

115TH CONGRESS
1ST SESSION

H. R. 1121

To amend the Public Health Service Act to prohibit application of pre-existing condition exclusions and to guarantee availability of health insurance coverage in the individual and group market, contingent on the enactment of legislation repealing the Patient Protection and Affordable Care Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2017

Mr. WALDEN (for himself, Mr. LATTA, Mr. WALBERG, Mr. GUTHRIE, Mr. LANCE, Mr. MCKINLEY, Mr. BILIRAKIS, Mrs. MIMI WALTERS of California, Mr. MITCHELL, Mr. BISHOP of Michigan, Mrs. WAGNER, Mrs. BROOKS of Indiana, Mr. KNIGHT, Mr. BUCSHON, Mr. CRAMER, Mr. RODNEY DAVIS of Illinois, Mr. POLIQUIN, Ms. HERRERA BEUTLER, Mr. REICHERT, Mr. HARPER, Mr. UPTON, Mr. ROYCE of California, Mr. ALLEN, Mr. ABRAHAM, Mr. TIPTON, Mr. SMUCKER, Mr. KELLY of Pennsylvania, Mr. DENHAM, Mr. DONOVAN, Mr. FORTENBERRY, Ms. JENKINS of Kansas, Mr. COLLINS of New York, Mr. STIVERS, Mrs. MCMORRIS RODGERS, Mr. COSTELLO of Pennsylvania, Mr. FLORES, Mr. ROSKAM, Mr. KINZINGER, Mr. SHUSTER, Mr. TIBERI, Mr. WILSON of South Carolina, Mr. SIMPSON, and Mr. MURPHY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, 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 Public Health Service Act to prohibit application of pre-existing condition exclusions and to guarantee availability of health insurance coverage in the individual and group market, contingent on the enactment of legis-

3 SECTION 1. SHORT TITLE.

6 SEC. 2. PROHIBITION OF PRE-EXISTING CONDITION EXCLU-
7 SIONS.

14 "SEC. 2701. PROHIBITION OF PRE-EXISTING CONDITION EX-
15 CLUSIONS.

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

22 “(A) IN GENERAL.—The term ‘pre-existing
23 condition exclusion’ means, with respect to a
24 group health plan or health insurance coverage,

1 a limitation or exclusion of benefits relating to
2 a condition based on the fact that the condition
3 was present before the date of enrollment in
4 such plan or for such coverage, whether or not
5 any medical advice, diagnosis, care, or treat-
6 ment was recommended or received before such
7 date.

8 “(B) TREATMENT OF GENETIC INFORMA-
9 TION.—Genetic information shall not be treated
10 as a pre-existing condition in the absence of a
11 diagnosis of the condition related to such infor-
12 mation.

13 “(2) DATE OF ENROLLMENT.—The term ‘date
14 of enrollment’ means, with respect to an individual
15 covered under a group health plan or health insur-
16 ance coverage, the date of enrollment of the indi-
17 vidual in the plan or coverage or, if earlier, the first
18 day of the waiting period for such enrollment.

19 “(3) WAITING PERIOD.—The term ‘waiting pe-
20 riod’ means, with respect to a group health plan and
21 an individual who is a potential participant or bene-
22 ficiary in the plan, the period that must pass with
23 respect to the individual before the individual is eli-
24 gible to be covered for benefits under the terms of
25 the plan.”.

1 (b) INDIVIDUAL MARKET.—Subject to section 6(a) of
 2 this Act, subpart 1 of part B of title XXVII of the Public
 3 Health Service Act (42 U.S.C. 300gg–41 et seq.), as re-
 4 stored or revived pursuant to PPACA repeal legislation
 5 described in section 6(b) of this Act, is amended by adding
 6 at the end the following:

7 **“SEC. 2746. PROHIBITION OF PRE-EXISTING CONDITION EX-**
 8 **CLUSIONS OR OTHER DISCRIMINATION**
 9 **BASED ON HEALTH STATUS.**

10 “The provisions of section 2701 shall apply to health
 11 insurance coverage offered to individuals by a health in-
 12 surance issuer in the individual market in the same man-
 13 ner as it applies to health insurance coverage offered by
 14 a health insurance issuer in the group market.”.

