

110TH CONGRESS  
2D SESSION

# H. R. 5449

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual health insurance coverage.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2008

Mr. KAGEN (for himself, Mr. BRALEY of Iowa, Mr. PERLMUTTER, Mr. COHEN, Mr. MCNERNEY, Ms. CASTOR, Mr. WALZ of Minnesota, Mr. JOHNSON of Georgia, Mr. GRIJALVA, Ms. HIRONO, Mrs. NAPOLITANO, Ms. SUTTON, Ms. CLARKE, Mr. CONYERS, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor 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

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## A BILL

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual 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; PURPOSE.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “No Discrimination in Health Insurance Act of 2008”.

4 (b) PURPOSE.—It is the purpose of this Act to—

5 (1) eliminate the application of pre-existing con-  
6 dition exclusions in all group health coverage policies  
7 and all individual health insurance policies; and

8 (2) provide that all health insurance issuers de-  
9 termine and openly disclose the premium price for  
10 each and every group health insurance policy and  
11 each and every individual health insurance policy,  
12 such that within a specific metropolitan statistical  
13 area, or other geographic area, all such premiums  
14 and prices established by a given issuer shall be uni-  
15 form.

16 **SEC. 2. NONDISCRIMINATION IN GROUP HEALTH COV-**  
17 **ERAGE.**

18 (a) APPLICATION UNDER THE EMPLOYEE RETIRE-  
19 MENT INCOME SECURITY ACT OF 1974.—

20 (1) ELIMINATION OF PREEXISTING CONDITION  
21 EXCLUSIONS.—Section 701 of the Employee Retire-  
22 ment Income Security Act of 1974 (29 U.S.C. 1181)  
23 is amended—

24 (A) by amending the heading to read as  
25 follows: “**ELIMINATION OF PREEXISTING**  
26 **CONDITION EXCLUSIONS**”;

1 (B) by amending subsection (a) to read as  
2 follows:

3 “(a) IN GENERAL.—A group health plan, and a  
4 health insurance issuer offering group health insurance  
5 coverage, with respect to a participant or beneficiary—

6 “(1) may not impose any pre-existing condition  
7 exclusion; and

8 “(2) in the case of a group health plan that of-  
9 fers medical care through health insurance coverage  
10 offered by a health maintenance organization, may  
11 not provide for an affiliation period with respect to  
12 coverage through the organization.”;

13 (C) in subsection (b), by striking para-  
14 graph (3) and inserting the following:

15 “(3) AFFILIATION PERIOD.—The term ‘affili-  
16 ation period’ means a period which, under the terms  
17 of the health insurance coverage offered by the  
18 health maintenance organization, must expire before  
19 the health insurance coverage becomes effective.”;

20 (D) by striking subsections (c), (d), (e),  
21 and (g); and

22 (E) by redesignating subsection (f) (relat-  
23 ing to special enrollment periods) as subsection  
24 (c).

1           (2) CLERICAL AMENDMENT.—The item in the  
 2           table of contents of such Act relating to section 701  
 3           is amended to read as follows:

“Sec. 701. Elimination of pre-existing condition exclusions.”.

4           (b) APPLICATION UNDER THE INTERNAL REVENUE  
 5 CODE OF 1986.—

6           (1) ELIMINATION OF PREEXISTING CONDITION  
 7 EXCLUSIONS.—Section 9801 of the Internal Revenue  
 8 Code of 1986 is amended—

9                   (A) by amending the heading to read as  
 10 follows: “**ELIMINATION OF PREEXISTING**  
 11 **CONDITION EXCLUSIONS**”;

12                   (B) by amending subsection (a) to read as  
 13 follows:

14           “(a) IN GENERAL.—A group health plan with respect  
 15 to a participant or beneficiary may not impose any pre-  
 16 existing condition exclusion.”;

17                   (C) by striking paragraph (3) of subsection  
 18 (b);

19                   (D) by striking subsections (c), (d), and  
 20 (e); and

21                   (E) by redesignating subsection (f) (relat-  
 22 ing to special enrollment periods) as subsection  
 23 (c).

1           (2) CLERICAL AMENDMENT.—The item in the  
2           table of sections of chapter 100 of such Code relat-  
3           ing to section 9801 is amended to read as follows:

“Sec. 9801. Elimination of preexisting condition exclusions.”.

