

111TH CONGRESS  
1ST SESSION

# S. 442

To impose a limitation on lifetime aggregate limits imposed by health plans.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2009

Mr. DORGAN (for himself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To impose a limitation on lifetime aggregate limits imposed by health plans.

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 “Health Insurance Cov-  
5 erage Protection Act”.

6 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**

7 **COME SECURITY ACT OF 1974.**

8 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
9 B of title I of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-  
2 ing at the end the following:

3 **“SEC. 714. LIMITATION ON LIFETIME AGGREGATE LIMITS.**

4 “(a) IN GENERAL.—A group health plan and a health  
5 insurance issuer providing health insurance coverage in  
6 connection with a group health plan, may not impose an  
7 aggregate dollar lifetime limit of less than—

8 “(1) with respect to the first 2 plan years after  
9 the effective date of this section, \$5,000,000;

10 “(2) with respect to the third and fourth plan  
11 years after such date, \$10,000,000; and

12 “(3) with respect to each subsequent year, the  
13 amount for the previous year adjusted by the per-  
14 centage increase in the consumer price index (for all  
15 urban consumers) for such year;

16 with respect to benefits payable under the plan or cov-  
17 erage.

18 “(b) SMALL EMPLOYERS.—

19 “(1) IN GENERAL.—Subsection (a) shall not  
20 apply to any group health plan (and group health in-  
21 surance coverage offered in connection with a group  
22 health plan) offered to or maintained for employees  
23 of a small employer, except that upon the request of  
24 such a small employer, the plan involved shall pro-  
25 vide for the application of an aggregate dollar life-

1 time limit that is consistent with the limit required  
2 under such subsection.

3 “(2) SMALL EMPLOYER.—For purposes of  
4 paragraph (1), the term ‘small employer’ means an  
5 employer who normally employed fewer than 20 em-  
6 ployees on a typical business day during the pre-  
7 ceding calendar year and who employs fewer than 20  
8 employees on the first day of the plan year.

9 “(3) APPLICATION OF CERTAIN RULES IN DE-  
10 TERMINATION OF EMPLOYER SIZE.—For purposes of  
11 this subsection—

12 “(A) APPLICATION OF AGGREGATION RULE  
13 FOR EMPLOYERS.—Rules similar to the rules  
14 under subsections (b), (c), (m), and (o) of sec-  
15 tion 414 of the Internal Revenue Code of 1986  
16 shall apply for purposes of treating persons as  
17 a single employer.

18 “(B) EMPLOYERS NOT IN EXISTENCE IN  
19 PRECEDING YEAR.—In the case of an employer  
20 which was not in existence throughout the pre-  
21 ceding calendar year, the determination of  
22 whether such employer is a small employer shall  
23 be based on the number of employees that it is  
24 reasonably expected such employer will normally

1 employ on a typical business day in the current  
2 calendar year.

3 “(C) PREDECESSORS.—Any reference in  
4 this subsection to an employer shall include a  
5 reference to any predecessor of such employer.

6 “(c) DEFINITION.—In this section, the term ‘aggre-  
7 gate dollar lifetime limit’ means, with respect to benefits  
8 under a group health plan or health insurance coverage,  
9 a dollar limitation on the total amount that may be paid  
10 with respect to such benefits under the plan or health in-  
11 surance coverage with respect to an individual or other  
12 coverage unit.”.

13 (b) CLERICAL AMENDMENT.—The table of contents  
14 in section 1 of such Act, is amended by inserting after  
15 the item relating to section 713 the following new item:

“Sec. 714. Limitation on lifetime aggregate limits.”.

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply with respect to plan years begin-  
18 ning on or after the date that is 1 year after the date  
19 of enactment of this Act.