15 **SEC. 3. GUARANTEED AVAILABILITY OF COVERAGE.**

16 (a) GROUP MARKET.—Subject to section 6(a) of this
 17 Act, subpart 3 of part A of title XXVII of the Public
 18 Health Service Act, as restored or revived pursuant to
 19 PPACA repeal legislation described in section 6(b) of this
 20 Act, is amended by striking section 2711 (42 U.S.C.
 21 300gg–11) and inserting the following:

22 **“SEC. 2711. GUARANTEED AVAILABILITY OF COVERAGE.**

23 “(a) GUARANTEED ISSUANCE OF COVERAGE IN THE
 24 GROUP MARKET.—Subject to subsection (b), each health
 25 insurance issuer that offers health insurance coverage in

1 the group market in a State shall accept every employer
 2 and every individual in a group in the State that applies
 3 for such coverage.

4 “(b) ENROLLMENT.—

5 “(1) RESTRICTION.—A health insurance issuer
 6 described in subsection (a) may restrict enrollment
 7 in coverage described in such subsection to open or
 8 special enrollment periods.

9 “(2) ESTABLISHMENT.—A health insurance
 10 issuer described in subsection (a) shall establish spe-
 11 cial enrollment periods for qualifying events (as such
 12 term is defined in section 603 of the Employee Re-
 13 tirement Income Security Act of 1974).”.

14 (b) INDIVIDUAL MARKET.—Subject to section 6(a) of
 15 this Act, subpart 1 of part B of title XXVII of the Public
 16 Health Service Act, as restored or revived pursuant to
 17 PPACA repeal legislation described in section 6(b) of this
 18 Act, is amended by striking section 2741 of such Act (42
 19 U.S.C. 300gg–41) and inserting the following:

20 **“SEC. 2741. GUARANTEED AVAILABILITY OF COVERAGE.**

21 “The provisions of section 2711 shall apply to health
 22 insurance coverage offered to individuals by a health in-
 23 surance issuer in the individual market in the same man-
 24 ner as such provisions apply to health insurance coverage
 25 offered to employers by a health insurance issuer in con-

1 nection with health insurance coverage in the group mar-
 2 ket. For purposes of this section, the Secretary shall treat
 3 any reference of the word ‘employer’ in such section as
 4 a reference to the term ‘individual’.”.

5 **SEC. 4. PROHIBITING DISCRIMINATION AGAINST INDI-**
 6 **VIDUAL PARTICIPANTS AND BENEFICIARIES**
 7 **BASED ON HEALTH STATUS.**

8 (a) GROUP MARKET.—Subject to section 6(a) of this
 9 Act, section 2702 of the Public Health Service Act, as re-
 10 stored or revived pursuant to PPACA repeal legislation
 11 described in section 6(b) of this Act, is amended to read
 12 as follows:

13 **“SEC. 2702. PROHIBITING DISCRIMINATION AGAINST INDI-**
 14 **VIDUAL PARTICIPANTS AND BENEFICIARIES**
 15 **BASED ON HEALTH STATUS.**

16 “(a) IN GENERAL.—A group health plan and a health
 17 insurance issuer offering group health insurance coverage
 18 may not establish rules for eligibility (including continued
 19 eligibility) of any individual to enroll under the terms of
 20 the plan or coverage based on any of the following health
 21 status-related factors in relation to the individual or a de-
 22 pendent of the individual:

23 “(1) Health status.

24 “(2) Medical condition (including both physical
 25 and mental illnesses).

1 “(3) Claims experience.

2 “(4) Receipt of health care.

3 “(5) Medical history.

4 “(6) Genetic information.

5 “(7) Evidence of insurability (including condi-
6 tions arising out of acts of domestic violence).

7 “(8) Disability.

8 “(9) Any other health status-related factor de-
9 termined appropriate by the Secretary.

10 “(b) IN PREMIUM CONTRIBUTIONS.—

11 “(1) IN GENERAL.—A group health plan, and a
12 health insurance issuer offering group health insur-
13 ance coverage, may not require any individual (as a
14 condition of enrollment or continued enrollment
15 under the plan) to pay a premium or contribution
16 which is greater than such premium or contribution
17 for a similarly situated individual enrolled in the
18 plan on the basis of any health status-related factor
19 in relation to the individual or to an individual en-
20 rolled under the plan as a dependent of the indi-
21 vidual.

