

105TH CONGRESS
1ST SESSION

H. R. 2874

To provide for prompt disclosure to insured individuals of their medical condition after undergoing medical examinations necessary to qualify for insurance coverage.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 1997

Mr. ACKERMAN (for himself, Mr. COBURN, Mr. ABERCROMBIE, Mr. BARTLETT of Maryland, Mr. BECERRA, Mr. BISHOP, Mr. BONO, Mr. BROWN of Ohio, Mr. BURTON of Indiana, Mr. CLYBURN, Mr. COOK, Mr. CRAMER, Mr. DEFAZIO, Mr. DELLUMS, Mr. DEUTSCH, Ms. ESHOO, Mr. FARR of California, Mr. FAZIO of California, Mr. FOGLIETTA, Mr. FORD, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GRAHAM, Mr. GREEN, Mr. GUTIERREZ, Mr. HEFNER, Mr. HINCHEY, Mr. HOYER, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mrs. KELLY, Mr. KENNEDY of Rhode Island, Ms. KILPATRICK, Mr. KIND, Mr. KUCINICH, Mr. LAFALCE, Mr. LAMPSON, Mr. LAZIO of New York, Mr. LEWIS of Georgia, Mrs. LOWEY, Mrs. MCCARTHY of New York, Ms. MCKINNEY, Mr. McNULTY, Mrs. MEEK of Florida, Mr. MENENDEZ, Mr. MILLER of California, Mr. NADLER, Mr. ORTIZ, Mr. OWENS, Mr. PALLONE, Mr. PAXON, Ms. RIVERS, Mr. RODRIGUEZ, Ms. ROS-LEHTINEN, Mr. ROTHMAN, Mr. SANDERS, Mr. SAWYER, Mr. SCHUMER, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Mr. TANNER, Mr. TAYLOR of Mississippi, Mr. THOMPSON, Mr. TURNER, Ms. VELÁZQUEZ, Mr. WALSH, Mr. WAXMAN, and Mr. WEXLER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Education and the Workforce, 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 provide for prompt disclosure to insured individuals of

their medical condition after undergoing medical examinations necessary to qualify for insurance coverage.

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 “Insurance Disclosure
5 Act of 1997”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

8 (1) **INSURER.**—The term “insurer” means any
9 person, reciprocal exchange, interinsurer, Lloyds in-
10 surer, fraternal benefit society, or other legal entity
11 engaged in the business of insurance, including
12 agents, brokers, adjusters, and third party adminis-
13 trators. The term also includes health benefit plans,
14 health carriers, and life, disability, and property and
15 casualty insurers.

16 (2) **HEALTH BENEFIT PLAN.**—The term
17 “health benefit plan” means any public or private
18 entity or program that provides for payments for
19 health care, including—

20 (A) a group health plan (as defined in sec-
21 tion 2791(a)(1) of the Public Health Service
22 Act (42 U.S.C. 300gg–91(a)(1)), section
23 733(a)(1) of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. 1191b(a)(1)),

1 or section 5000(b)(1) of the Internal Revenue
2 Code of 1986));

3 (B) a multiple employer welfare arrange-
4 ment (as defined in section 3(40) of the Em-
5 ployee Retirement Income Security Act (29
6 U.S.C. 1002(40))) that provides benefits con-
7 sisting of medical care (as defined in section
8 733(a)(2) of such Act (29 U.S.C.
9 1191b(a)(2))), including items and services paid
10 for as medical care;

11 (C) any other health insurance arrange-
12 ment, including any arrangement consisting of
13 a hospital or medical expense incurred policy or
14 certificate, hospital or medical service plan con-
15 tract, or health maintenance organization sub-
16 scriber contract;

17 (D) workers' compensation or similar in-
18 surance to the extent that it relates to workers'
19 compensation medical benefits (as defined in
20 regulations of the Secretary);

21 (E) automobile medical insurance to the
22 extent that it relates to medical benefits (as de-
23 fined in regulations of the Secretary); and

24 (F) any other insurance providing for en-
25 rollees medical benefits (as defined in regula-

1 tions of the Secretary) in the event of sickness,
2 accident, disability, death, or unemployment.

