

104TH CONGRESS
2D SESSION

H. R. 3425

To amend the Internal Revenue Code of 1986 to require health insurance coverage and group health plans that provide coverage of childbirth to provide coverage for a minimum inpatient stay following childbirth.

IN THE HOUSE OF REPRESENTATIVES

MAY 9, 1996

Mr. KLECZKA (for himself, Mr. STARK, Mr. GIBBONS, Mr. JACOBS, Mr. PALLONE, Mr. CARDIN, Mr. MATSUI, Mr. LEWIS of Georgia, Mr. COYNE, Mrs. KENNELLY, Mr. McDERMOTT, Mr. NEAL of Massachusetts, Mr. PAYNE of Virginia, Mr. RANGEL, Mr. McNULTY, Mr. LEVIN, Mr. FORD, and Ms. MCKINNEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to require health insurance coverage and group health plans that provide coverage of childbirth to provide coverage for a minimum inpatient stay following childbirth.

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 “Newborns’ and Moth-
5 ers’ Health Protection Act of 1996”.

1 **SEC. 2. FINDING.**

2 Congress finds that—

3 (1) the length of post-delivery inpatient care
4 should be based on the unique characteristics of
5 each mother and her newborn child, taking into con-
6 sideration the health of the mother, the health and
7 stability of the infant, the ability and confidence of
8 the mother to care for her infant, the adequacy of
9 support systems at home, and the access of the
10 mother and infant to appropriate follow-up health
11 care; and

12 (2) the timing of the discharge of a mother and
13 her newborn child from the hospital should be made
14 by the attending provider in consultation with the
15 mother.

16 **SEC. 3. NEWBORNS' AND MOTHERS' HEALTH PROTECTION.**

17 (a) IN GENERAL.—The Internal Revenue Code of
18 1986 is amended by adding at the end the following:

19 **“Subtitle K—Newborns’ and**
20 **Mothers’ Health Protection**
21 **“CHAPTER 100—NEWBORNS’ AND**
22 **MOTHERS’ HEALTH PROTECTION**

“Sec. 9801. Imposition of tax for failure to meet newborns’ and mothers’ health protection requirements.

“Sec. 9802. Required coverage for minimum inpatient stay following birth.

“Sec. 9803. Definitions; general provisions.

1 **“SEC. 9801. IMPOSITION OF TAX FOR FAILURE TO MEET**
2 **NEWBORNS’ AND MOTHERS’ HEALTH PRO-**
3 **TECTION REQUIREMENTS.**

4 “(a) **HEALTH INSURANCE COVERAGE.—**

5 “(1) **IN GENERAL.—**There is hereby imposed a
6 tax on an insurer or health maintenance organiza-
7 tion that offers health insurance coverage which the
8 Secretary of Health and Human Services certifies to
9 the Secretary fails to meet an applicable requirement
10 specified in section 9802 at any time during a cal-
11 endar year.

12 “(2) **AMOUNT OF TAX.—**The amount of tax im-
13 posed by paragraph (1) shall be equal to 25 percent
14 of the premiums received under such coverage dur-
15 ing the calendar year.

16 “(3) **PREMIUM.—**For purposes of this sub-
17 section, the term ‘premium’ means the gross amount
18 of premiums and other consideration (including ad-
19 vance premiums, deposits, fees, and assessments)
20 arising from health insurance coverage issued by an
21 insurer or health maintenance organization, adjusted
22 for any return or additional premiums paid as a re-
23 sult of endorsements, cancellations, audits, or retro-
24 spective rating.

25 “(4) **EXEMPTION IF STATE REGULATION.—**No
26 tax shall be imposed under paragraph (1) for a fail-

1 ure of an insurer or organization to meet a require-
2 ment if the insurer or organization is regulated by
3 a State, unless the Secretary of Health and Human
4 Services has determined that such State has not
5 provided for enforcement of State laws which govern
6 the same matters as are governed by such require-
7 ment and which assure substantial compliance by in-
8 surers or organizations with such a requirement.

9 “(b) GROUP HEALTH PLANS.—

10 “(1) IN GENERAL.—There is hereby imposed a
11 tax on a plan sponsor (as defined in section 3 of the
12 Employee Retirement Income Security Act of 1974)
13 of a group health plan which the Secretary of Labor
14 certifies to the Secretary fails to meet an applicable
15 requirement of section 9802 at any time during a
16 calendar year.

17 “(2) AMOUNT OF TAX.—The amount of tax im-
18 posed by paragraph (1) shall be equal to 25 percent
19 of the group health plan coverage expenditures for
20 such calendar year under such plan.