22 “(2) CONSTRUCTION.—Nothing in paragraph
23 (1) shall be construed—

24 “(A) to restrict the amount that an em-
25 ployer or individual may be charged for cov-

1 erage under a group health plan except as pro-
2 vided in paragraph (3); or

3 “(B) to prevent a group health plan, and
4 a health insurance issuer offering group health
5 insurance coverage, from establishing premium
6 discounts or rebates or modifying otherwise ap-
7 plicable copayments or deductibles in return for
8 adherence to programs of health promotion and
9 disease prevention.

10 “(3) NO GROUP-BASED DISCRIMINATION ON
11 BASIS OF GENETIC INFORMATION.—

12 “(A) IN GENERAL.—For purposes of this
13 section, a group health plan, and health insur-
14 ance issuer offering group health insurance cov-
15 erage, may not adjust premium or contribution
16 amounts for the group covered under such plan
17 on the basis of genetic information.

18 “(B) RULE OF CONSTRUCTION.—Nothing
19 in subparagraph (A) or in paragraphs (1) and
20 (2) of subsection (d) shall be construed to limit
21 the ability of a health insurance issuer offering
22 group health insurance coverage to increase the
23 premium for an employer based on the mani-
24 festation of a disease or disorder of an indi-
25 vidual who is enrolled in the plan. In such case,

1 the manifestation of a disease or disorder in
2 one individual cannot also be used as genetic in-
3 formation about other group members and to
4 further increase the premium for the employer.

5 “(c) GENETIC TESTING.—

6 “(1) LIMITATION ON REQUESTING OR REQUIR-
7 ING GENETIC TESTING.—A group health plan, and a
8 health insurance issuer offering health insurance
9 coverage in connection with a group health plan,
10 shall not request or require an individual or a family
11 member of such individual to undergo a genetic test.

12 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
13 shall not be construed to limit the authority of a
14 health care professional who is providing health care
15 services to an individual to request that such indi-
16 vidual undergo a genetic test.

17 “(3) RULE OF CONSTRUCTION REGARDING PAY-
18 MENT.—

19 “(A) IN GENERAL.—Nothing in paragraph
20 (1) shall be construed to preclude a group
21 health plan, or a health insurance issuer offer-
22 ing health insurance coverage in connection
23 with a group health plan, from obtaining and
24 using the results of a genetic test in making a
25 determination regarding payment (as such term

1 is defined for the purposes of applying the regu-
2 lations promulgated by the Secretary under
3 part C of title XI of the Social Security Act and
4 section 264 of the Health Insurance Portability
5 and Accountability Act of 1996, as may be re-
6 vised from time to time) consistent with sub-
7 section (a).

8 “(B) LIMITATION.—For purposes of sub-
9 paragraph (A), a group health plan, or a health
10 insurance issuer offering health insurance cov-
11 erage in connection with a group health plan,
12 may request only the minimum amount of in-
13 formation necessary to accomplish the intended
14 purpose.

15 “(4) RESEARCH EXCEPTION.—Notwithstanding
16 paragraph (1), a group health plan, or a health in-
17 surance issuer offering health insurance coverage in
18 connection with a group health plan, may request,
19 but not require, that a participant or beneficiary un-
20 dergo a genetic test if each of the following condi-
21 tions is met:

22 “(A) The request is made pursuant to re-
23 search that complies with part 46 of title 45,
24 Code of Federal Regulations, or equivalent Fed-
25 eral regulations, and any applicable State or

1 local law or regulations for the protection of
2 human subjects in research.

3 “(B) The plan or issuer clearly indicates to
4 each participant or beneficiary, or in the case of
5 a minor child, to the legal guardian of such
6 beneficiary, to whom the request is made that—

7 “(i) compliance with the request is
8 voluntary; and

9 “(ii) non-compliance will have no ef-
10 fect on enrollment status or premium or
11 contribution amounts.

12 “(C) No genetic information collected or
13 acquired under this paragraph shall be used for
14 underwriting purposes.