3 (3) HEALTH CARRIER.—The term “health car-
4 rier” means a person that contracts or offers to con-
5 tract on a risk-assuming basis to provide, deliver, ar-
6 range for, pay for, or reimburse any of the cost of
7 health care services, including a sickness and acci-
8 dent insurance company, a health maintenance orga-
9 nization, a nonprofit hospital and health service cor-
10 poration, or any other entity providing a plan of
11 health insurance, health benefits, or health services.

12 (4) POLICY.—The term “policy” means a con-
13 tract of insurance, certificate, indemnity, suretyship,
14 or annuity issued, proposed for issuance, or intended
15 for issuance by an insurer, including endorsements
16 or riders to an insurance policy or contract.

17 (5) SECRETARY.—The term “Secretary” means
18 the Secretary of Health and Human Services.

19 **SEC. 3. ACCESS BY EXAMINED INDIVIDUAL TO RESULTS OF**
20 **MEDICAL EXAMINATIONS.**

21 An insurer shall take such actions as are necessary
22 to ensure that, in any case in which—

23 (1) a medical examination of an individual is
24 required for initial or continued enrollment under a
25 policy issued by the insurer, and

1 (2) such medical examination is conducted by a
2 person who is in the employ of the insurer or whose
3 services are procured otherwise by the insurer,
4 such individual (or the individual's legal guardian) is pro-
5 vided all medical information obtained from such examina-
6 tion at the same time that such information is made avail-
7 able to the insurer and is encouraged to make such infor-
8 mation available to such individual's own physician.

9 **SEC. 4. ENFORCEMENT.**

10 (a) **APPLICABILITY OF CERTAIN PUBLIC HEALTH**
11 **SERVICE ACT PROVISIONS.—**

12 (1) **IN GENERAL.—**For purposes of sections
13 2722 and 2723 of the Public Health Service Act (42
14 U.S.C. 300gg-22, 300gg-23), the provisions of sec-
15 tion 3 shall be deemed provisions of part A of title
16 XXVII of such Act. For purposes of sections 2761
17 and 2762 of such Act (42 U.S.C. 300gg-45, 300gg-
18 46), the provisions of section 3 shall be deemed pro-
19 visions of part B of such title XXVII.

20 (2) **RULES OF CONSTRUCTION.—**In applying
21 such sections 2722, 2723, 2761 and 2762, and sec-
22 tion 2791(d) of such Act (42 U.S.C. 300gg-91(d))
23 pursuant to paragraph (1)—

1 (A) any reference to a “health insurance
2 issuer” shall be deemed a reference to an in-
3 surer (as defined in section 2(1));

4 (B) any reference to “health insurance cov-
5 erage” (including any such coverage offered in
6 connection with a group health plan) shall be
7 deemed a reference to a policy (as defined in
8 section 2(4));

9 (C) any reference to a “group health plan”
10 shall be deemed a reference to a group insur-
11 ance plan (as defined in section 111(b)(1) of
12 the Employee Retirement Income Security Act
13 of 1974, and subject to the same rules as apply
14 with respect to group health plans under section
15 2721(a) of the Public Health Service Act (42
16 U.S.C. 300gg-21(a)); and

17 (D) any reference to part A or part B of
18 title XXVII of such Act shall be deemed a ref-
19 erence to sections 2 through 6 of this Act.