4           (c) APPLICATION UNDER PUBLIC HEALTH SERVICE  
5           ACT.—

6           (1) ELIMINATION OF PREEXISTING CONDITION  
7           EXCLUSIONS.—Section 2701 of the Public Health  
8           Service Act (42 U.S.C. 300gg) is amended—

9                       (A) by amending the heading to read as  
10                      follows: “**ELIMINATION OF PREEXISTING**  
11                      **CONDITION EXCLUSIONS**”;

12                     (B) by amending subsection (a) to read as  
13                      follows:

14           “(a) IN GENERAL.—A group health plan, and a  
15           health insurance issuer offering group health insurance  
16           coverage, with respect to a participant or beneficiary—

17                      “(1) may not impose any pre-existing condition  
18                      exclusion; and

19                      “(2) in the case of a group health plan that of-  
20                      fers medical care through health insurance coverage  
21                      offered by a health maintenance organization, may  
22                      not provide for an affiliation period with respect to  
23                      coverage through the organization.”;

24                      (C) in subsection (b), by striking para-  
25                      graph (3) and inserting the following:

1           “(3) AFFILIATION PERIOD.—The term ‘affili-  
 2           ation period’ means a period which, under the terms  
 3           of the health insurance coverage offered by the  
 4           health maintenance organization, must expire before  
 5           the health insurance coverage becomes effective.”;

6                   (D) by striking subsections (c), (d), (e),  
 7           and (g); and

8                   (E) by redesignating subsection (f) (relat-  
 9           ing to special enrollment periods) as subsection  
 10          (c).

11          (2) GUARANTEED AVAILABILITY OF GROUP  
 12          HEALTH INSURANCE COVERAGE TO EMPLOYERS OF  
 13          ALL SIZES IN THE GROUP MARKET.—Section 2711  
 14          of such Act (42 U.S.C. 300gg–11) is amended—

15                (A) in subsection (a)—

16                   (i) in the heading, by striking  
 17           “SMALL”;

18                   (ii) in paragraph (1), by striking “(c)  
 19           through (f)” and inserting “(b) through  
 20           (d)”;

21                   (iii) in paragraph (1), in the matter  
 22           before subparagraph (A), by striking  
 23           “small”;

1 (iv) in paragraph (1)(A), by striking  
 2 “small employer (as defined in section  
 3 2791(e)(4))” and inserting “employer”;

4 (v) in paragraph (2), by striking  
 5 “small” each place it appears; and

6 (vi) in paragraph (2), by striking  
 7 “coverage to a” and inserting “coverage to  
 8 an”;

9 (B) by striking subsection (b);

10 (C) in subsections (c), (d), and (e), by  
 11 striking “small” each place it appears; and

12 (D) by striking subsection (f).

13 (3) APPLICATION OF UNIFORM PREMIUMS.—

14 Section 2711 of such Act, as so amended, is amend-  
 15 ed by inserting after subsection (a) the following  
 16 new subsection:

17 “(b) APPLICATION OF UNIFORM PREMIUM.—

18 “(1) IN GENERAL.—Each and every health in-  
 19 surance issuer that offers health insurance coverage  
 20 in the group market in a State shall—

21 “(A) shall charge the same premium price  
 22 for the same coverage; and

23 “(B) shall openly disclose, in a manner  
 24 specified by the Secretary and including disclo-  
 25 sure through the Internet, the amount of the

1 premium price that is being charged for the  
 2 coverage involved.

3 “(2) UNIFORM APPLICATION TO FAMILY COV-  
 4 ERAGE AND TO DIFFERENT GEOGRAPHIC AREAS.—  
 5 Paragraph (1) shall be applied uniformly—

6 “(A) for coverage on the basis of such dif-  
 7 ferent family categories as the Secretary ap-  
 8 proves; and

9 “(B) for coverage within each metropolitan  
 10 statistical area and for coverage within the por-  
 11 tions of a State that are not within a metropoli-  
 12 tan statistical area.

13 “(3) APPLICATION.—Paragraph (1) shall not be  
 14 construed as preventing variations in premiums that  
 15 result from the application of a uniform monthly  
 16 premium over different policy years.”.

17 (4) APPLICATION OF NONDISCRIMINATION  
 18 RULES TO NONFEDERAL GOVERNMENTAL PLANS.—  
 19 Section 2721(b)(2)(A) of such Act (42 U.S.C.  
 20 300gg-21(b)(2)(A)) is amended by striking “sub-  
 21 parts 1 through 3” and “such subparts” and insert-  
 22 ing “subpart 2” and “such subpart”, respectively.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by  
 25 this section shall apply to plan years beginning on



1 or after January 1, 2009, regardless of whether an  
2 individual is provided coverage under a group health  
3 plan before such date.

4 (2) SPECIAL RULE FOR COLLECTIVE BAR-  
5 GAINING AGREEMENTS.—In the case of a group  
6 health plan maintained pursuant to one or more col-  
7 lective bargaining agreements between employee rep-  
8 resentatives and one or more employers ratified be-  
9 fore the date of the enactment of this Act, the  
10 amendments made by this section shall not apply to  
11 plan years beginning before the later of—

12 (A) the date on which the last of the col-  
13 lective bargaining agreements relating to the  
14 plan terminates (determined without regard to  
15 any extension thereof agreed to after the date  
16 of the enactment of this Act), or

17 (B) January 1, 2010.

