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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R.

To amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit preexisting condition exclusions in group health plans and health insurance coverage in the group and individual markets.

IN THE HOUSE OF REPRESENTATIVES

Mr. COURTNEY introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit preexisting condition exclusions in group health plans and health insurance coverage in the group and individual markets.

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 “Preexisting Condition
5 Patient Protection Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) According to the United States Census Bu-
4 reau, 45.7 million people were uninsured in 2007.

5 (2) According to a recent study by the Com-
6 monwealth Fund, the number of underinsured adults
7 aged 19 to 64 has jumped 60 percent over the last
8 4 years, from 16,000,000 in 2003 to 25,000,000 in
9 2007.

10 (3) According to the Centers for Disease Con-
11 trol and Prevention (CDC), approximately 45 per-
12 cent of Americans have at least one chronic condi-
13 tion.

14 (4) Forty-four States currently allow insurance
15 companies to deny coverage for, limit coverage for,
16 or charge increased premiums for a preexisting con-
17 dition.

18 (5) Over 26 million people were enrolled in pri-
19 vate individual market health plans in 2007. Under
20 the Health Insurance Portability and Accountability
21 Act of 1996 (HIPAA), these individuals have no
22 protections against pre-existing condition exclusions
23 or waiting periods.

24 (6) When a child or adult has a 63-day gap in
25 insurance coverage, pre-existing condition exclusions,
26 such as limiting coverage or instituting a waiting pe-

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

4 “(1) may not impose any preexisting condition
5 exclusion; and

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

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

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

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

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

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

“Sec. 701. Elimination of preexisting condition exclusions.”.

1 (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE
2 ACT.—

3 (1) IN GENERAL.—Section 2701 of the Public
4 Health Service Act (42 U.S.C. 300gg) is amended—

5 (A) by amending the heading to read as
6 follows: “**ELIMINATION OF PREEXISTING**
7 **CONDITION EXCLUSIONS**”;

8 (B) by amending subsection (a) to read as
9 follows:

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

13 “(1) may not impose any preexisting condition
14 exclusion; and

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

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

22 “(3) AFFILIATION PERIOD.—The term ‘affili-
23 ation period’ means a period which, under the terms
24 of the health insurance coverage offered by the

1 health maintenance organization, must expire before
2 the health insurance coverage becomes effective.”;

3 (D) by striking subsections (c), (d), (e),
4 and (g); and

5 (E) by redesignating subsection (f) (relat-
6 ing to special enrollment periods) as subsection
7 (c).

8 (2) TECHNICAL AMENDMENTS RELATING TO
9 EMPLOYER SIZE.—Section 2711 of such Act (42
10 U.S.C. 300gg–11) is amended—

11 (A) in subsection (a)—

12 (i) in the heading, by striking
13 “SMALL”;

14 (ii) in paragraph (1)—

15 (I) in the matter before subpara-
16 graph (A), by striking “(c) through
17 (f)” and inserting “(b) through (d)”
18 and by striking “small”; and

19 (II) in subparagraph (A), by
20 striking “small employer (as defined
21 in section 2791(e)(4))” and inserting
22 “employer”; and

23 (iii) in paragraph (2)—

24 (I) by striking “small” each place
25 it appears; and

1 (II) by striking “coverage to a”
2 and inserting “coverage to an”;
3 (B) by striking subsection (b);
4 (C) in subsections (c), (d), and (e), by
5 striking “small” each place it appears; and
6 (D) by striking subsection (f).

7 (c) AMENDMENTS TO THE INTERNAL REVENUE
8 CODE OF 1986.—

9 (1) ELIMINATION OF PREEXISTING CONDITION
10 EXCLUSIONS.—Section 9801 of the Internal Revenue
11 Code of 1986 is amended—

12 (A) by amending the heading to read as
13 follows: “**ELIMINATION OF PREEXISTING**
14 **CONDITION EXCLUSIONS**”;

15 (B) by amending subsection (a) to read as
16 follows:

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

20 (C) by striking paragraph (3) of subsection
21 (b);
22 (D) by striking subsections (c), (d), and
23 (e); and

1 (E) by redesignating subsection (f) (relat-
2 ing to special enrollment periods) as subsection
3 (c).