20 (b) PRIVATE CAUSE OF ACTION.—

21 (1) IN GENERAL.—An individual who believes
22 that he or she has been adversely affected by an act
23 or practice of an insurer in violation of section 3
24 may maintain an action against the insurer in a
25 Federal or State court of original jurisdiction. Upon

1 proof of such conduct by a preponderance of the evi-
2 dence, the court may award appropriate relief, in-
3 cluding temporary, preliminary, and permanent in-
4 junctive relief and compensatory and punitive dam-
5 ages, as well as the costs of suit and reasonable fees
6 for the aggrieved individual's attorneys and expert
7 witnesses. With respect to compensatory damages,
8 the aggrieved individual may elect, at any time prior
9 to the rendering of final judgment, to recover in lieu
10 of actual damages, an award of statutory damages
11 in the amount of \$10,000 for each violation. It shall
12 be the duty of the Federal courts to advance on the
13 docket and to expedite to the greatest possible extent
14 the disposition of any action for temporary or pre-
15 liminary injunctive relief considered under this para-
16 graph.

17 (2) ADDITIONAL PROVISIONS RELATING TO JU-
18 RISDICTION, VENUE, ATTORNEY'S FEES, ETC.—

19 (A) IN GENERAL.—Subject to subpara-
20 graph (B), subsections (d), (e), (f), (g), (h), and
21 (j) of section 502 of the Employee Retirement
22 Income Security Act of 1974 (29 U.S.C.
23 1132(d), (e), (f), (g), (h), and (j)) shall apply
24 with respect to a cause of action under para-
25 graph (1) in the same manner and to the same

1 extent as such subsections apply with respect to
2 a cause of action under section 502(a)(1)(B) of
3 such Act (29 U.S.C. 1132(a)(1)(B)).

4 (B) RULES OF CONSTRUCTION.—In apply-
5 ing such subsections pursuant to subparagraph
6 (A)—

7 (i) any reference to a “participant” or
8 “beneficiary” shall be deemed a reference
9 to the aggrieved individual referred to in
10 paragraph (1);

11 (ii) any reference to an “employee
12 benefit plan” shall be deemed a reference
13 to an insurer (as defined in section
14 (2)(A));

15 (iii) any reference to the Secretary of
16 Labor or the Secretary of the Treasury
17 shall be deemed a reference to the Sec-
18 retary of Health and Human Services; and

19 (iv) any reference to title I of such
20 Act shall be deemed a reference to sections
21 2 through 6 of this Act.

22 **SEC. 5. EFFECT ON STATE LAW.**

23 (a) IN GENERAL.—Section 3 supersedes any provi-
24 sion of State law which is inconsistent with any provision
25 of such section, in terms of providing less protection to

1 individuals than is provided by such section, but only to
2 the extent of such inconsistency. Nothing in section 3 shall
3 be construed to—

4 (1) alter or relieve any insurer from the obliga-
5 tion to comply with any State law with respect to in-
6 surers, policies, and health benefit plans, except to
7 the extent that such law is inconsistent with any
8 provision of section 3, or

9 (2) preclude a State from enacting any law or
10 regulation that affords a greater level or broader
11 range of protections to individuals under policies or
12 health benefit plans.

13 (b) DEFINITIONS.—For purposes of this section, the
14 terms “State” and “State law” have the meanings pro-
15 vided such terms under section 514(c) of the Employee
16 Retirement Income Security Act of 1974 (29 U.S.C.
17 1144(c)).

18 **SEC. 6. REGULATIONS.**

19 The Secretary (in consultation with the Secretary of
20 Labor) shall prescribe regulations to carry out the provi-
21 sions of sections 2 through 5.