21 “(3) GROUP HEALTH PLAN COVERAGE EXPEND-
22 ITURES.—For purposes of this subsection, the group
23 health plan coverage expenditures of any self-insured
24 group health plan for any calendar year are the ag-
25 gregate expenditures for such year for health bene-

1 fits provided under such plan to the extent that
2 health benefits are provided other than through
3 health insurance coverage.

4 “(c) WAIVER.—If the Secretary of Health and
5 Human Services finds, with respect to an insurer or health
6 maintenance organization, or the Secretary of Labor finds,
7 with respect to a group health plan, that a failure of such
8 insurer, organization, or plan is due to reasonable cause
9 and not to willful neglect and certifies such fact to the
10 Secretary of the Treasury, the Secretary of the Treasury
11 may waive part or all of the tax imposed by this section
12 to the extent that the Secretary of Health and Human
13 Services or the Secretary of Labor (as the case may be)
14 finds that payment of such tax would be excessive relative
15 to the failure involved.

16 **“SEC. 9802. REQUIRED MINIMUM CHILDBIRTH BENEFITS.**

17 “(a) MINIMUM CHILDBIRTH BENEFITS.—If an in-
18 surer or health maintenance organization provides health
19 insurance coverage that includes any benefits for inpatient
20 care for childbirth for a mother or newborn child or if a
21 group health plan includes any such benefits, the insurer,
22 organization, or plan shall meet the following require-
23 ments:

24 “(1) MINIMUM LENGTH OF STAY FOR INPA-
25 TIENT CARE BENEFITS.—The coverage or plan shall

1 provide benefits for inpatient care for childbirth for
2 a minimum length of stay of 48 hours following a
3 vaginal delivery and a minimum length of stay of 96
4 hours following a caesarean section.

5 “(2) COVERAGE OF POST-DELIVERY FOLLOW-UP
6 CARE.—If an attending provider, in consultation
7 with the mother, decides to discharge a covered
8 mother or newborn child from an inpatient setting
9 before the expiration of the minimum length of stay
10 period described in paragraph (1), the coverage or
11 plan shall include benefits for timely post-delivery
12 care by a registered nurse, physician, nurse practi-
13 tioner, nurse midwife or physician assistant experi-
14 enced in maternal and child health in the home, a
15 provider’s office, a hospital, a federally qualified
16 health center, a federally qualified rural health clin-
17 ic, a State health department maternity clinic, or an-
18 other setting (such as a birthing center or an inter-
19 mediate care facility) determined appropriate under
20 regulations promulgated by the Secretary of Health
21 and Human Services.

22 “(3) NOTICE.—The insurer, organization, or
23 plan shall provide notice to each enrollee eligible for
24 childbirth benefits under this subsection regarding
25 the requirements of this section.

1 (b) PROHIBITIONS.—In implementing the require-
2 ments of subsection (a), an insurer, organization, or plan
3 may not—

4 “(1) require or condition the provision of bene-
5 fits under subsection (a) on any authorization or ap-
6 proval of an attending or other provider;

7 “(2) deny enrollment, renewal, or continued
8 coverage to a mother and her newborn child who are
9 otherwise eligible to be so covered based on compli-
10 ance with this section;

11 “(3) provide monetary incentives to mothers to
12 encourage such mothers to request less than the
13 minimum coverage required under subsection (a);

14 “(4) provide incentives (monetary or otherwise)
15 to an attending provider to induce such provider to
16 provide treatment in a manner inconsistent with this
17 section; or

18 “(5) penalize or otherwise reduce or limit the
19 reimbursement of an attending provider because
20 such provider provided treatment in accordance with
21 this section.

22 “(c) ADDITIONAL TERMS AND CONDITIONS.—

23 “(1) ATTENDING PROVIDER.—As used in this
24 section, the term ‘attending provider’ means, with
25 respect to a mother and her newborn child, an obste-

1 trician-gynecologist, pediatrician, family physician,
2 or other physician, or any other health care provider
3 (such as a nurse midwife or nurse practitioner),
4 who, acting in accordance with applicable State law,
5 is primarily responsible for the care of the mother
6 and child.

7 (2) **TIMELY CARE DEFINED.**—As used in sub-
8 section (a)(2), the term ‘timely post-delivery care’
9 means health care that is provided—

10 “(A) following the discharge of a mother
11 and her newborn child from the inpatient set-
12 ting following childbirth; and

13 “(B) in a manner that meets the health
14 care needs of the mother and her newborn
15 child, that provides for the appropriate monitor-
16 ing of the conditions of the mother and child,
17 and that occurs within the 72-hour period im-
18 mediately following discharge.

