

109TH CONGRESS
1ST SESSION

H. R. 2937

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans permit enrollees direct access to services of obstetrical and gynecological physician services directly and without a referral.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2005

Mrs. DAVIS of California introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce and Ways and Means, 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, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans permit enrollees direct access to services of obstetrical and gynecological physician services directly and without a referral.

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 “Women’s Obstetrician
3 and Gynecologist Access Now Act”.

4 **SEC. 2. WOMEN’S ACCESS TO OBSTETRICAL AND GYNECO-**
5 **LOGICAL SERVICES.**

6 (a) GROUP HEALTH PLANS.—

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

11 **“SEC. 2707. STANDARD RELATING TO WOMEN’S ACCESS TO**
12 **OBSTETRICAL AND GYNECOLOGICAL SERV-**
13 **ICES.**

14 “(a) DIRECT ACCESS REQUIRED.—

15 “(1) IN GENERAL.—A group health plan, and a
16 health insurance issuer offering group health insur-
17 ance coverage, shall allow a participant or bene-
18 ficiary the option to seek obstetrical and gynecolo-
19 gical physician services directly from a partici-
20 pating obstetrician and gynecologist or directly from
21 a participating family practice physician and sur-
22 geon designated by the plan or issuer as providing
23 obstetrical and gynecological services. A group
24 health plan or health insurance issuer, in connection
25 with the offering of group health insurance coverage,
26 shall not require a participant or beneficiary to ob-

1 tain prior approval from another physician, another
2 provider, the plan or issuer, or any other person
3 prior to obtaining direct access to obstetrical and
4 gynecological physician services.

5 “(2) CONSTRUCTION.—Paragraph (1) shall not
6 be construed as preventing a plan or issuer—

7 “(A) from establishing reasonable require-
8 ments for the participating obstetrician and
9 gynecologist or family practice physician and
10 surgeon to communicate with the participant’s
11 or beneficiary’s primary care physician and sur-
12 geon regarding the participant’s or beneficiary’s
13 condition, treatment, and any need for followup
14 care; or

15 “(B) from establishing reasonable provi-
16 sions governing utilization protocols and the use
17 of obstetricians and gynecologists, or family
18 practice physicians and surgeons, participating
19 in the plan or issuer network, medical group, or
20 independent practice association, so long as
21 these provisions—

22 “(i) are consistent with the intent of
23 such paragraph;

24 “(ii) are those customarily applied to
25 other physicians and surgeons, such as pri-

1 mary care physicians and surgeons, to
2 whom the participant or beneficiary has di-
3 rect access; and

4 “(iii) are not to be more restrictive for
5 the provision of obstetrical and gynecolo-
6 gical physician services.

7 “(b) NOTICE.—A group health plan under this part
8 shall comply with the notice requirement under section
9 714(b) of the Employee Retirement Income Security Act
10 of 1974 with respect to the requirements of this section
11 as if such section applied to such plan.”.

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. 714. STANDARD RELATING TO WOMEN’S ACCESS TO**
17 **OBSTETRICAL AND GYNECOLOGICAL SERV-**
18 **ICES.**

19 “(a) DIRECT ACCESS REQUIRED.—

20 “(1) IN GENERAL.—A group health plan, and a
21 health insurance issuer offering group health insur-
22 ance coverage, shall allow a participant or bene-
23 ficiary the option to seek obstetrical and gynecolo-
24 gical physician services directly from a partici-
25 pating obstetrician and gynecologist or directly from

1 a participating family practice physician and sur-
2 geon designated by the plan or issuer as providing
3 obstetrical and gynecological services. A group
4 health plan or health insurance issuer, in connection
5 with the offering of group health insurance coverage,
6 shall not require a participant or beneficiary to ob-
7 tain prior approval from another physician, another
8 provider, the plan or issuer, or any other person
9 prior to obtaining direct access to obstetrical and
10 gynecological physician services.

11 “(2) CONSTRUCTION.—Paragraph (1) shall not
12 be construed as preventing a plan or issuer—

13 “(A) from establishing reasonable require-
14 ments for the participating obstetrician and
15 gynecologist or family practice physician and
16 surgeon to communicate with the participant’s
17 or beneficiary’s primary care physician and sur-
18 geon regarding the participant’s or beneficiary’s
19 condition, treatment, and any need for followup
20 care; or

21 “(B) from establishing reasonable provi-
22 sions governing utilization protocols and the use
23 of obstetricians and gynecologists, or family
24 practice physicians and surgeons, participating
25 in the plan or issuer network, medical group, or

1 independent practice association, so long as
2 these provisions—

3 “(i) are consistent with the intent of
4 such paragraph;

5 “(ii) are those customarily applied to
6 other physicians and surgeons, such as pri-
7 mary care physicians and surgeons, to
8 whom the participant or beneficiary has di-
9 rect access; and

10 “(iii) are not to be more restrictive for
11 the provision of obstetrical and gynecolo-
12 gical physician services.

13 “(b) 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 732(a) of such Act (29 U.S.C.
24 1191a(a)) is amended by striking “section 711” and
25 inserting “sections 711 and 714”.

