

103^D CONGRESS
1ST SESSION

H. R. 975

To amend title I of the Employee Retirement Income Security Act of 1974 to ensure nondiscrimination in benefits provided under group health plans, and to provide for adequate notice of adoption of material coverage restrictions under group health plans and effective remedies for violations of such title with respect to such plans.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 1993

Mr. HUGHES (for himself, Mr. BOEHLERT, Mr. ABERCROMBIE, Mr. DEFazio, Mr. WAXMAN, Mr. STUDDS, Mr. MATSUI, Mr. FRANK of Massachusetts, Ms. PELOSI, Mr. MCDERMOTT, Mr. BLACKWELL, Mr. BERMAN, Mr. HEFNER, Mr. CONYERS, Mr. STARK, Mr. EVANS, and Mr. WYDEN) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to ensure nondiscrimination in benefits provided under group health plans, and to provide for adequate notice of adoption of material coverage restrictions under group health plans and effective remedies for violations of such title with respect to such plans.

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 “Group Health Plan
3 Nondiscrimination Act of 1993”.

4 **SEC. 2. PROTECTION FROM INTERFERENCE WITH RIGHTS.**

5 Section 510 of the Employee Retirement Income Se-
6 curity Act of 1974 (29 U.S.C. 1140) is amended—

7 (1) by inserting “(a) IN GENERAL.—” after
8 “SEC. 510.”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(b) DISCRIMINATION BASED ON BENEFIT CLAIMS
12 UNDER GROUP HEALTH PLANS.—

13 “(1) IN GENERAL.—It shall be unlawful dis-
14 crimination for purposes of subsection (a) to take
15 any action to cancel or reduce a benefit of a partici-
16 pant or beneficiary under a group health plan (by
17 plan amendment or plan termination, change in in-
18 sured status of the plan, change of insurer under the
19 plan, or any other means), if—

20 “(A) such action is specifically related to
21 one or more particular diseases or medical con-
22 ditions,

23 “(B) such participant or beneficiary is un-
24 dergoing, at the time such action is taken, a
25 course of treatment related to any such disease
26 or medical condition, and

1 “(C) a valid claim under the plan reason-
2 ably related to such course of treatment has
3 been submitted to the plan by or on behalf of
4 such participant or beneficiary prior to the tak-
5 ing of such action.

6 “(2) DEFINITIONS.—For purposes of this sub-
7 section—

8 “(A) GROUP HEALTH PLAN.—The term
9 ‘group health plan’ has the meaning provided in
10 section 607(1).

11 “(B) CHANGE IN INSURED STATUS.—The
12 term ‘change in insured status’ of a plan means
13 a change to self-insured status or a change in
14 the extent to which benefits provided under the
15 plan are provided under a contract or policy of
16 insurance issued by an insurer under the plan.

17 “(C) INSURER.—The term ‘insurer’ under
18 a plan means a person licensed by a State to
19 engage in the business of insurance who pro-
20 vides benefits under the plan under a contract
21 or policy of insurance issued by such person.

22 “(D) VALID CLAIM.—The term ‘valid
23 claim’ under a group health plan means a claim
24 which, at the time of its submission by or on
25 behalf of a participant or beneficiary, would

1 tween employee representatives and one or more
2 employers,

3 “(B) there is evidence that benefits pro-
4 vided under the group health plan established
5 or maintained pursuant to such collective bar-
6 gaining agreement were the subject of good
7 faith bargaining between such employee rep-
8 resentatives and such employer or employers,
9 and

10 “(C) the discrimination consists of a lack
11 of uniformity based solely on—

12 “(i) variations in the required terms
13 of the collective bargaining agreement as
14 applied to separate geographically located
15 facilities of the same employer, or

16 “(ii) different levels of contributions
17 to such plan negotiated between such em-
18 ployee representatives and more than 1
19 employer, as set forth in applicable collec-
20 tive bargaining agreements.

21 “(2) EXEMPTION PROCEDURE.—The require-
22 ments of this paragraph are met if the sponsor of
23 such group health plan demonstrates to the Sec-
24 retary by a preponderance of the evidence that such
25 sponsor will be unable to continue such plan unless

1 granted relief from the applicable requirements of
2 subsection (a), pursuant to an exemption procedure
3 which—

4 “(A) shall be established by the Secretary
5 by regulation for purposes of this subsection,
6 and

7 “(B) shall be subject to standards and pro-
8 cedures similar to those applicable under sec-
9 tion 408(a) with respect to exemptions granted
10 thereunder.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 in section 1 of such Act is amended by inserting after the
13 item relating to section 514 the following new items:

“Sec. 515. Delinquent contributions.