19 “(3) **REGULATIONS REGARDING APPROPRIATE**
20 **POST-CARE DELIVERY SETTINGS.**—The Secretary of
21 Health and Human Services, with respect to regula-
22 tions promulgated under subsection (a)(2) concern-
23 ing appropriate post-delivery care settings—

1 “(A) shall ensure that, to the extent prac-
2 ticable, such regulations are consistent with
3 State licensing and practice laws,

4 “(B) shall consider telemedicine and other
5 innovative means to provide follow-up care, and

6 “(C) shall consider both urban and rural
7 settings.

8 “(4) RULE OF CONSTRUCTION.—Nothing in
9 this section shall be construed to require that a
10 mother—

11 “(A) give birth in a hospital; or

12 “(B) stay in the hospital for a fixed period
13 of time following the birth of her child.

14 “(5) REQUIREMENTS.—The notice required
15 under subsection (a)(3) shall be in accordance with
16 regulations promulgated by the Secretary of Health
17 and Human Services. Such regulations shall provide
18 that the notice shall be in writing, shall be conspicu-
19 ous and prominently positioned, and shall be re-
20 quired to be provided as follows:

21 “(A) HEALTH INSURANCE COVERAGE.—By
22 an insurer or health maintenance organiza-
23 tion—

24 “(i) to enrollees described in sub-
25 section (a) who are enrolled on the effec-

1 tive date of this chapter within 120 days
2 after such effective date and annually
3 thereafter, and

4 “(ii) to other enrollees at the time of
5 enrollment and annually thereafter.

6 “(B) GROUP HEALTH PLANS.—By a group
7 health plan—

8 “(i) to enrollees described in sub-
9 section (a) who are enrolled on the effec-
10 tive date of this chapter within 120 days
11 after such effective date, and

12 “(ii) for plan years beginning on or
13 after such effective date, as part of its
14 summary plan description.

15 **“SEC. 9803. DEFINITIONS; GENERAL PROVISIONS.**

16 “(a) GROUP HEALTH PLAN DEFINED.—For pur-
17 poses of this chapter—

18 “(1) IN GENERAL.—The term ‘group health
19 plan’ means an employee welfare benefit plan (as de-
20 fined in section 3(1) of the Employee Retirement In-
21 come Security Act of 1974) to the extent that the
22 plan provides medical care directly or through insur-
23 ance, reimbursement, or otherwise, and includes a
24 group health plan within the meaning of section
25 5000(b)(1).

1 “(2) EXCLUSION OF PLANS WITH LIMITED COV-
2 ERAGE.—An employee welfare benefit plan shall be
3 treated as a group health plan under this chapter
4 only with respect to medical care which is provided
5 under the plan and which does not consist of cov-
6 erage excluded from the definition of health insur-
7 ance coverage under subsection (b)(1)(B).

8 “(3) EXCLUSION OF CHURCH PLANS.—The re-
9 quirements of this chapter insofar as they apply to
10 group health plans shall not apply to church plans
11 (as defined in section 3(33) of the Employee Retirement
12 Income Security Act of 1974).

13 “(4) TREATMENT OF GOVERNMENTAL PLANS.—
14 If the plan sponsor of a governmental plan (as such
15 terms are defined in section 3 of the Employee Retirement
16 Income Security Act of 1974) which is a
17 group health plan to which the provisions of this
18 chapter otherwise apply makes an election under this
19 paragraph for any specified period (in such form
20 and manner as the Secretary of Health and Human
21 Services may by regulations prescribe), then the re-
22 quirements of this chapter insofar as they apply to
23 group health plans shall not apply to such govern-
24 mental plans for such period.

1 “(b) DEFINITIONS RELATING TO HEALTH INSUR-
2 ANCE COVERAGE.—As used in this chapter—

3 “(1) HEALTH INSURANCE COVERAGE.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘health insurance
6 coverage’ means benefits consisting of medical
7 care (provided directly, through insurance or re-
8 imbursement, or otherwise) under any hospital
9 or medical service policy or certificate, hospital
10 or medical service plan contract, or health
11 maintenance organization group contract of-
12 fered by an insurer or a health maintenance or-
13 ganization.