15 “(D) The plan or issuer notifies the Sec-
16 retary in writing that the plan or issuer is con-
17 ducting activities pursuant to the exception pro-
18 vided for under this paragraph, including a de-
19 scription of the activities conducted.

20 “(E) The plan or issuer complies with such
21 other conditions as the Secretary may by regu-
22 lation require for activities conducted under this
23 paragraph.

24 “(d) PROHIBITION ON COLLECTION OF GENETIC IN-
25 FORMATION.—

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer offering health insurance
3 coverage in connection with a group health plan,
4 shall not request, require, or purchase genetic infor-
5 mation for underwriting purposes (as defined in sec-
6 tion 2791).

7 “(2) PROHIBITION ON COLLECTION OF GE-
8 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
9 group health plan, and a health insurance issuer of-
10 fering health insurance coverage in connection with
11 a group health plan, shall not request, require, or
12 purchase genetic information with respect to any in-
13 dividual prior to such individual’s enrollment under
14 the plan or coverage in connection with such enroll-
15 ment.

16 “(3) INCIDENTAL COLLECTION.—If a group
17 health plan, or a health insurance issuer offering
18 health insurance coverage in connection with a group
19 health plan, obtains genetic information incidental to
20 the requesting, requiring, or purchasing of other in-
21 formation concerning any individual, such request,
22 requirement, or purchase shall not be considered a
23 violation of paragraph (2) if such request, require-
24 ment, or purchase is not in violation of paragraph
25 (1).

1 “(e) GENETIC INFORMATION OF A FETUS OR EM-
2 BRYO.—Any reference in this part to genetic information
3 concerning an individual or family member of an indi-
4 vidual shall—

5 “(1) with respect to such an individual or fam-
6 ily member of an individual who is a pregnant
7 woman, include genetic information of any fetus car-
8 ried by such pregnant woman; and

9 “(2) with respect to an individual or family
10 member utilizing an assisted reproductive tech-
11 nology, include genetic information of any embryo le-
12 gally held by the individual or family member.

13 “(f) PROGRAMS OF HEALTH PROMOTION OR DIS-
14 EASE PREVENTION.—

15 “(1) GENERAL PROVISIONS.—

16 “(A) GENERAL RULE.—For purposes of
17 subsection (b)(2)(B), a program of health pro-
18 motion or disease prevention (referred to in this
19 subsection as a ‘wellness program’) shall be a
20 program offered by an employer that is de-
21 signed to promote health or prevent disease
22 that meets the applicable requirements of this
23 subsection.

24 “(B) NO CONDITIONS BASED ON HEALTH
25 STATUS FACTOR.—If none of the conditions for

1 obtaining a premium discount or rebate or
2 other reward for participation in a wellness pro-
3 gram is based on an individual satisfying a
4 standard that is related to a health status fac-
5 tor, such wellness program shall not violate this
6 section if participation in the program is made
7 available to all similarly situated individuals
8 and the requirements of paragraph (2) are com-
9 plied with.

10 “(C) CONDITIONS BASED ON HEALTH STA-
11 TUS FACTOR.—If any of the conditions for ob-
12 taining a premium discount or rebate or other
13 reward for participation in a wellness program
14 is based on an individual satisfying a standard
15 that is related to a health status factor, such
16 wellness program shall not violate this section if
17 the requirements of paragraph (3) are complied
18 with.

19 “(2) WELLNESS PROGRAMS NOT SUBJECT TO
20 REQUIREMENTS.—If none of the conditions for ob-
21 taining a premium discount or rebate or other re-
22 ward under a wellness program as described in para-
23 graph (1)(B) are based on an individual satisfying
24 a standard that is related to a health status factor
25 (or if such a wellness program does not provide such

1 a reward), the wellness program shall not violate
2 this section if participation in the program is made
3 available to all similarly situated individuals. The
4 following programs shall not have to comply with the
5 requirements of paragraph (3) if participation in the
6 program is made available to all similarly situated
7 individuals:

8 “(A) A program that reimburses all or
9 part of the cost for memberships in a fitness
10 center.

11 “(B) A diagnostic testing program that
12 provides a reward for participation and does
13 not base any part of the reward on outcomes.