“Sec. 516. Discrimination in lifetime benefit coverage under group health plan.”.

14 **SEC. 4. REPORTING AND DISCLOSURE REQUIREMENTS.**

15 (a) NOTICE OF MODIFICATIONS AND CHANGES.—
16 Section 104(b)(1) of the Employee Retirement Income Se-
17 curity Act of 1974 (29 U.S.C. 1024(b)) is amended by
18 adding at the end the following: “In the case of a group
19 health plan (as defined in section 607(1)), the adoption
20 of any material coverage restriction which constitutes such
21 a modification in the terms of the plan (including the ter-
22 mination of the plan), or which is represented by any such
23 change in the information required under section 102(b),
24 may not take effect until 60 days after such a summary

1 description of such modification or change is furnished to
2 each participant and to each spouse thereof who is a bene-
3 ficiary under the plan in language calculated to be easily
4 understood by the typical participant or beneficiary. For
5 purposes of the preceding sentence, the term ‘material cov-
6 erage restriction’ means any change in the terms of a
7 group health plan that results in elimination of, or in-
8 creased restrictions on, any form of benefit coverage which
9 was provided by the plan prior to the change, including,
10 but not limited to, the establishment of, or increases in
11 the amount of, deductibles or coinsurance payments re-
12 quired of participants and beneficiaries under the plan, ex-
13 cept that the Secretary may by regulation exclude from
14 such term any such change of a type which the Secretary
15 finds to be de minimis.’’.

16 (b) SPECIAL REQUIREMENTS FOR SELF-INSURED
17 PLANS.—Section 102(b) of such Act (29 U.S.C. 1022(b))
18 is amended—

19 (1) by inserting “(1)” after “(b)”; and

20 (2) by adding at the end the following new
21 paragraph:

22 “(2)(A) In the case of a self-insured group health
23 plan, the plan description and summary plan description
24 shall also contain a statement—

1 “(i) indicating that the plan is a self-insured
2 group health plan and is not a policy of insurance,

3 “(ii) identifying the person who is responsible
4 for claim determinations and processing, and

5 “(iii) indicating that the plan is not subject to
6 State guarantee fund protection and that, if the plan
7 does not pay all benefits for which participants or
8 beneficiaries are eligible under the plan, responsibil-
9 ity for payment for medical care may to some extent
10 remain with the participant or beneficiary.

11 “(B) For purposes of this paragraph—

12 “(i) The term ‘group health plan’ has the
13 meaning provided in section 607(1).

14 “(ii) A group health plan is ‘self-insured’ unless
15 all benefits provided under the plan are provided
16 under a contract or policy of insurance issued by a
17 person licensed by a State to engage in the business
18 of insurance.’’.

19 **SEC. 5. LEGAL RELIEF FROM DAMAGES FOR INTER-**
20 **ERENCE WITH RIGHTS UNDER PLAN.**

21 (a) DAMAGES.—Section 502(c) of the Employee Re-
22 tirement Income Security Act of 1974 (29 U.S.C. 1132(c))
23 is amended by adding at the end the following new para-
24 graph:

1 “(4)(A) Any person who violates section 510 or 516
2 with respect to any participant or beneficiary under a
3 group health plan shall be liable to such participant or
4 beneficiary for actual damages. Subject to subparagraph
5 (B), damages for such violation shall not include punitive
6 damages.

7 “(B) In any case in which the violation constitutes
8 willful, fraudulent, or malicious conduct, bad faith, or
9 gross negligence, each person liable under subparagraph
10 (A) may, in the court’s discretion, be liable to such partici-
11 pant or beneficiary for exemplary damages equal to not
12 more than the greater of—

13 “(i) 200 percent of the amount of actual dam-
14 ages awarded, or

15 “(ii) \$10,000.

16 Any such exemplary damages shall be in addition to any
17 actual damages under subparagraph (A).

18 “(C) For purposes of this paragraph, the term ‘group
19 health plan’ has the meaning provided in section 607(1).”.

20 (b) ATTORNEY’S FEES.—Section 502(g) of such Act
21 (29 U.S.C. 1132(g)) is amended by adding at the end the
22 following new paragraph:

23 “(3) In any action for damages under subsection
24 (c)(4) in which the plaintiff prevails or substantially pre-
25 vails, the court shall award the plaintiff reasonable attor-

1 ney's fees and other costs of the action, including reason-
2 able expert witness fees and costs, to be paid by the de-
3 fendant. Fees awarded under this paragraph shall be at
4 generally prevailing hourly rates.".

5 **SEC. 6. EFFECTIVE DATE.**

6 The amendments made by this Act shall apply with
7 respect to changes in group health plan coverage adopted
8 on or after February 4, 1993.

○