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104TH CONGRESS
2D SESSION

H. R. 3991

To assure equitable treatment in health care coverage of prescription drugs.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 1996

Mrs. LOWEY introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, and Economic and Educational Opportunities, 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

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A BILL

To assure equitable treatment in health care coverage of prescription drugs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prescription Drug Benefit Equity Act of 1996''.

SEC. 2. EQUITY IN PROVISION OF PRESCRIPTION DRUG COVERAGE.

(a) IN GENERAL.—No health plan (as defined in section 5(1)) may provide for mail-order prescription drug

coverage (as defined in section 5(2)) unless the plan also provides non-mail-order prescription drug coverage consistent with subsection (b).

(b) EQUITABLE COVERAGE.—A health plan provides non-mail-order prescription drug coverage consistent with this subsection only if—

(1) benefits under the non-mail-order prescription coverage are provided for in the case of all drugs and all circumstances under which benefits are provided under the mail-order prescription drug coverage;

(2) no deductible or similar cost-sharing is imposed with respect to benefits under the non-mail-order prescription drug coverage unless such a deductible or similar cost-sharing is imposed with respect to benefits under the mail-order prescription drug coverage; and

(3) the benefits for the non-mail-order coverage assures payments consistent with either (or both) of the following subparagraphs:

(A) The dollar amount of payment for prescription drug coverage is not less than the dollar amount of benefits provided with respect to the mail-order coverage for that same coverage.

(B) The cost-sharing (including deductibles, copayments, or coinsurance) imposed with respect to non-mail-order coverage that is not greater (as a percentage of charges or dollar amount, as specified under the coverage) than the cost-sharing imposed with respect to the mail-order coverage.

(c) APPLICATION TO ORGANIZATIONS AND INSURERS.—A requirement imposed under this section on a health plan offered by a health maintenance organization or insurer shall be deemed to be a requirement imposed on the organization or insurer.

SEC. 3. ENFORCEMENT.

(a) HEALTH PLAN ISSUED BY HMOS AND INSURERS.—

(1) IN GENERAL.—Each State shall require that each health plan issued, sold, renewed, offered for sale or operated in such State by a health maintenance organization meet the requirements of section 2 pursuant to an enforcement plan filed by the State with the Secretary of Health and Human Services. A State shall submit such information as required by such Secretary demonstrating effective implementation of the State enforcement plan.

(2) FAILURE TO IMPLEMENT PLAN.—In the case of the failure of a State to substantially enforce the requirements of section 2 with respect to health plans as provided for under the State enforcement plan filed under paragraph (1), the Secretary of Health and Human Services shall implement an enforcement plan to enforce such requirements for organizations and insurers in such State. In the case of a State that fails to substantially enforce such requirements, each health maintenance organization and insurer operating in such State shall be subject to civil enforcement as provided for under sections 502, 504, 506, and 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132, 1134, 1136, and 1140) through the Secretary of Health and Human Services. The civil penalties contained in paragraphs (1) and (2) of section 502(c) of such Act (29 U.S.C. 1132(c) (1) and (2)) shall apply to any information required by such Secretary to be disclosed and reported under this subsection.

(b) EMPLOYEE HEALTH BENEFIT PLANS.—With respect to employee health benefit plans, the Secretary of Labor shall enforce the requirements of section 2 in the same manner as provided for under sections 502, 504, 506, and 510 of the Employee Retirement Income Secu-

rity Act of 1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The civil penalties contained in paragraphs (1) and (2) of section 502(c) of such Act (29 U.S.C. 1132(c) (1) and (2)) shall apply to any information required by such Secretary to be disclosed and reported under this subsection.

(c) MEDICAID.—With respect to a health plan described in section 5(1)(C), the requirements of section 2 shall be treated as requirements of a State plan under title XIX of the Social Security Act.

(d) FEHBP.—With respect to a health plan described in section 5(1)(E), the requirements of section 2 shall be treated as a condition for contracting with the plan under chapter 89 of title 5, United States Code.

