H. R. 5449

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual health insurance coverage.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2008

Mr. KAGEN (for himself, Mr. BRALEY of Iowa, Mr. PERLMUTTER, Mr. COHEN, Mr. MCMINN, Ms. CASTOR, Mr. WALZ of Minnesota, Mr. JOHNSON of Georgia, Mr. GRIJALVA, Ms. HIRONO, Mrs. NAPOLEON, Ms. SUTTON, Ms. CLARKE, Mr. CONYERS, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, 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 amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to prohibit discrimination in group health coverage and individual health insurance coverage.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the "No Discrimination in Health Insurance Act of 2008".

(b) PURPOSE.—It is the purpose of this Act to—

(1) eliminate the application of pre-existing condition exclusions in all group health coverage policies and all individual health insurance policies; and

(2) provide that all health insurance issuers determine and openly disclose the premium price for each and every group health insurance policy and each and every individual health insurance policy, such that within a specific metropolitan statistical area, or other geographic area, all such premiums and prices established by a given issuer shall be uniform.

SEC. 2. NONDISCRIMINATION IN GROUP HEALTH COVERAGE.

(a) APPLICATION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS.—Section 701 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181) is amended—

(A) by amending the heading to read as follows: "ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS";
(B) by amending subsection (a) to read as follows:

“(a) In General.—A group health plan, and a health insurance issuer offering group health insurance coverage, with respect to a participant or beneficiary—

“(1) may not impose any pre-existing condition exclusion; and

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

(C) in subsection (b), by striking paragraph (3) and inserting the following:

“(3) Affiliation Period.—The term ‘affiliation period’ means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective.”;

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

(E) by redesignating subsection (f) (relating to special enrollment periods) as subsection (c).
(2) CLERICAL AMENDMENT.—The item in the table of contents of such Act relating to section 701 is amended to read as follows:

“Sec. 701. Elimination of pre-existing condition exclusions.”

(b) APPLICATION UNDER THE INTERNAL REVENUE CODE OF 1986.—

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

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

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

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

(C) by striking paragraph (3) of subsection (b);

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

(E) by redesignating subsection (f) (relating to special enrollment periods) as subsection (e).
(2) CLERICAL AMENDMENT.—The item in the table of sections of chapter 100 of such Code relating to section 9801 is amended to read as follows:

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

(e) APPLICATION UNDER PUBLIC HEALTH SERVICE ACT.—

(1) ELIMINATION OF PREEXISTING CONDITION EXCLUSIONS.—Section 2701 of the Public Health Service Act (42 U.S.C. 300gg) is amended—

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

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

“(a) In General.—A group health plan, and a health insurance issuer offering group health insurance coverage, with respect to a participant or beneficiary—

“(1) may not impose any pre-existing condition exclusion; and

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

(C) in subsection (b), by striking paragraph (3) and inserting the following:
“(3) AFFILIATION PERIOD.—The term ‘affiliation period’ means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective.”;

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

(E) by redesignating subsection (f) (relating to special enrollment periods) as subsection (c).

(2) GUARANTEED AVAILABILITY OF GROUP HEALTH INSURANCE COVERAGE TO EMPLOYERS OF ALL SIZES IN THE GROUP MARKET.—Section 2711 of such Act (42 U.S.C. 300gg–11) is amended—

(A) in subsection (a)—

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

(ii) in paragraph (1), by striking “(c) through (f)” and inserting “(b) through (d)”;

(iii) in paragraph (1), in the matter before subparagraph (A), by striking “small”;
(iv) in paragraph (1)(A), by striking “small employer (as defined in section 2791(e)(4))” and inserting “employer”; 

(v) in paragraph (2), by striking “small” each place it appears; and 

(vi) in paragraph (2), by striking “coverage to a” and inserting “coverage to an”; 

(B) by striking subsection (b); 

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

(D) by striking subsection (f).

(3) Application of Uniform Premiums.— Section 2711 of such Act, as so amended, is amend- ed by inserting after subsection (a) the following new subsection:

“(b) Application of Uniform Premium.—

“(1) In General.—Each and every health insurance issuer that offers health insurance coverage in the group market in a State shall—

“(A) shall charge the same premium price for the same coverage; and

“(B) shall openly disclose, in a manner specified by the Secretary and including disclo- sure through the Internet, the amount of the
premium price that is being charged for the
coverage involved.

