

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1558

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2009

Mr. COURTNEY (for himself, Mr. SCHIFF, Mrs. CAPPS, Ms. DELAURO, Ms. CLARKE, Mr. LANGEVIN, Ms. SCHAKOWSKY, Ms. SCHWARTZ, Mr. MASSA, Ms. BALDWIN, Ms. ROS-LEHTINEN, Ms. PINGREE of Maine, and Mrs. DAVIS of California) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and Labor, 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

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Preexisting Condition  
3 Patient Protection Act of 2009”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds as follows:

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

8 (2) According to a recent study by the Com-  
9 monwealth Fund, the number of underinsured adults  
10 aged 19 to 64 has jumped 60 percent over the last  
11 4 years, from 16,000,000 in 2003 to 25,000,000 in  
12 2007.

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

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

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

1           (6) When a child or adult has a 63-day gap in  
2 insurance coverage, pre-existing condition exclusions,  
3 such as limiting coverage or instituting a waiting pe-  
4 riod, can be placed on them when they become in-  
5 sured under a new health insurance policy.

6           (7) Eliminating pre-existing condition exclu-  
7 sions for all is a vital safeguard to ensuring that all  
8 Americans have access to health care when in need.

9           (8) According to a Kaiser Family Foundation/  
10 Harvard School of Public Health public opinion poll,  
11 58 percent of Americans strongly favor the Federal  
12 Government requiring health insurance companies to  
13 cover anyone who applies for health coverage, even  
14 if they have a prior illness.

15 **SEC. 3. AMENDMENTS RELATING TO PREEXISTING CONDI-**  
16 **TION EXCLUSIONS UNDER GROUP HEALTH**  
17 **PLANS.**

18           (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
19 INCOME SECURITY ACT OF 1974.—

20           (1) ELIMINATION OF PREEXISTING CONDITION  
21 EXCLUSIONS.—Section 701 of the Employee Retire-  
22 ment Income Security Act of 1974 (29 U.S.C. 1181)  
23 is amended—

1 (A) by amending the heading to read as  
2 follows: “**ELIMINATION OF PREEXISTING**  
3 **CONDITION EXCLUSIONS**”;

4 (B) by amending subsection (a) to read as  
5 follows:

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

9 “(1) may not impose any preexisting condition  
10 exclusion; and

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

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

18 “(3) AFFILIATION PERIOD.—The term ‘affili-  
19 ation period’ means a period which, under the terms  
20 of the health insurance coverage offered by the  
21 health maintenance organization, must expire before  
22 the health insurance coverage becomes effective.”;

23 (D) by striking subsections (c), (d), (e),  
24 and (g); 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 contents of such Act relating to section 701  
6 is amended to read as follows:

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

7 (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE  
8 ACT.—

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

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

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

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

19 “(1) may not impose any preexisting condition  
20 exclusion; and

21 “(2) in the case of a group health plan that of-  
22 fers medical care through health insurance coverage  
23 offered by a health maintenance organization, may  
24 not provide for an affiliation period with respect to  
25 coverage through the organization.”;

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

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

8 (D) by striking subsections (c), (d), (e),  
9 and (g); and

10 (E) by redesignating subsection (f) (relat-  
11 ing to special enrollment periods) as subsection  
12 (c).

13 (2) TECHNICAL AMENDMENTS RELATING TO  
14 EMPLOYER SIZE.—Section 2711 of such Act (42  
15 U.S.C. 300gg-11) is amended—

16 (A) in subsection (a)—

17 (i) in the heading, by striking  
18 “SMALL”;

19 (ii) in paragraph (1)—

20 (I) in the matter before subpara-  
21 graph (A), by striking “(c) through  
22 (f)” and inserting “(b) through (d)”  
23 and by striking “small”; and

24 (II) in subparagraph (A), by  
25 striking “small employer (as defined

1 in section 2791(e)(4))” and inserting  
2 “employer”; and

3 (iii) in paragraph (2)—

4 (I) by striking “small” each place  
5 it appears; and

6 (II) by striking “coverage to a”  
7 and inserting “coverage to an”;

8 (B) by striking subsection (b);

9 (C) in subsections (c), (d), and (e), by  
10 striking “small” each place it appears; and

11 (D) by striking subsection (f).

12 (c) AMENDMENTS TO THE INTERNAL REVENUE  
13 CODE OF 1986.—

14 (1) ELIMINATION OF PREEXISTING CONDITION  
15 EXCLUSIONS.—Section 9801 of the Internal Revenue  
16 Code of 1986 is amended—

17 (A) by amending the heading to read as  
18 follows: “**ELIMINATION OF PREEXISTING**  
19 **CONDITION EXCLUSIONS**”;

20 (B) by amending subsection (a) to read as  
21 follows:

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

1 (C) by striking paragraph (3) of subsection  
2 (b);  
3 (D) by striking subsections (c), (d), and  
4 (e); and  
5 (E) by redesignating subsection (f) (relat-  
6 ing to special enrollment periods) as subsection  
7 (c).

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

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

11 (d) EFFECTIVE DATE.—

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

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



1 (A) the date on which the last of the col-  
2 lective bargaining agreements relating to the  
3 plan terminates (determined without regard to  
4 any extension thereof agreed to after the date  
5 of the enactment of this Act), or

6 (B) the date that is after the end of the  
7 12th calendar month following the date of the  
8 enactment of this Act.

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

16 **SEC. 4. PROHIBITION OF PREEXISTING CONDITION EXCLU-**  
17 **SIONS IN HEALTH INSURANCE COVERAGE IN**  
18 **THE INDIVIDUAL MARKET.**

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

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

24 “(A) an eligible individual (as defined in  
25 subsection (b)) desiring to enroll in individual

1 health insurance coverage decline to offer such  
2 coverage to, or deny enrollment of, such indi-  
3 vidual; and

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

8 (2) in subsection (a)(2), by striking “paragraph  
9 (1)” and inserting “paragraph (1)(A)”.

10 (b) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply with respect to health insurance  
12 coverage offered, sold, issued, renewed, in effect, or oper-  
13 ated in the individual market on or after the end of the  
14 12th month following the date of the enactment of this  
15 Act.

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

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

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

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

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

11           (3) such other information as the Secretary  
12 deems appropriate.

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

23 **SEC. 6. GAO REPORT.**

24           Not later than 1 year after the date of the enactment  
25 of this Act, the Comptroller General of the United States

1 shall submit to Congress a report on the impact of this  
2 Act (and other Federal laws regarding the regulation of  
3 health insurance and health benefits coverage) on the re-  
4 duction in the number of uninsured and underinsured in-  
5 dividuals in the group market and the individual market  
6 and on the affordability of coverage in such markets.

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