

111TH CONGRESS
1ST SESSION

H. R. 2137

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and title 5, United States Code, to require individual and group health insurance coverage and group health plans and Federal employees health benefit plans to provide coverage for routine HIV screening.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2009

Ms. WATERS (for herself, Mr. STARK, Mrs. CHRISTENSEN, Ms. LEE of California, Mr. MEEKS of New York, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor, Ways and Means, and Oversight and Government Reform, 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, the Internal Revenue Code of 1986, and title 5, United States Code, to require individual and group health insurance coverage and group health plans and Federal employees health benefit plans to provide coverage for routine HIV screening.

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; FINDINGS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Routine HIV Screening Coverage Act of 2009”.

4 (b) FINDINGS.—Congress finds the following:

5 (1) HIV/AIDS continues to infect and kill thou-
6 sands of Americans, 25 years after the first cases
7 were reported.

8 (2) It has been estimated that at least 1.6 mil-
9 lion Americans have been infected with HIV since
10 the beginning of the epidemic and over 500,000 of
11 them have died.

12 (3) The HIV/AIDS epidemic has disproportion-
13 ately impacted African-Americans and Hispanic-
14 Americans and its impact on women is growing.

15 (4) It has been estimated that almost one quar-
16 ter of those infected with HIV in the United States
17 do not know they are infected.

18 (5) Not all individuals who have been infected
19 with HIV demonstrate clinical indications or fall into
20 high risk categories.

21 (6) The Centers for Disease Control and Pre-
22 vention has determined that increasing the propor-
23 tion of people who know their HIV status is an es-
24 sential component of comprehensive HIV/AIDS
25 treatment and prevention efforts and that early di-

1 agnosis is critical in order for people with HIV/
2 AIDS to receive life-extending therapy.

3 (7) On September 21, 2006, the Centers for
4 Disease Control and Prevention released new guide-
5 lines that recommend routine HIV screening in
6 health care settings for all patients aged 13–64, re-
7 gardless of risk.

8 (8) Standard health insurance plans generally
9 cover HIV screening when there are clinical indica-
10 tions of infection or when there are known risk fac-
11 tors present.

12 (9) Requiring health insurance plans to cover
13 routine HIV screening could play a critical role in
14 preventing the spread of HIV/AIDS and allowing in-
15 fected individuals to receive effective treatment.

16 **SEC. 2. COVERAGE FOR ROUTINE HIV SCREENING UNDER**
17 **GROUP HEALTH PLANS, INDIVIDUAL HEALTH**
18 **INSURANCE COVERAGE, AND FEHBP.**

19 (a) GROUP HEALTH PLANS.—

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

1 **“SEC. 2708. COVERAGE FOR ROUTINE HIV SCREENING.**

2 “(a) **COVERAGE.**—A group health plan, and a health
3 insurance issuer offering group health insurance coverage,
4 shall provide coverage for routine HIV screening under
5 terms and conditions that are no less favorable than the
6 terms and conditions applicable to other routine health
7 screenings.

8 “(b) **PROHIBITIONS.**—A group health plan, and a
9 health insurance issuer offering group health insurance
10 coverage, shall not—

11 “(1) deny to an individual eligibility, or contin-
12 ued eligibility, to enroll or to renew coverage under
13 the terms of the plan, solely for the purpose of
14 avoiding the requirements of this section;

15 “(2) deny coverage for routine HIV screening
16 on the basis that there are no known risk factors
17 present, or the screening is not clinically indicated,
18 medically necessary, or pursuant to a referral, con-
19 sent, or recommendation by any health care pro-
20 vider;

21 “(3) provide monetary payments, rebates, or
22 other benefits to individuals to encourage such indi-
23 viduals to accept less than the minimum protections
24 available under this section;

25 “(4) penalize or otherwise reduce or limit the
26 reimbursement of a provider because such provider

1 provided care to an individual participant or bene-
2 ficiary in accordance with this section;

3 “(5) provide incentives (monetary or otherwise)
4 to a provider to induce such provider to provide care
5 to an individual participant or beneficiary in a man-
6 ner inconsistent with this section; or

7 “(6) deny to an individual participant or bene-
8 ficiary continued eligibility to enroll or to renew cov-
9 erage under the terms of the plan, solely because of
10 the results of an HIV test or other HIV screening
11 procedure for the individual or any other individual.

12 “(c) RULES OF CONSTRUCTION.—Nothing in this
13 section shall be construed—

14 “(1) to require an individual who is a partici-
15 pant or beneficiary to undergo HIV screening; or

16 “(2) as preventing a group health plan or issuer
17 from imposing deductibles, coinsurance, or other
18 cost-sharing in relation to HIV screening, except
19 that such deductibles, coinsurance or other cost-
20 sharing may not be greater than the deductibles, co-
21 insurance, or other cost-sharing imposed on other
22 routine health screenings.

