FOR CONTINUING CARE.**

2       “The provisions of section 2707 shall apply to health  
3 maintenance organization coverage offered by a health in-  
4 surance issuer in the individual market in the same man-  
5 ner as they apply to such coverage offered by a health  
6 insurance issuer in connection with a group health plan  
7 in the small or large group market.”.

8       (b) **EFFECTIVE DATE.**—The amendment made by  
9 this section shall apply with respect to health insurance  
10 coverage offered, sold, issued, renewed, in effect, or oper-  
11 ated in the individual market on or after January 1, 2000.

○