14 “(B) EXCEPTION.—Such term does not in-
15 clude coverage under any separate policy, cer-
16 tificate, or contract only for one or more of any
17 of the following:

18 “(i) Coverage only for accident, or
19 disability income insurance, or any com-
20 bination thereof.

21 “(ii) Medicare supplemental health in-
22 surance (as defined under section
23 1882(g)(1) of the Social Security Act).

24 “(iii) Coverage issued as a supplement
25 to liability insurance.

1 “(iv) Liability insurance, including
2 general liability insurance and automobile
3 liability insurance.

4 “(v) Workers compensation or similar
5 insurance.

6 “(vi) Automobile medical payment in-
7 surance.

8 “(vii) Coverage for a specified disease
9 or illness.

10 “(viii) Hospital or fixed indemnity in-
11 surance.

12 “(ix) Short-term limited duration in-
13 surance.

14 “(x) Credit-only, dental-only, or vi-
15 sion-only insurance.

16 “(xi) A health insurance policy provid-
17 ing benefits only for long-term care, nurs-
18 ing home care, home health care, commu-
19 nity-based care, or any combination there-
20 of.

21 “(2) HEALTH MAINTENANCE ORGANIZATION.—
22 The term ‘health maintenance organization’
23 means—

24 “(A) a federally qualified health mainte-
25 nance organization (as defined in section

1 1301(a) of the Public Health Service Act (42
2 U.S.C. 300e(a)),

3 “(B) an organization recognized under
4 State law as a health maintenance organization,
5 or

6 “(C) a similar organization regulated
7 under State law for solvency in the same man-
8 ner and to the same extent as such a health
9 maintenance organization,

10 if the organization is subject to State law which reg-
11 ulates insurance (within the meaning of section
12 514(b)(2) of the Employee Retirement Income Secu-
13 rity Act of 1974).

14 “(3) INSURER.—The term ‘insurer’ means an
15 insurance company, insurance service, or insurance
16 organization which is licensed to engage in the busi-
17 ness of insurance in a State and which is subject to
18 State law which regulates insurance (within the
19 meaning of section 514(b)(2)(A) of the Employee
20 Retirement Income Security Act of 1974).

21 “(c) OTHER DEFINITIONS.—As used in this chap-
22 ter—

23 “(1) MEDICAL CARE.—The term ‘medical care’
24 means—

1 “(A) amounts paid for, or items or services
2 in the form of, the diagnosis, cure, mitigation,
3 treatment, or prevention of disease, or amounts
4 paid for, or items or services provided for, the
5 purpose of affecting any structure or function
6 of the body,

7 “(B) amounts paid for, or services in the
8 form of, transportation primarily for and essen-
9 tial to medical care referred to in subparagraph
10 (A), and

11 “(C) amounts paid for insurance covering
12 medical care referred to in subparagraphs (A)
13 and (B).

14 “(2) STATE.—The term ‘State’ includes the
15 District of Columbia, Puerto Rico, the Virgin Is-
16 lands, Guam, American Samoa, and the Northern
17 Mariana Islands.

18 “(d) NONPREEMPTION.—

19 “(1) IN GENERAL.—The provisions of this
20 chapter shall not preempt those provisions of State
21 law that provide protections that are not less than
22 the protections provided under this chapter, includ-
23 ing any—

24 “(A) requirement that health insurance
25 coverage provide for maternity and pediatric

1 care that is in accordance with guidelines estab-
2 lished by the American College of Obstetricians
3 and Gynecologists and the American Academy
4 of Pediatrics, and

5 “(B) leaving decisions regarding the appro-
6 priate length of inpatient care for a mother and
7 her newborn child entirely to the attending pro-
8 vider in consultation with the mother.

9 “(2) NO OVERRIDE OF ERISA PREEMPTION.—
10 Nothing in this chapter shall be construed to affect
11 or modify the provisions of section 514 of the Em-
12 ployee Retirement Income Security Act of 1974 (29
13 U.S.C. 1144).

14 “(e) REGULATIONS.—Regulations promulgated by
15 the Secretary to carry out this chapter shall be promul-
16 gated in consultation with the Secretary of Health and
17 Human Services.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply—

20 (1) to health insurance coverage for contract
21 years beginning on or after January 1, 1997; and

22 (2) to group health plans as of the first day of
23 the first plan year beginning on or after January 1,
24 1997.

1 (c) CLERICAL AMENDMENT.—The table of contents
2 for the Internal Revenue Code of 1986 is amended by add-
3 ing after the item relating to subtitle J the following new
4 item:

“Subtitle K. Newborns’ and Mothers’ Health Protection.”

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