14 “(C) A program that encourages preven-
15 tive care related to a health condition through
16 the waiver of the copayment or deductible re-
17 quirement under group health plan for the costs
18 of certain items or services related to a health
19 condition (such as prenatal care or well-baby
20 visits).

21 “(D) A program that reimburses individ-
22 uals for the costs of smoking cessation pro-
23 grams without regard to whether the individual
24 quits smoking.

1 “(E) A program that provides a reward to
2 individuals for attending a periodic health edu-
3 cation seminar.

4 “(3) WELLNESS PROGRAMS SUBJECT TO RE-
5 QUIREMENTS.—If any of the conditions for obtaining
6 a premium discount, rebate, or reward under a
7 wellness program as described in paragraph (1)(C)
8 is based on an individual satisfying a standard that
9 is related to a health status factor, the wellness pro-
10 gram shall not violate this section if the following re-
11 quirements are complied with:

12 “(A) The reward for the wellness program,
13 together with the reward for other wellness pro-
14 grams with respect to the plan that requires
15 satisfaction of a standard related to a health
16 status factor, shall not exceed 30 percent of the
17 cost of employee-only coverage under the plan.
18 If, in addition to employees or individuals, any
19 class of dependents (such as spouses or spouses
20 and dependent children) may participate fully
21 in the wellness program, such reward shall not
22 exceed 30 percent of the cost of the coverage in
23 which an employee or individual and any de-
24 pendents are enrolled. For purposes of this
25 paragraph, the cost of coverage shall be deter-

1 mined based on the total amount of employer
2 and employee contributions for the benefit
3 package under which the employee is (or the
4 employee and any dependents are) receiving
5 coverage. A reward may be in the form of a dis-
6 count or rebate of a premium or contribution,
7 a waiver of all or part of a cost-sharing mecha-
8 nism (such as deductibles, copayments, or coin-
9 surance), the absence of a surcharge, or the
10 value of a benefit that would otherwise not be
11 provided under the plan. The Secretaries of
12 Labor, Health and Human Services, and the
13 Treasury may increase the reward available
14 under this subparagraph to up to 50 percent of
15 the cost of coverage if the Secretaries determine
16 that such an increase is appropriate.

17 “(B) The wellness program shall be rea-
18 sonably designed to promote health or prevent
19 disease. A program complies with the preceding
20 sentence if the program has a reasonable
21 chance of improving the health of, or preventing
22 disease in, participating individuals and it is
23 not overly burdensome, is not a subterfuge for
24 discriminating based on a health status factor,

1 and is not highly suspect in the method chosen
2 to promote health or prevent disease.

3 “(C) The plan shall give individuals eligible
4 for the program the opportunity to qualify for
5 the reward under the program at least once
6 each year.

7 “(D) The full reward under the wellness
8 program shall be made available to all similarly
9 situated individuals. For such purpose, among
10 other things:

11 “(i) The reward is not available to all
12 similarly situated individuals for a period
13 unless the wellness program allows—

14 “(I) for a reasonable alternative
15 standard (or waiver of the otherwise
16 applicable standard) for obtaining the
17 reward for any individual for whom,
18 for that period, it is unreasonably dif-
19 ficult due to a medical condition to
20 satisfy the otherwise applicable stand-
21 ard; and

22 “(II) for a reasonable alternative
23 standard (or waiver of the otherwise
24 applicable standard) for obtaining the
25 reward for any individual for whom,

1 for that period, it is medically inadvis-
2 able to attempt to satisfy the other-
3 wise applicable standard.

4 “(ii) If reasonable under the cir-
5 cumstances, the plan or issuer may seek
6 verification, such as a statement from an
7 individual’s physician, that a health status
8 factor makes it unreasonably difficult or
9 medically inadvisable for the individual to
10 satisfy or attempt to satisfy the otherwise
11 applicable standard.

12 “(E) The plan or issuer involved shall dis-
13 close in all plan materials describing the terms
14 of the wellness program the availability of a
15 reasonable alternative standard (or the possi-
16 bility of waiver of the otherwise applicable
17 standard) required under subparagraph (D). If
18 plan materials disclose that such a program is
19 available, without describing its terms, the dis-
20 closure under this subparagraph shall not be re-
21 quired.

