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110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 110–870, Part 1

HEALTH INSURANCE SOURCE OF INJURY CLARIFICATION ACT OF 2008

SEPTEMBER 23, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 6908]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 6908) to require that limitations and restrictions on coverage under group health plans be timely disclosed to group health plan sponsors and timely communicated to participants and beneficiaries under such plans in a form that is easily understandable, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 6908, the Health Insurance Source of Injury Clarification Act of 2008, is to improve transparency in health insurance benefit restrictions and limitations. H.R. 6908 amends the Employee Retirement Income Security Act of 1974 (ERISA), Public Health Service Act (PHSA), and the Internal Revenue Code (IRC) to require that any limitations on benefits of health insurers be explicit and clear; that they be disclosed to plan sponsors in advance of the point of sale; and that they be disclosed to participants and beneficiaries in a manner that is easily understandable in the plan in advance of enrollment and after enrollment.

BACKGROUND AND NEED FOR LEGISLATION

In January 2001, the Department of Labor (DOL), the Internal Revenue Service and the Health Care Financing Administration, issued a rule in accordance to the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The rule states that "[w]hile a person cannot be excluded from a plan for engaging in certain recreational activities, benefits for a particular injury can, in some cases, be excluded based on the source of the injury."[1]

This rule resulted in situations where a beneficiary was unaware that injuries resulting from certain recreational activities could result in non-payment for necessary medical services. In many situations the exclusions were unclear or very broad.

The lack of clarity underlying coverage of benefits has created a confusing situation for individuals that may ride motorcycles, horses, snowmobiles, or participate in other legal activities that could result in an injury. Millions of Americans enjoy these activities safely every year within the framework of State laws and utilizing proper safety precautions. However, where an injury results from these activities, insurers should not discriminate in their treatment of injured individuals. To the extent plan limitations or restrictions are permitted, such limitations or restrictions should be explicit and clear before a person enrolls in a plan.

LEGISLATIVE AND EXECUTIVE HISTORY

H.R. 1076, the HIPAA Recreational Injury Technical Correction Act, was introduced by Congressman Michael Burgess (R–TX) and Congressman Bart Stupak (D–MI) on February 15, 2007, and currently has 122 cosponsors. The Senate companion, S. 616, was introduced by Senator Susan Collins (R–ME) on February 15, 2007, and has 8 cosponsors.

As introduced, H.R. 1076 would have required plans to cover payment for medical services resulting from participation of an individual in a legal mode of transportation or a legal recreational activity.

In response to concerns raised during discussions on this bill, the Committee worked with Mr. Burgess and Mr. Stupak on an alternative policy.

Congressman Burgess and Stupak introduced new legislation, H.R. 6908, that would:

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[1] Federal Register, Vol. 66, No. 5, Monday, January 8, 2001.

- Require any limitations and restrictions on benefits be explicit and clear;
- Require that they be disclosed to the sponsor of the group health plan in advance of the point of sale to the group health plan; and
- Require that the issuer of the health insurance coverage make available to participants and beneficiaries in an easily understandable manner a description of the limitations and restrictions prior to and upon their enrollment.

HEARINGS

No hearings were held in connection with H.R. 6908.

COMMITTEE CONSIDERATION

On Wednesday, September 17, 2008, the full Committee met in open markup session and ordered H.R. 6908 favorably reported to the House, by a voice vote. No amendments were offered during full Committee consideration of the bill.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in connection with ordering H.R. 6908 reported to the House. A motion by Mr. Dingell to order H.R. 6908 favorably reported to the House was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee regarding H.R. 6908 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The objective of H.R. 6908 is to ensure that consumers are informed of any limitations and restrictions on their health insurance coverage.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 6908 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6908 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 6908 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 6908 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 2008.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6908, the Health Insurance Source of Injury Clarification Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kirstin Nelson.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 6908—Health Insurance Source of Injury Clarification Act of 2008

H.R. 6908, the Health Insurance Source of Injury Clarification Act of 2008, would require that group health plans disclose the limitations and restrictions on coverage in a timely manner to health plan sponsors and participants. The bill would amend the Employee Retirement and Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code to reflect this new requirement. The bill would require that health insurance coverage limitations and restrictions be explicit and clear prior to the time of sale or enrollment. CBO estimates that enacting H.R. 6908 would not affect the federal budget.

H.R. 6908 would impose a private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), on issuers of group health insurance coverage and sponsors of group health insurance plans. CBO estimates that the aggregate cost of complying with those mandates would not exceed the threshold established by UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation). CBO estimates that the direct cost of these requirements would be small because issuers and sponsors of group health insurance plans generally already make such information available and already disclose plan information before and after enrollment. Making that information more explicit would not, in and of itself, be costly.

H.R. 6908 contains no intergovernmental mandates as defined in UMRA. An existing provision in the Public Health Service Act would allow state, local, and tribal governments, as employers that

provide health benefits to their employees, to opt out of the requirements of this bill. Consequently, the requirements in the bill that would require plans to disclose coverage limits for injuries by source would not be an intergovernmental mandate as defined in UMRA. The bill would affect the budgets of those governments only if they choose to comply with the requirements for their group health plans.

