

111TH CONGRESS
1ST SESSION

H. R. 2940

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, 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 18, 2009

Mrs. DAVIS of California (for herself and Mrs. BIGGERT) 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

A BILL

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, 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 Medical Access Now Act of 2009”.

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

6 (a) GROUP HEALTH PLANS.—

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

11 **“SEC. 715. 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-

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

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

“(A) from establishing reasonable requirements for the participating obstetrician and gynecologist or family practice physician and surgeon to communicate with the participant’s or beneficiary’s primary care physician and surgeon regarding the participant’s or beneficiary’s condition, treatment, and any need for followup care; or

“(B) from establishing reasonable provisions governing utilization protocols and the use of obstetricians and gynecologists, or family practice physicians and surgeons, participating in the plan or issuer network, medical group, or independent practice association, so long as these provisions—

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

“(ii) are those customarily applied to 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 UNDER GROUP HEALTH PLAN.—The
 8 imposition of the requirement of this section shall be treat-
 9 ed as a material modification in the terms of the plan de-
 10 scribed in section 102(a)(1), for purposes of assuring no-
 11 tice of such requirements under the plan; except that the
 12 summary description required to be provided under the
 13 last sentence of section 104(b)(1) with respect to such
 14 modification shall be provided by not later than 60 days
 15 after the first day of the first plan year in which such
 16 requirement apply.”.

17 (B) Section 732(a) of such Act (29 U.S.C.
 18 1191a(a)) is amended by striking “section 711” and
 19 inserting “sections 711 and 715”.

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

“Sec. 715. Standard relating to women’s access to obstetrical and gynecological
 services”.

23 (2) PUBLIC HEALTH SERVICE ACT AMEND-
 24 MENTS.—(A) Subpart 2 of part A of title XXVII of

1 the Public Health Service Act is amended by adding
 2 at the end the following new section:

3 **“SEC. 2708. STANDARD RELATING TO WOMEN’S ACCESS TO**
 4 **OBSTETRICAL AND GYNECOLOGICAL SERV-**
 5 **ICES.**

6 “(a) IN GENERAL.—The provisions of section 715(a)
 7 of the Employee Retirement Income Security Act of 1974
 8 shall apply to group health plans, and health insurance
 9 issuers offering group health insurance coverage, as if in-
 10 cluded in this subpart.

11 “(b) NOTICE.—A group health plan under this part
 12 shall comply with the notice requirement under section
 13 715(b) of the Employee Retirement Income Security Act
 14 of 1974 with respect to the requirements of this section
 15 as if such section applied to such plan.”.

16 (3) INTERNAL REVENUE CODE AMEND-
 17 MENTS.—

18 (A) IN GENERAL.—Subchapter B of chap-
 19 ter 100 of the Internal Revenue Code of 1986
 20 is amended—

21 (i) in the table of sections, by insert-
 22 ing after the item relating to section 9813
 23 the following new item:

“Sec. 9814. Standard relating to women’s access to obstetrical and gynecological services”; and

1 (ii) by inserting after section 9813 the
 2 following:

3 **“SEC. 9814. STANDARD RELATING TO WOMEN’S ACCESS TO**
 4 **OBSTETRICAL AND GYNECOLOGICAL SERV-**
 5 **ICES.**

6 “The provisions of section 715(a) of the Employee
 7 Retirement Income Security Act of 1974 shall apply to
 8 group health plans, and health insurance issuers offering
 9 group health insurance coverage, as if included in this sub-
 10 chapter.”.

11 (B) CONFORMING AMENDMENT.—Section
 12 4980D(d)(1) of such Code is amended by strik-
 13 ing “section 9811” and inserting “sections
 14 9811 and 9814”.

15 (b) INDIVIDUAL HEALTH INSURANCE.—Part B of
 16 title XXVII of the Public Health Service Act is amended
 17 by inserting after section 2753 the following new section:

18 **“SEC. 2754. STANDARD RELATING TO WOMEN’S ACCESS TO**
 19 **OBSTETRICAL AND GYNECOLOGICAL SERV-**
 20 **ICES.**

21 “(a) IN GENERAL.—The provisions of section
 22 2708(a) shall apply to health insurance coverage offered
 23 by a health insurance issuer in the individual market in
 24 the same manner as they apply to health insurance cov-
 25 erage offered by a health insurance issuer in connection

1 with a group health plan in the small or large group mar-
2 ket.

3 “(b) NOTICE.—A health insurance issuer under this
4 part shall comply with the notice requirement under sec-
5 tion 715(b) of the Employee Retirement Income Security
6 Act of 1974 with respect to the requirements referred to
7 in subsection (a) as if such section applied to such issuer
8 and such issuer were a group health plan.”.

9 (c) EFFECTIVE DATES.—

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

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

21 (3) COLLECTIVE BARGAINING EXCEPTION.—In
22 the case of a group health plan maintained pursuant
23 to 1 or more collective bargaining agreements be-
24 tween employee representatives and 1 or more em-
25 ployers ratified before the date of enactment of this

1 Act, the amendments made subsection (a) shall not
2 apply to plan years beginning before the later of—

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

8 (B) the date that is 180 days after the
9 date of the enactment of this Act.

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

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

21 (1) regulations, rulings, and interpretations
22 issued by such Secretaries relating to the same mat-
23 ter over which two or more such Secretaries have re-
24 sponsibility under the provisions of this Act (and the

1 amendments made thereby) are administered so as
2 to have the same effect at all times; and

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

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