“(2) UNIFORM APPLICATION TO FAMILY COV-
ERAGE AND TO DIFFERENT GEOGRAPHIC AREAS.—
Paragraph (1) shall be applied uniformly—

“(A) for coverage on the basis of such dif-
derent family categories as the Secretary ap-
proves; and

“(B) for coverage within each metropolitan
statistical area and for coverage within the por-
tions of a State that are not within a metropoli-
tan statistical area.

“(3) APPLICATION.—Paragraph (1) shall not be
construed as preventing variations in premiums that
result from the application of a uniform monthly
premium over different policy years.”.

(4) APPLICATION OF NONDISCRIMINATION
RULES TO NONFEDERAL GOVERNMENTAL PLANS.—
Section 2721(b)(2)(A) of such Act (42 U.S.C.
300gg–21(b)(2)(A)) is amended by striking “sub-
parts 1 through 3” and “such subparts” and insert-
ing “subpart 2” and “such subpart”, respectively.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by
this section shall apply to plan years beginning on
or after January 1, 2009, regardless of whether an individual is provided coverage under a group health plan before such date.

(2) **Special rule for collective bargaining agreements.**—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 2010.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement under the amendments made by this section shall not be treated as a termination of such collective bargaining agreement.
SEC. 3. NONDISCRIMINATION IN INDIVIDUAL HEALTH INSURANCE.

(a) In General.—Section 2741 of the Public Health Service Act (42 U.S.C. 300gg–41) is amended—

(1) by amending the heading to read as follows:

“GUARANTEED ISSUE OF INDIVIDUAL HEALTH INSURANCE COVERAGE; UNIFORM PREMIUMS”;

(2) by amending subsections (a) and (b) to read as follows:

“(a) In General.—

“(1) Guaranteed Issue.—Subject to the succeeding subsections of this section, each and every health insurance issuer that offers health insurance coverage (as defined in section 2791(b)(1)) in the individual market to individuals residing in an area may not, with respect to an eligible individual (as defined in subsection (b)) residing in the area who desires to enroll in individual health insurance coverage—

“(A) decline to offer such coverage to, or deny enrollment of, such individual; or

“(B) impose any preexisting condition exclusion (as defined in section 2701(b)(1)(A)) with respect to such coverage.

“(2) Application of Uniform Premium.—
“(A) IN GENERAL.—Each and every health insurance issuer that offers health insurance coverage in the individual market in a State—

“(i) shall charge the same premium price for the same coverage;

“(ii) if the issuer offers such coverage in the group market in the State, shall charge the same premium for the same coverage offered in the group market; and

“(iii) shall openly disclose, in a manner specified by the Secretary and including disclosure through the Internet, the amount of the premium price that is being charged for the coverage involved.

“(B) UNIFORM APPLICATION TO FAMILY COVERAGE AND TO DIFFERENT GEOGRAPHIC AREAS.—Subparagraph (A) shall be applied uniformly—

“(i) for coverage on the basis of such different family categories as the Secretary approves; and

“(ii) for coverage within each metropolitan statistical area and for coverage within the portions of a State that are not within a metropolitan statistical area.
“(C) APPLICATION.—Subparagraph (A) shall not be construed as preventing variations in premiums that result from the application of a uniform monthly premium over different policy years.

“(b) ELIGIBLE INDIVIDUAL DEFINED.—In this part, the term ‘eligible individual’ means, with respect to an area, an individual who resides in such area, without regard to the period of such residency, and who is—

“(1) a citizen or national of the United States;

“(2) an alien lawfully admitted to the United States for permanent residence; or

“(3) an alien who is otherwise lawfully residing in the United States.”;

(3) by striking subsection (c);

(4) by redesignating subsection (d) and the first subsection (e) (relating to application of financial capacity limits) as subsections (c) and (d), respectively;

(5) in paragraph (1) of the subsection (e) relating to market requirements, by striking “or through one or more bona fide associations, or both”; and

(6) by striking subsection (f) and inserting the following:
“(f) Uniform Rules To Respond to Adverse Selection.—

“(1) IN GENERAL.—The Secretary may establish rules for uniform application that are designed to deter individuals—

“(A) from enrolling in individual health insurance coverage only after they develop an illness or injury for which such coverage applies; and

“(B) from disenrolling from health insurance coverage for periods in which they are unlikely (or less likely) to require such coverage.

“(2) Considerations.—Such rules may take into account the financial and other circumstances of individuals for not being so enrolled or for so disenrolling.”.

(b) Conforming Amendment.—Section 2742(b) of such Act (42 U.S.C. 300gg–42(b)) is amended by striking paragraph (5).

(c) Effective Date.—The amendments made by this section shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after December 31, 2008.