The CBO staff contacts for this estimate are Kirstin Nelson (for federal costs); Lisa Ramirez-Branum (for the impact on state, local, and tribal governments); and Patrick Bernhardt (for the private-sector impact). This estimate was approved by Keith J. Fontenot, Deputy Assistant Director for Health and Human Services, Budget Analysis Division.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 6908 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 6908.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for H.R. 6908 is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian Tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 6908 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of H.R. 6908 as the Health Insurance Source of Injury Clarification Act of 2008.

Section 2. Disclosure requirements

Section 2(a) amends the Employee Retirement Income Security Act of 1974. This provision is not within the jurisdiction of the Committee.

Section 2(b) amends the Public Health Service Act relating to the group market. It amends section 2702 (relating to prohibiting discrimination against individual participants and beneficiaries based on health status) in subsection (a)(2)(B) to provide that paragraph (1) of subsection (a) shall not be construed to prevent a plan or coverage from establishing limitations or restrictions on the amount,

level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage so long as:

- Such limitations and restrictions are explicit and clear;
- Such limitations and restrictions have been disclosed to the plan sponsor of the group health plan in advance of the point of sale to the group health plan;
- The plan sponsor and issuer make available to participants and beneficiaries in an easily understandable manner a description of the limitations and restrictions in advance of the point of their enrollment under the plan; and
- The plan sponsor and issuer make available to participants and beneficiaries in an easily understandable manner a description of the limitations and restrictions upon their enrollment.

Section 2(c) amends the Internal Revenue Code of 1986. This provision is not within the jurisdiction of the Committee.

Section 2(d) makes these changes applicable with respect to plan years beginning 1 year after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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SUBTITLE B—REGULATORY PROVISIONS

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PART 7—GROUP HEALTH PLAN REQUIREMENTS

SUBPART A—REQUIREMENTS RELATING TO PORTABILITY, ACCESS, AND RENEWABILITY

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SEC. 702. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

(a) IN ELIGIBILITY TO ENROLL.—

(1) * * *

(2) NO APPLICATION TO BENEFITS OR EXCLUSIONS.—To the extent consistent with section 701, paragraph (1) shall not be construed—

(A) * * *

(B) to prevent such a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or

nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage *so long as*—

(i) such limitations and restrictions are explicit and clear;

(ii) in the case of such limitations and restrictions in health insurance coverage offered in connection with the group health plan, such limitations and restrictions have been disclosed to the plan sponsor in advance of the point of sale to the plan;

(iii) the plan sponsor and the issuer of the health insurance coverage make available, to participants and beneficiaries in the plan in advance of the point of their enrollment under the plan, a description of such limitations and restrictions in a form that is easily understandable by such participants and beneficiaries; and

(iv) the plan sponsor and the issuer of the coverage provide such description to participants and beneficiaries upon their enrollment under the plan.

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PUBLIC HEALTH SERVICE ACT

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TITLE XXVII—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

PART A—GROUP MARKET REFORMS

Subpart 1—Portability, Access, and Renewability Requirements

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SEC. 2702. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

(a) IN ELIGIBILITY TO ENROLL.—

(1) * * *

(2) NO APPLICATION TO BENEFITS OR EXCLUSIONS.—To the extent consistent with section 701, paragraph (1) shall not be construed—

(A) * * *

(B) to prevent such a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage *so long as*—

(i) such limitations and restrictions are explicit and clear;

(ii) in the case of such limitations and restrictions in health insurance coverage offered in connection with the group health plan, such limitations and restrictions have been disclosed to the plan sponsor in advance of the point of sale to the plan;

(iii) the plan sponsor and the issuer of the group health insurance coverage make available, to partici-

pants and beneficiaries in the plan in advance of the point of their enrollment under the plan, a description of such limitations and restrictions in a form that is easily understandable by such participants and beneficiaries; and

(iv) the plan sponsor and the issuer of the coverage provides such description to participants and beneficiaries upon their enrollment under the plan.

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INTERNAL REVENUE CODE OF 1986

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Subtitle K—Group Health Plan Requirements

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CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS

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Subchapter A—Requirements Relating to Portability, Access, and Renewability

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SEC. 9802. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS.

(a) IN ELIGIBILITY TO ENROLL.—

(1) * * *

(2) NO APPLICATION TO BENEFITS OR EXCLUSIONS.—To the extent consistent with section 9801, paragraph (1) shall not be construed—

(A) * * *

(B) to prevent such a plan from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage *so long as*—

(i) such limitations and restrictions are explicit and clear;

(ii) the group health plan makes available, to participants and beneficiaries in the plan in advance of the point of their enrollment under the plan, a description of such limitations and restrictions in a form that is easily understandable by such participants and beneficiaries; and

(iii) the plan provides such description to participants and beneficiaries upon their enrollment under the plan.

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