18 For purposes of subparagraph (A), any plan amend-  
19 ment made pursuant to a collective bargaining  
20 agreement relating to the plan which amends the  
21 plan solely to conform to any requirement under the  
22 amendments made by this section shall not be treat-  
23 ed as a termination of such collective bargaining  
24 agreement.

1 **SEC. 3. NONDISCRIMINATION IN INDIVIDUAL HEALTH IN-**  
2 **SURANCE.**

3 (a) IN GENERAL.—Section 2741 of the Public Health  
4 Service Act (42 U.S.C. 300gg–41) is amended—

5 (1) by amending the heading to read as follows:

6 **“GUARANTEED ISSUE OF INDIVIDUAL HEALTH**  
7 **INSURANCE COVERAGE; UNIFORM PREMIUMS”;**

8 (2) by amending subsections (a) and (b) to read  
9 as follows:

10 **“(a) IN GENERAL.—**

11 **“(1) GUARANTEED ISSUE.—**Subject to the suc-  
12 ceeding subsections of this section, each and every  
13 health insurance issuer that offers health insurance  
14 coverage (as defined in section 2791(b)(1)) in the in-  
15 dividual market to individuals residing in an area  
16 may not, with respect to an eligible individual (as  
17 defined in subsection (b)) residing in the area who  
18 desires to enroll in individual health insurance cov-  
19 erage—

20 **“(A) decline to offer such coverage to, or**  
21 **deny enrollment of, such individual; or**

22 **“(B) impose any preexisting condition ex-**  
23 **clusion (as defined in section 2701(b)(1)(A))**  
24 **with respect to such coverage.**

25 **“(2) APPLICATION OF UNIFORM PREMIUM.—**

1           “(A) IN GENERAL.—Each and every health  
2 insurance issuer that offers health insurance  
3 coverage in the individual market in a State—

4           “(i) shall charge the same premium  
5 price for the same coverage;

6           “(ii) if the issuer offers such coverage  
7 in the group market in the State, shall  
8 charge the same premium for the same  
9 coverage offered in the group market; and

10          “(iii) shall openly disclose, in a man-  
11 ner specified by the Secretary and includ-  
12 ing disclosure through the Internet, the  
13 amount of the premium price that is being  
14 charged for the coverage involved.

15          “(B) UNIFORM APPLICATION TO FAMILY  
16 COVERAGE AND TO DIFFERENT GEOGRAPHIC  
17 AREAS.—Subparagraph (A) shall be applied  
18 uniformly—

19          “(i) for coverage on the basis of such  
20 different family categories as the Secretary  
21 approves; and

22          “(ii) for coverage within each metro-  
23 politan statistical area and for coverage  
24 within the portions of a State that are not  
25 within a metropolitan statistical area.

1                   “(C) APPLICATION.—Subparagraph (A)  
2                   shall not be construed as preventing variations  
3                   in premiums that result from the application of  
4                   a uniform monthly premium over different pol-  
5                   icy years.

6                   “(b) ELIGIBLE INDIVIDUAL DEFINED.—In this part,  
7                   the term ‘eligible individual’ means, with respect to an  
8                   area, an individual who resides in such area, without re-  
9                   gard to the period of such residency, and who is—

10                   “(1) a citizen or national of the United States;

11                   “(2) an alien lawfully admitted to the United  
12                   States for permanent residence; or

13                   “(3) an alien who is otherwise lawfully residing  
14                   in the United States.”;

15                   (3) by striking subsection (c);

16                   (4) by redesignating subsection (d) and the first  
17                   subsection (e) (relating to application of financial ca-  
18                   pacity limits) as subsections (c) and (d), respec-  
19                   tively;

20                   (5) in paragraph (1) of the subsection (e) relat-  
21                   ing to market requirements, by striking “or through  
22                   one or more bona fide associations, or both”; and

23                   (6) by striking subsection (f) and inserting the  
24                   following:

1       “(f) UNIFORM RULES TO RESPOND TO ADVERSE SE-  
2   LECTION.—

3               “(1) IN GENERAL.—The Secretary may estab-  
4       lish rules for uniform application that are designed  
5       to deter individuals—

6               “(A) from enrolling in individual health in-  
7               surance coverage only after they develop an ill-  
8               ness or injury for which such coverage applies;  
9               and

10              “(B) from disenrolling from health insur-  
11              ance coverage for periods in which they are un-  
12              likely (or less likely) to require such coverage.

13              “(2) CONSIDERATIONS.—Such rules may take  
14       into account the financial and other circumstances  
15       of individuals for not being so enrolled or for so  
16       disenrolling.”.

17       (b) CONFORMING AMENDMENT.—Section 2742(b) of  
18   such Act (42 U.S.C. 300gg-42(b)) is amended by striking  
19   paragraph (5).

20       (c) EFFECTIVE DATE.—The amendments made by  
21   this section shall apply with respect to health insurance  
22   coverage offered, sold, issued, renewed, in effect, or oper-  
23   ated in the individual market after December 31, 2008.

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