23 “(d) NOTICE.—A group health plan under this part
24 shall comply with the notice requirement under section
25 715(d) of the Employee Retirement Income Security Act

1 of 1974 with respect to the requirements of this section
2 as if such section applied to such plan.

3 “(e) PREEMPTION.—Nothing in this section shall be
4 construed to preempt any State law in effect on the date
5 of enactment of this section with respect to health insur-
6 ance coverage that requires coverage of at least the cov-
7 erage of HIV screening otherwise required under this sec-
8 tion.”.

9 (2) ERISA AMENDMENTS.—(A) Subpart B of
10 part 7 of subtitle B of title I of the Employee Re-
11 tirement Income Security Act of 1974 is amended by
12 adding at the end the following new section:

13 **“SEC. 715. COVERAGE FOR ROUTINE HIV SCREENING.**

14 “(a) COVERAGE.—A group health plan, and a health
15 insurance issuer offering group health insurance coverage,
16 shall provide coverage for routine HIV screening under
17 terms and conditions that are no less favorable than the
18 terms and conditions applicable to other routine health
19 screenings.

20 “(b) PROHIBITIONS.—A group health plan, and a
21 health insurance issuer offering group health insurance
22 coverage, shall not—

23 “(1) deny to an individual eligibility, or contin-
24 ued eligibility, to enroll or to renew coverage under

1 the terms of the plan, solely for the purpose of
2 avoiding the requirements of this section;

3 “(2) deny coverage for routine HIV screening
4 on the basis that there are no known risk factors
5 present, or the screening is not clinically indicated,
6 medically necessary, or pursuant to a referral, con-
7 sent, or recommendation by any health care pro-
8 vider;

9 “(3) provide monetary payments, rebates, or
10 other benefits to individuals to encourage such indi-
11 viduals to accept less than the minimum protections
12 available under this section;

13 “(4) penalize or otherwise reduce or limit the
14 reimbursement of a provider because such provider
15 provided care to an individual participant or bene-
16 ficiary in accordance with this section;

17 “(5) provide incentives (monetary or otherwise)
18 to a provider to induce such provider to provide care
19 to an individual participant or beneficiary in a man-
20 ner inconsistent with this section; or

21 “(6) deny to an individual participant or bene-
22 ficiary continued eligibility to enroll or to renew cov-
23 erage under the terms of the plan, solely because of
24 the results of an HIV test or other HIV screening
25 procedure for the individual or any other individual.

1 “(c) RULES OF CONSTRUCTION.—Nothing in this
2 section shall be construed—

3 “(1) to require an individual who is a partici-
4 pant or beneficiary to undergo HIV screening; or

5 “(2) as preventing a group health plan or issuer
6 from imposing deductibles, coinsurance, or other
7 cost-sharing in relation to HIV screening, except
8 that such deductibles, coinsurance or other cost-
9 sharing may not be greater than the deductibles, co-
10 insurance, or other cost-sharing imposed on other
11 routine health screenings.

12 “(d) NOTICE UNDER GROUP HEALTH PLAN.—A
13 group health plan, and a health insurance issuer providing
14 health insurance coverage in connection with a group
15 health plan, shall provide notice to each participant and
16 beneficiary under such plan regarding the coverage re-
17 quired by this section in accordance with regulations pro-
18 mulgated by the Secretary. Such notice shall be in writing
19 and prominently positioned in any literature or cor-
20 respondence made available or distributed by the plan or
21 issuer and shall be transmitted—

22 “(1) in the next mailing made by the plan or
23 issuer to the participant or beneficiary;

24 “(2) as part of any yearly informational packet
25 sent to the participant or beneficiary; or

1 “(3) not later than January 1, 2010;
2 whichever is earliest.

3 “(e) PREEMPTION, RELATION TO STATE LAWS.—

4 “(1) IN GENERAL.—Nothing in this section
5 shall be construed to preempt any State law in effect
6 on the date of enactment of this section with respect
7 to health insurance coverage that requires coverage
8 of at least the coverage of HIV screening otherwise
9 required under this section.

10 “(2) ERISA.—Nothing in this section shall be
11 construed to affect or modify the provisions of sec-
12 tion 514 with respect to group health plans.”.

13 (B) Section 732(a) of such Act (29 U.S.C.
14 1191a(a)) is amended by striking “section 711” and
15 inserting “sections 711 and 715”.

16 (C) The table of contents in section 1 of such
17 Act is amended by inserting after the item relating
18 to section 714 the following new item:

“Sec. 715. Coverage for routine HIV screening.”.

19 (3) INTERNAL REVENUE CODE AMEND-
20 MENTS.—(A) Subchapter B of chapter 100 of the
21 Internal Revenue Code of 1986 is amended by in-
22 serting after section 9813 the following:

23 **“SEC. 9814. COVERAGE FOR ROUTINE HIV SCREENING.**

24 “(a) COVERAGE.—A group health plan shall provide
25 coverage for routine HIV screening under terms and con-

1 ditions that are no less favorable than the terms and con-
2 ditions applicable to other routine health screenings.

