

111TH CONGRESS
1ST SESSION

S. 643

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 pre-existing condition exclusions for children in group health plans and health insurance coverage in the group and individual markets.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2009

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

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 pre-existing condition exclusions for children 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 “Children’s Health Pro-
5 tection Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) According to the Bureau of the Census,
4 8,100,000 children and young adults are uninsured
5 at some point during the year. Young adults between
6 the ages of 18 and 25 years old make up 21 percent
7 of the total uninsured population.

8 (2) According to a recent study, approximately
9 20 percent of school-aged children suffer from a
10 chronic illness.

11 (3) Thirteen States have passed legislation that
12 increased the age of dependency for young adults for
13 purposes of private insurance coverage to age 25.

14 (4) When a child or young adult has a 63 day
15 gap in insurance coverage, pre-existing condition ex-
16 clusions, such as coverage limits or waiting periods,
17 can be applied when the child or young adult be-
18 comes insured under a new health insurance policy.

19 (5) Eliminating pre-existing condition exclu-
20 sions for children is a vital safeguard to ensure all
21 children have access to health care when in need.

22 (6) High-risk pools were created to help individ-
23 uals with pre-existing conditions purchase insurance
24 with the assistance of government subsidies. How-
25 ever, State high-risk pools are often underfunded,
26 unaffordable for patients, have long waiting lists and

1 impose pre-existing condition waiting periods once
2 enrolled.

3 (7) Pre-existing condition limitation periods for
4 children in the private market discourage families
5 from moving off Medicaid or the Children’s Health
6 Insurance Program.

7 **SEC. 3. PROHIBITION OF PRE-EXISTING CONDITION EXCLU-**
8 **SIONS FOR CHILDREN UNDER GROUP**
9 **HEALTH PLANS.**

10 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
11 INCOME SECURITY ACT OF 1974.—Section 701(d) of the
12 Employee Retirement Income Security Act of 1974 (29
13 U.S.C. 1181(d)) is amended—

14 (1) by striking paragraph (1) and inserting the
15 following:

16 “(1) EXCLUSION NOT APPLICABLE TO CHIL-
17 DREN.—A group health plan, and a health insurance
18 issuer offering group health insurance coverage, may
19 not impose any pre-existing condition exclusion in
20 the case of an individual who has not attained 25
21 years of age.”;

22 (2) by striking paragraphs (2) and (4); and

23 (3) by redesignating paragraph (3) as para-
24 graph (2).

1 (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE
2 ACT.—Section 2701(d) of the Public Health Service Act
3 (42 U.S.C. 300gg(d)) is amended—

4 (1) by striking paragraph (1) and inserting the
5 following:

6 “(1) EXCLUSION NOT APPLICABLE TO CHIL-
7 DREN.—A group health plan, and a health insurance
8 issuer offering group health insurance coverage, may
9 not impose any pre-existing condition exclusion in
10 the case of an individual who has not attained 25
11 years of age.”;

12 (2) by striking paragraphs (2) and (4); and

13 (3) by redesignating paragraph (3) as para-
14 graph (2).

15 (c) AMENDMENTS TO THE INTERNAL REVENUE
16 CODE OF 1986.—Subsection (d) of section 9801 of the
17 Internal Revenue Code of 1986 (relating to exceptions) is
18 amended—

19 (1) by striking paragraph (1) and inserting the
20 following:

21 “(1) EXCLUSION NOT APPLICABLE TO CHIL-
22 DREN.—A group health plan may not impose any
23 pre-existing condition exclusion in the case of an in-
24 dividual who has not attained 25 years of age.”;

25 (2) by striking paragraphs (2) and (4); and

1 (3) by redesignating paragraph (3) as para-
2 graph (2).

3 (d) EFFECTIVE DATE.—

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

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

18 (A) the date on which the last of the col-
19 lective bargaining agreements relating to the
20 plan terminates (determined without regard to
21 any extension thereof agreed to after the date
22 of the enactment of this Act); or

23 (B) the date that is after the end of the
24 12th calendar month following the date of en-
25 actment of this Act.

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

8 **SEC. 4. PROHIBITION OF PRE-EXISTING CONDITION EXCLU-**
 9 **SIONS FOR CHILDREN IN HEALTH INSUR-**
 10 **ANCE COVERAGE IN THE INDIVIDUAL MAR-**
 11 **KET.**

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

14 (1) by redesignating the second subsection (e)
 15 (relating to market requirements) and subsection (f)
 16 as subsections (f) and (g), respectively; and

17 (2) by adding at the end the following new sub-
 18 section:

19 “(h) PROHIBITION OF PRE-EXISTING CONDITION
 20 EXCLUSIONS FOR CHILDREN.—Each health insurance
 21 issuer that offers health insurance coverage in the indi-
 22 vidual market may not impose any pre-existing condition
 23 exclusion (as defined in section 2701(b)(1)(A)) in the case
 24 of an individual who has not attained 25 years of age.”.

1 (b) CONFORMING AMENDMENT.—Section 2744(a)(1)
2 of such Act (42 U.S.C. 300gg–44(a)(1)) is amended by
3 inserting “(other than subsection (h))” after “section
4 2741”.

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

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