(e) MEDICARE HMOS.—With respect to a health plan described in section 5(1)(F), the requirements of section 2 shall be treated as requirements of a State plan under section 1876 of the Social Security Act.

(f) REGULATIONS.—The Secretaries of Labor and Health and Human Services and the Director of the Office of Personnel Management may promulgate such regulations as may be necessary or appropriate to carry out this Act.

(g) TECHNICAL AMENDMENT.—Section 508 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1138) is amended by inserting ''and under the Pre-

scription Drug Benefit Equity Act of 1996'' before the period.

SEC. 4. CONSTRUCTION; PREEMPTION.

(a) IN GENERAL.—Nothing in this Act shall be construed as preventing a health plan from—

(1) restricting the drugs for which benefits are provided under the plan, or

(2) imposing a limitation on the amount of benefits provided with respect to such coverage or the cost-sharing that may be imposed with respect to such coverage,

so long as such restrictions and limitations are consistent with this Act.

(b) PREEMPTION OF STATE LAW.—

(1) IN GENERAL.—Subject to paragraph (2), nothing in this Act shall be construed to prevent a State from establishing, implementing, or continuing in effect standards and requirements—

(A) not prescribed in this Act; or

(B) related to the provision of prescription drug coverage that are consistent with, and are not in direct conflict with, this Act and provide greater protection or benefit to participants, beneficiaries, or individuals.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

SEC. 5. DEFINITIONS.

In this Act:

(1) HEALTH PLAN.—The term ''health plan'' means—

(A) an employee welfare benefit plan to the extent that the plan provides medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise, and includes a group health plan (within the meaning of section 5000(b)(1) of the Internal Revenue Code of 1986);

(B) benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and whether or not provided to a group, association, or individual) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization group

contract offered by an insurer or a health maintenance organization;

(C) a State medical assistance plan under title XIX of the Social Security Act;

(D) a medicare supplemental policy under section 1882 of the Social Security Act;

(E) a health plan under chapter 89 of title 5, United States Code; and

(F) benefits provided under a risk-sharing contract under section 1876 of the Social Security Act.

(2) MAIL-ORDER PRESCRIPTION DRUG COVERAGE.—The term ''mail-order prescription drug coverage'' means provision of benefits for prescription drugs and biologicals that are delivered directly to beneficiaries through the mail or similar means.

(3) NON-MAIL-ORDER PRESCRIPTION DRUG COVERAGE.—The term ''non-mail-order prescription drug coverage'' means the provision of benefits for prescription drugs and biologicals through one or more local pharmacies.

(4) LOCAL PHARMACY.—The term ''local pharmacy'' means, with respect to a prescription drug or biological and a beneficiary, an establishment that is authorized to dispense such drug or biological and

that is located within such distance (not to exceed 5 miles in the case of a beneficiary residing in an urban area or 10 miles in the case of a beneficiary residing in a non-urban area) of the residence of such beneficiary, as the Secretary of Health and Human Services shall prescribe.

(5) EMPLOYEE HEALTH BENEFIT PLAN.—The term ''employee health benefit plan'' means any employee welfare benefit plan, governmental plan, or church plan (as defined under paragraphs (1), (32), and (33) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002 (1), (32), and (33))), that provides or pays for health benefits (such as provider and hospital benefits) for participants and beneficiaries (as defined in such section) whether—

(A) directly;

(B) through a health plan offered by a health maintenance organization or insurer; or

(C) otherwise.

Such term includes any health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

(6) HEALTH MAINTENANCE ORGANIZATION; HMO.—The terms ''health maintenance organization'' and ''HMO'' mean—

(A) a federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a))),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization,

if it is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974).

(7) INSURER.—The term ''insurer'' means an insurance company, insurance service, or insurance organization which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2)(A) of the Employee Retirement Income Security Act of 1974).

(8) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto

Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 6. EFFECTIVE DATE.

This Act shall apply to coverage provided under—

(1) health plans described in section 5(1)(A), for plan years beginning more than 6 months after the date of the enactment of this Act, or

(2) other health plans, for contract years beginning more than 6 months after the date of the enactment of this Act.

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