3 “(b) PROHIBITIONS.—A group health plan shall
4 not—

5 “(1) deny to an individual eligibility, or contin-
6 ued eligibility, to enroll or to renew coverage under
7 the terms of the plan, solely for the purpose of
8 avoiding the requirements of this section;

9 “(2) deny coverage for routine HIV screening
10 on the basis that there are no known risk factors
11 present, or the screening is not clinically indicated,
12 medically necessary, or pursuant to a referral, con-
13 sent, or recommendation by any health care pro-
14 vider;

15 “(3) provide monetary payments, rebates, or
16 other benefits to individuals to encourage such indi-
17 viduals to accept less than the minimum protections
18 available under this section;

19 “(4) penalize or otherwise reduce or limit the
20 reimbursement of a provider because such provider
21 provided care to an individual participant or bene-
22 ficiary in accordance with this section;

23 “(5) provide incentives (monetary or otherwise)
24 to a provider to induce such provider to provide care

1 to an individual participant or beneficiary in a man-
2 ner inconsistent with this section; or

3 “(6) deny to an individual participant or bene-
4 ficiary continued eligibility to enroll or to renew cov-
5 erage under the terms of the plan, solely because of
6 the results of an HIV test or other HIV screening
7 procedure for the individual or any other individual.

8 “(c) RULES OF CONSTRUCTION.—Nothing in this
9 section shall be construed—

10 “(1) to require an individual who is a partici-
11 pant or beneficiary to undergo HIV screening; or

12 “(2) as preventing a group health plan or issuer
13 from imposing deductibles, coinsurance, or other
14 cost-sharing in relation to HIV screening, except
15 that such deductibles, coinsurance or other cost-
16 sharing may not be greater than the deductibles, co-
17 insurance, or other cost-sharing imposed on other
18 routine health screenings.”.

19 (B) The table of sections of such subchapter is
20 amended by inserting after the item relating to sec-
21 tion 9813 the following new item:

“Sec. 9814. Coverage for routine HIV screening.”.

22 (C) Section 4980D(d)(1) of such Code is
23 amended by striking “section 9811” and inserting
24 “sections 9811 and 9814”.

1 (b) APPLICATION TO INDIVIDUAL HEALTH INSUR-
2 ANCE COVERAGE.—(1) Part B of title XXVII of the Pub-
3 lic Health Service Act is amended by inserting after sec-
4 tion 2753 the following new section:

5 **“SEC. 2754. COVERAGE FOR ROUTINE HIV SCREENING.**

6 “(a) IN GENERAL.—The provisions of section 2708
7 (other than subsection (d)) shall apply to health insurance
8 coverage offered by a health insurance issuer in the indi-
9 vidual market in the same manner as it applies to health
10 insurance coverage offered by a health insurance issuer
11 in connection with a group health plan in the small or
12 large group market.

13 “(b) NOTICE.—A health insurance issuer under this
14 part shall comply with the notice requirement under sec-
15 tion 715(d) of the Employee Retirement Income Security
16 Act of 1974 with respect to the requirements referred to
17 in subsection (a) as if such section applied to such issuer
18 and such issuer were a group health plan.”.

19 (2) Section 2762(b)(2) of such Act (42 U.S.C.
20 300gg–62(b)(2)) is amended by striking “section 2751”
21 and inserting “sections 2751 and 2754”.

22 (c) APPLICATION UNDER FEDERAL EMPLOYEES
23 HEALTH BENEFITS PROGRAM (FEHBP).—Section 8902
24 of title 5, United States Code, is amended by adding at
25 the end the following new subsection:

1 “(p) A contract may not be made or a plan approved
2 which does not comply with the requirements of section
3 2708 of the Public Health Service Act.”.

4 (d) EFFECTIVE DATES.—(1) The amendments made
5 by subsections (a) and (c) apply with respect to group
6 health plans and health benefit plans for plan years begin-
7 ning on or after January 1, 2010.

8 (2) The amendments made by subsection (b) shall
9 apply with respect to health insurance coverage offered,
10 sold, issued, renewed, in effect, or operated in the indi-
11 vidual market on or after January 1, 2010.

12 (e) COORDINATION OF ADMINISTRATION.—The Sec-
13 retary of Labor, the Secretary of Health and Human Serv-
14 ices, and the Secretary of the Treasury shall ensure,
15 through the execution of an interagency memorandum of
16 understanding among such Secretaries, that—

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

23 (2) coordination of policies relating to enforcing
24 the same requirements through such Secretaries in
25 order to have a coordinated enforcement strategy

- 1 that avoids duplication of enforcement efforts and
- 2 assigns priorities in enforcement.

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