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

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

7 (d) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply with respect to group health plans for
11 plan years beginning after the end of the 12th cal-
12 endar month following the date of the enactment of
13 this Act.

14 (2) SPECIAL RULE FOR COLLECTIVE BAR-
15 GAINING AGREEMENTS.—In the case of a group
16 health plan maintained pursuant to one or more col-
17 lective bargaining agreements between employee rep-
18 resentatives and one or more employers ratified be-
19 fore the date of the enactment of this Act, the
20 amendments made by this section shall not apply to
21 plan years beginning before the later of—

22 (A) the date on which the last of the col-
23 lective bargaining agreements relating to the
24 plan terminates (determined without regard to

1 any extension thereof agreed to after the date
2 of the enactment of this Act), or

3 (B) the date that is after the end of the
4 12th calendar month following the date of the
5 enactment of this Act.

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

13 **SEC. 4. PROHIBITION OF PREEXISTING CONDITION EXCLU-**
14 **SIONS IN HEALTH INSURANCE COVERAGE IN**
15 **THE INDIVIDUAL MARKET.**

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

18 (1) in subsection (a)(1), by striking “with re-
19 spect to an eligible individual” and all that follows
20 and inserting the following: “with respect to—

21 “(A) an eligible individual (as defined in sub-
22 section (b)) desiring to enroll in individual health in-
23 surance coverage decline to offer such coverage to,
24 or deny enrollment of, such individual; and

1 “(B) any individual desiring to enroll in such
2 coverage impose any preexisting condition exclusion
3 (as defined in section 2701(b)(1)(A)) with respect to
4 such coverage.”;and

5 (2) in subsection (a)(2), by striking “paragraph
6 (1)” and inserting “paragraph (1)(A)”;

7 (b) **EFFECTIVE DATE.**—The amendments made by
8 this section shall apply with respect to health insurance
9 coverage offered, sold, issued, renewed, in effect, or oper-
10 ated in the individual market on or after the end of the
11 12th month following the date of the enactment of this
12 Act.

13 **SEC. 5. TRANSPARENCY IN CLAIMS DATA.**

14 (a) **IN GENERAL.**—Not later than 2 years after the
15 date of the enactment of this Act, the Secretary of Health
16 and Human Services shall submit to Congress a report
17 on the impact of this Act on health benefits coverage.

18 (b) **EXAMINATION OF CLAIMS EXPERIENCE AND
19 OTHER DATA.**—In preparing the report under subsection
20 (a), the Secretary may request from group health plans
21 and health insurance issuers—

22 (1) data on claims experience under the plan or
23 health insurance coverage issued by such issuers,
24 such as the number, nature, and dollar amount of
25 claims made by enrollees during the period involved;

1 (2) data relating to enrollees in the plan or
2 under such coverage, such as number of new enroll-
3 ees, number of individuals reenrolling (or dis-
4 continuing enrollment) after the first year of cov-
5 erage, and changes in the demographic composition
6 of enrollees; and

7 (3) such other information as the Secretary
8 deems appropriate.

9 The provisions of section 2722(b) of the Public Health
10 Service Act shall apply to a failure of a group health plan
11 or health insurance issuer to provide data or information
12 requested by the Secretary under this subsection in the
13 same manner as such provisions apply to the enforcement
14 of a provision of part A of title XXVIII of such Act, except
15 that any reference to an individual in paragraph (1)(C)(i)
16 of such section shall be deemed for this purpose a ref-
17 erence to a covered life under the plan or health insurance
18 coverage involved.

19 **SEC. 6. GAO REPORT.**

20 Not later than 1 year after the date of the enactment
21 of this Act, the Comptroller General of the United States
22 shall submit to Congress a report on the impact of this
23 Act (and other Federal laws regarding the regulation of
24 health insurance and health benefits coverage) on the re-
25 duction in the number of uninsured and underinsured in-

- 1 individuals in the group market and the individual market
- 2 and on the affordability of coverage in such markets.