1 **SEC. 7. ERISA REQUIREMENTS FOR DISCLOSURE BY GROUP**
2 **INSURANCE PLANS TO PARTICIPANTS AND**
3 **BENEFICIARIES OF THEIR MEDICAL CONDI-**
4 **TION LEARNED IN THE COURSE OF MEDICAL**
5 **EXAMINATIONS REQUIRED FOR COVERAGE**
6 **UNDER SUCH PLANS.**

7 (a) IN GENERAL.—Part 1 of subtitle B of title I of
8 the Employee Retirement Income Security Act of 1974 is
9 amended—

10 (1) by redesignating section 111 (29 U.S.C.
11 1031) as section 112; and

12 (2) by inserting after section 110 (29 U.S.C.
13 1030) the following new section:

14 “DISCLOSURE TO PARTICIPANTS AND BENEFICIARIES OF
15 RESULTS OF MEDICAL EXAMINATIONS CONDUCTED
16 BY GROUP INSURANCE PLANS

17 “SEC. 111. (a) IN GENERAL.—A group insurance
18 plan, and any insurer offering a policy in connection with
19 such plan, shall take such actions as are necessary to en-
20 sure that, in any case in which—

21 “(1) a medical examination of a participant or
22 beneficiary is required for initial or continued eligi-
23 bility for benefits, and

24 “(2) such medical examination is conducted by
25 a person who is in the employ of the plan or the in-

1 surer or whose services are procured otherwise by
2 the plan or the insurer,
3 such participant or beneficiary (or his or her legal guard-
4 ian) is provided all medical information obtained from
5 such examination at the same time that such information
6 is made available to the plan or insurer and is encouraged
7 to make such information available to his or her own phy-
8 sician.

9 “(b) DEFINITIONS.—For purposes of this section—

10 “(1) GROUP INSURANCE PLAN.—The term
11 ‘group insurance plan’ means an employee welfare
12 benefit plan established and maintained for the pur-
13 pose of providing for its participants or their bene-
14 ficiaries, through the purchase of insurance or other-
15 wise, medical, surgical, or hospital care or benefits,
16 or benefits in the event of sickness, accident, disabil-
17 ity, death, or unemployment.

18 “(2) POLICY.—The term “policy” means a con-
19 tract of insurance, certificate, indemnity, suretyship,
20 or annuity, including endorsements or riders to an
21 insurance policy or contract.

22 “(c) EFFECT ON STATE LAW.—This section super-
23 sedes any provision of State law which is inconsistent with
24 any provision of this section, in terms of providing less
25 protection to participants and beneficiaries than is pro-

1 vided by this section, but only to the extent of such incon-
2 sistency. Nothing in this section shall be construed to—

3 “(1) alter or relieve any plan administrator
4 from the obligation to comply with the laws of any
5 State with respect to group insurance plans, except
6 to the extent that such laws are inconsistent with
7 any provision of this section, or

8 “(2) preclude a State from enacting any law or
9 regulation that affords a greater level or broader
10 range of protections to participants and beneficiaries
11 under group insurance plans.

12 “(d) EXPEDITED CONSIDERATION.—It shall be the
13 duty of the Federal courts to advance on the docket and
14 to expedite to the greatest possible extent the disposition
15 of any action under section 502 for temporary or prelimi-
16 nary injunctive relief from violations of this section.

17 “(e) REGULATIONS.—The Secretary (in consultation
18 with the Secretary of Health and Human Services) shall
19 prescribe regulations to carry out the provisions of this
20 section.”.

21 (b) PENALTIES AT \$100 A DAY FOR FAILURE TO
22 DISCLOSE.—Section 502(c)(1)(A) of such Act (29 U.S.C.
23 1132(c)(1)(A)) is amended by striking “or section
24 101(e)(1)” and inserting “, section 101(e)(1), or section
25 111(a)”.

1 (c) CONFORMING AMENDMENT.—The table of con-
2 tents in section 1 is amended by striking the item relating
3 to section 111 and inserting the following new items:

“Sec. 111. Disclosure to participants and beneficiaries of results of medical ex-
aminations conducted by group insurance plans.

“Sec. 112. Repeal and effective date.”.

4 **SEC. 8. EFFECTIVE DATE.**

5 Sections 2, 3, 4, 5, and 6 shall apply with respect
6 to any action taken on or after the date of the enactment
7 of this Act. The amendments made by section 7 shall
8 apply with respect to plan years beginning on or after such
9 date.

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