20 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**  
21 **RELATING TO THE GROUP MARKET.**

22 (a) IN GENERAL.—Subpart 2 of part A of title  
23 XXVII of the Public Health Service Act (42 U.S.C.  
24 300gg–4 et seq.) is amended by adding at the end the  
25 following:

1 **“SEC. 2707. LIMITATION ON LIFETIME AGGREGATE LIMITS.**

2 “(a) IN GENERAL.—A group health plan and a health  
3 insurance issuer providing health insurance coverage in  
4 connection with a group health plan, may not impose an  
5 aggregate dollar lifetime limit of less than—

6 “(1) with respect to the first 2 plan years after  
7 the effective date of this section, \$5,000,000;

8 “(2) with respect to the third and fourth plan  
9 years after such date, \$10,000,000; and

10 “(3) with respect to each subsequent year, the  
11 amount for the previous year adjusted by the per-  
12 centage increase in the consumer price index (for all  
13 urban consumers) for such year;

14 with respect to benefits payable under the plan or cov-  
15 erage.

16 “(b) SMALL EMPLOYERS.—

17 “(1) IN GENERAL.—Subsection (a) shall not  
18 apply to any group health plan (and group health in-  
19 surance coverage offered in connection with a group  
20 health plan) offered to or maintained for employees  
21 of a small employer, except that upon the request of  
22 such a small employer, the plan involved shall pro-  
23 vide for the application of an aggregate dollar life-  
24 time limit that is consistent with the limit required  
25 under such subsection.

1           “(2) SMALL EMPLOYER.—For purposes of  
2 paragraph (1), the term ‘small employer’ means an  
3 employer who normally employed fewer than 20 em-  
4 ployees on a typical business day during the pre-  
5 ceding calendar year and who employs fewer than 20  
6 employees on the first day of the plan year.

7           “(3) APPLICATION OF CERTAIN RULES IN DE-  
8 TERMINATION OF EMPLOYER SIZE.—For purposes of  
9 this subsection—

10           “(A) APPLICATION OF AGGREGATION RULE  
11 FOR EMPLOYERS.—Rules similar to the rules  
12 under subsections (b), (c), (m), and (o) of sec-  
13 tion 414 of the Internal Revenue Code of 1986  
14 shall apply for purposes of treating persons as  
15 a single employer.

16           “(B) EMPLOYERS NOT IN EXISTENCE IN  
17 PRECEDING YEAR.—In the case of an employer  
18 which was not in existence throughout the pre-  
19 ceding calendar year, the determination of  
20 whether such employer is a small employer shall  
21 be based on the number of employees that it is  
22 reasonably expected such employer will normally  
23 employ on a typical business day in the current  
24 calendar year.

1                   “(C) PREDECESSORS.—Any reference in  
2                   this subsection to an employer shall include a  
3                   reference to any predecessor of such employer.

4                   “(c) DEFINITION.—In this section, the term ‘aggre-  
5                   gate dollar lifetime limit’ means, with respect to benefits  
6                   under a group health plan or health insurance coverage,  
7                   a dollar limitation on the total amount that may be paid  
8                   with respect to such benefits under the plan or health in-  
9                   surance coverage with respect to an individual or other  
10                  coverage unit.”.

11                  (b) EFFECTIVE DATE.—The amendment made by  
12                  this section shall apply with respect to plan years begin-  
13                  ning on or after the date that is 1 year after the date  
14                  of enactment of this Act.

15                  **SEC. 4. STUDY BY THE INSTITUTE OF MEDICINE.**

16                  The Secretary of Health and Human Services shall  
17                  enter into a contract with the Institute of Medicine for  
18                  the conduct of a study to determine the number of individ-  
19                  uals who have reached the lifetime limitations set forth  
20                  in the amendments made by this Act beginning in the  
21                  third plan year for which such amendments apply. Not  
22                  later than 1 year after the date on which the study is con-  
23                  ducted under the previous sentence, the Institute of Medi-  
24                  cine shall submit to the Secretary and the appropriate

- 1 committees of Congress a report concerning the results of
- 2 the study.