22 “(g) EXISTING PROGRAMS.—Nothing in this section
23 shall prohibit a program of health promotion or disease
24 prevention that was established prior to the date of enact-
25 ment of this section and applied with all applicable regula-

1 tions, and that is operating on such date, from continuing
 2 to be carried out for as long as such regulations remain
 3 in effect.

4 “(h) REGULATIONS.—Nothing in this section shall be
 5 construed as prohibiting the Secretaries of Labor, Health
 6 and Human Services, or the Treasury from promulgating
 7 regulations in connection with this section.”.

8 (b) INDIVIDUAL MARKET.—Subject to section 6(a) of
 9 this Act, subpart 1 of part B of title XXVII of the Public
 10 Health Service Act, as restored or revived pursuant to
 11 PPACA repeal legislation described in section 6(b) of this
 12 Act and amended by section 2(b), is further amended by
 13 adding at the end the following:

14 **“SEC. 2747. PROHIBITING DISCRIMINATION AGAINST INDIVIDUAL PARTICIPANTS AND BENEFICIARIES**
 15 **BASED ON HEALTH STATUS.**

17 “The provisions of section 2702 (other than sub-
 18 sections (b)(2)(B) and (f) of such section) shall apply to
 19 health insurance coverage offered to individuals by a
 20 health insurance issuer in the individual market in the
 21 same manner as such provisions apply to health insurance
 22 coverage offered to employers by a health insurance issuer
 23 in connection with health insurance coverage in the group
 24 market.”.

1 **SEC. 5. INCORPORATION INTO ERISA AND INTERNAL REV-**
2 **ENUE CODE.**

3 (a) ERISA.—Subpart B of part 7 of subtitle A of
4 title I of the Employee Retirement Income Security Act
5 of 1974 (29 U.S.C. 1181 et seq.) is amended by adding
6 at the end the following:

7 **“SEC. 715. ADDITIONAL MARKET REFORMS.**

8 “Sections 2701, 2702, and 2711 shall apply to group
9 health plans, and health insurance issuers providing health
10 insurance coverage in connection with group health plans,
11 as if included in this subpart, and to the extent that any
12 provision of this part conflicts with a provision of such
13 a section with respect to group health plans, or health in-
14 surance issuers providing health insurance coverage in
15 connection with group health plans, the provisions of such
16 section shall apply.”.

17 (b) IRC.—Subchapter B of chapter 100 of the Inter-
18 nal Revenue Code of 1986 is amended by adding at the
19 end the following:

20 **“SEC. 9815. ADDITIONAL MARKET REFORMS.**

21 “Sections 2701, 2702, and 2711 shall apply to group
22 health plans, and health insurance issuers providing health
23 insurance coverage in connection with group health plans,
24 as if included in this subchapter, and to the extent that
25 any provision of this subchapter conflicts with a provision
26 of such a section with respect to group health plans, or

1 health insurance issuers providing health insurance cov-
2 erage in connection with group health plans, the provisions
3 of such section shall apply.”.

4 **SEC. 6. EFFECTIVE DATE CONTINGENT ON REPEAL OF**
5 **PPACA.**

6 (a) IN GENERAL.—Sections 2, 3, 4, and 5 and the
7 amendments made by such sections shall take effect upon
8 the enactment of PPACA repeal legislation described in
9 subsection (b) and such sections and amendments shall
10 have no force or effect if such PPACA repeal legislation
11 is not enacted.

12 (b) PPACA REPEAL LEGISLATION DESCRIBED.—
13 For purposes of subsection (a), PPACA repeal legislation
14 described in this subsection is legislation that—

15 (1) repeals Public Law 111–148, and restores
16 or revives the provisions of law amended or repealed,
17 respectively, by such Act as if such Act had not been
18 enacted and without further amendment to such
19 provisions of law; and

20 (2) repeals title I and subtitle B of title II of
21 the Health Care and Education Reconciliation Act of
22 2010 (Public Law 111–152), and restores or revives
23 the provisions of law amended or repealed, respec-
24 tively, by such title or subtitle, respectively, as if
25 such title and subtitle had not been enacted and

- 1 without further amendment to such provisions of
- 2 law.