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

“714. Standard relating to women’s access to obstetrical and gynecological services.”.

4 (3) INTERNAL REVENUE CODE AMEND-
5 MENTS.—

6 (A) IN GENERAL.—Subchapter B of chap-
7 ter 100 of the Internal Revenue Code of 1986
8 is amended—

9 (i) in the table of sections, by insert-
10 ing after the item relating to section 9812
11 the following new item:

“9813. Standard relating to women’s access to obstetrical and gynecological services.”;

12 and

13 (ii) by inserting after section 9812 the
14 following:

15 **“SEC. 9813. STANDARD RELATING TO WOMEN’S ACCESS TO**
16 **OBSTETRICAL AND GYNECOLOGICAL SERV-**
17 **ICES.**

18 “(a) DIRECT ACCESS REQUIRED.—A group health
19 plan, and a health insurance issuer offering group health
20 insurance coverage, shall allow a participant or beneficiary
21 the option to seek obstetrical and gynecological physician
22 services directly from a participating obstetrician and gyn-
23 ecologist or directly from a participating family practice

1 physician and surgeon designated by the plan or issuer
2 as providing obstetrical and gynecological services. A
3 group health plan or health insurance issuer, in connection
4 with the offering of group health insurance coverage, shall
5 not require a participant or beneficiary to obtain prior ap-
6 proval from another physician, another provider, the plan
7 or issuer, or any other person prior to obtaining direct
8 access to obstetrical and gynecological physician services.

9 “(b) CONSTRUCTION.—Subsection (a) shall not be
10 construed as preventing a plan or issuer—

11 “(1) from establishing reasonable requirements
12 for the participating obstetrician and gynecologist or
13 family practice physician and surgeon to commu-
14 nicate with the participant’s or beneficiary’s primary
15 care physician and surgeon regarding the partici-
16 pant’s or beneficiary’s condition, treatment, and any
17 need for followup care; or

18 “(2) from establishing reasonable provisions
19 governing utilization protocols and the use of obste-
20 tricians and gynecologists, or family practice physi-
21 cians and surgeons, participating in the plan or
22 issuer network, medical group, or independent prac-
23 tice association, so long as these provisions—

24 “(A) are consistent with the intent of such
25 subsection;

1 “(B) are those customarily applied to other
2 physicians and surgeons, such as primary care
3 physicians and surgeons, to whom the partici-
4 pant or beneficiary has direct access; and

5 “(C) are not to be more restrictive for the
6 provision of obstetrical and gynecological physi-
7 cian services.”.

8 (B) CONFORMING AMENDMENT.—Section
9 4980D(d)(1) of such Code is amended by strik-
10 ing “section 9811” and inserting “sections
11 9811 and 9813”.

12 (b) INDIVIDUAL HEALTH INSURANCE.—Part B of
13 title XXVII of the Public Health Service Act is amended
14 by inserting after section 2752 the following new section:

15 **“SEC. 2753. STANDARD RELATING TO WOMEN’S ACCESS TO**
16 **OBSTETRICAL AND GYNECOLOGICAL SERV-**
17 **ICES.**

18 “(a) IN GENERAL.—The provisions of section
19 2707(a) shall apply to health insurance coverage offered
20 by a health insurance issuer in the individual market in
21 the same manner as they apply to health insurance cov-
22 erage offered by a health insurance issuer in connection
23 with a group health plan in the small or large group mar-
24 ket.

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

7 (c) EFFECTIVE DATES.—

8 (1) GROUP HEALTH PLANS AND GROUP
9 HEALTH INSURANCE COVERAGE.—Subject to para-
10 graph (3), the amendments made by subsection (a)
11 apply with respect to group health plans for plan
12 years beginning more than 180 days after the date
13 of the enactment of this Act.

14 (2) INDIVIDUAL HEALTH INSURANCE COV-
15 ERAGE.—The amendment made by subsection (b)
16 applies with respect to health insurance coverage of-
17 fered, sold, issued, renewed, in effect, or operated in
18 the individual market on or after such date.

19 (3) COLLECTIVE BARGAINING EXCEPTION.—In
20 the case of a group health plan maintained pursuant
21 to 1 or more collective bargaining agreements be-
22 tween employee representatives and 1 or more em-
23 ployers ratified before the date of enactment of this
24 Act, the amendments made subsection (a) shall not
25 apply to plan years beginning before the later of—

1 (A) the date on which the last collective
2 bargaining agreements relating to the plan ter-
3 minates (determined without regard to any ex-
4 tension thereof agreed to after the date of en-
5 actment of this Act), or

6 (B) the date that is 180 days after the
7 date of the enactment of this Act.

8 For purposes of subparagraph (A), any plan amend-
9 ment made pursuant to a collective bargaining
10 agreement relating to the plan which amends the
11 plan solely to conform to any requirement added by
12 subsection (a) shall not be treated as a termination
13 of such collective bargaining agreement.

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

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

1 (2) coordination of policies relating to enforcing
2 the same requirements through such Secretaries in
3 order to have a coordinated enforcement strategy
4 that avoids duplication of enforcement efforts and
5 assigns priorities in enforcement.

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