

107TH CONGRESS
1ST SESSION

H. R. 1648

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to assure access to covered emergency hospital services and emergency ambulance services under a prudent layperson test under group health plans and health insurance coverage.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 2001

Mr. UPTON (for himself and Mr. TOWNS) 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, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to assure access to covered emergency hospital services and emergency ambulance services under a prudent layperson test under group health plans and health insurance coverage.

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 “Emergency Ambulance
3 Services Access Assurance Act of 2001”.

4 **SEC. 2. ASSURING ACCESS TO EMERGENCY SERVICES.**

5 (a) GROUP HEALTH PLANS.—

6 (1) PUBLIC HEALTH SERVICE ACT AMEND-
7 MENTS.—Subpart 2 of part A of title XXVII of the
8 Public Health Service Act is amended by adding at
9 the end the following new section:

10 **“SEC. 2707. STANDARD RELATING TO ACCESS TO EMER-
11 GENCY SERVICES AND EMERGENCY AMBU-
12 LANCE SERVICES.**

13 “(a) COVERAGE OF EMERGENCY SERVICES.—

14 “(1) IN GENERAL.—If a group health plan, or
15 health insurance coverage offered in connection with
16 a health insurance issuer, provides any benefits with
17 respect to emergency services (as defined in para-
18 graph (2)(B)), the plan or issuer shall cover emer-
19 gency services furnished under the plan or
20 coverage—

21 “(A) without the need for any prior au-
22 thorization determination;

23 “(B) whether or not the health care pro-
24 vider furnishing such services is a participating
25 provider with respect to such services;

1 “(C) in a manner so that, if such services
2 are provided to a participant, beneficiary, or en-
3 rollee by a nonparticipating health care provider
4 without prior authorization by the plan or
5 issuer, the participant, beneficiary, or enrollee
6 is not liable for amounts that exceed the
7 amounts of liability that would be incurred if
8 the services were provided by a participating
9 health care provider with prior authorization by
10 the plan or issuer; and

11 “(D) without regard to any other term or
12 condition of such coverage (other than exclusion
13 or coordination of benefits, or an affiliation or
14 waiting period, permitted under section 2701 of
15 this Act, section 701 of the Employee Retirement
16 Income Security Act of 1974, or section
17 9801 of the Internal Revenue Code of 1986,
18 and other than applicable cost-sharing).

19 “(2) DEFINITIONS.—In this section:

20 “(A) EMERGENCY MEDICAL CONDITION
21 BASED ON PRUDENT LAYPERSON STANDARD.—

22 The term ‘emergency medical condition’ means
23 a medical condition manifesting itself by acute
24 symptoms of sufficient severity (including se-
25 vere pain) such that a prudent layperson, who

1 possesses an average knowledge of health and
2 medicine, could reasonably expect the absence
3 of immediate medical attention to result in a
4 condition described in clause (i), (ii), or (iii) of
5 section 1867(e)(1)(A) of the Social Security
6 Act.

7 “(B) EMERGENCY SERVICES.—The term
8 ‘emergency services’ means—

9 “(i) a medical screening examination
10 (as required under section 1867 of the So-
11 cial Security Act) that is within the capa-
12 bility of the emergency department of a
13 hospital, including ancillary services rou-
14 tinely available to the emergency depart-
15 ment to evaluate an emergency medical
16 condition (as defined in subparagraph
17 (A)), and

18 “(ii) within the capabilities of the
19 staff and facilities available at the hospital,
20 such further medical examination and
21 treatment as are required under section
22 1867 of such Act to stabilize the patient.

23 “(C) NONPARTICIPATING.—The term ‘non-
24 participating’ means, with respect to a health
25 care provider that provides health care items

1 and services to a participant, beneficiary, or en-
2 rollee under group health plan or health insur-
3 ance coverage, a health care provider that is not
4 a participating health care provider with respect
5 to such items and services.

6 “(D) PARTICIPATING.—The term ‘partici-
7 pating’ means, with respect to a health care
8 provider that provides health care items and
9 services to a participant, beneficiary, or enrollee
10 under group health plan or health insurance
11 coverage offered by a health insurance issuer, a
12 health care provider that furnishes such items
13 and services under a contract or other arrange-
14 ment with the plan or issuer.

15 “(b) COVERAGE OF EMERGENCY AMBULANCE SERV-
16 ICES.—

17 “(1) IN GENERAL.—If a group health plan, or
18 health insurance coverage offered in connection with
19 a group health plan by a health insurance issuer,
20 provides any benefits with respect to ambulance
21 services and emergency services, the plan or issuer
22 shall cover emergency ambulance services (as defined
23 in paragraph (2)) furnished under the plan or cov-
24 erage under the same terms and conditions under
25 subparagraphs (A) through (D) of subsection (a)(1)

1 under which coverage is provided for emergency
2 services.

3 “(2) EMERGENCY AMBULANCE SERVICES.—For
4 purposes of this subsection, the term ‘emergency
5 ambulance services’ means ambulance services (as
6 defined for purposes of section 1861(s)(7) of the So-
7 cial Security Act) furnished to transport an indi-
8 vidual who has an emergency medical condition (as
9 defined in subsection (a)(2)(A)) to a hospital for the
10 receipt of emergency services (as defined in sub-
11 section (a)(2)(B)) in a case in which the emergency
12 services are covered under the plan or coverage pur-
13 suant to subsection (a)(1) and a prudent layperson,
14 with an average knowledge of health and medicine,
15 could reasonably expect that the absence of such
16 transport would result in placing the health of the
17 individual in serious jeopardy, serious impairment of
18 bodily function, or serious dysfunction of any bodily
19 organ or part.

20 “(c) NOTICE.—A group health plan under this part
21 shall comply with the notice requirement under section
22 714(b) of the Employee Retirement Income Security Act
23 of 1974 with respect to the requirements of this section
24 as if such section applied to such plan.”

1 (B) Section 2723(c) of such Act (42 U.S.C.
2 300gg-23(c)) is amended by striking “section 2704”
3 and inserting “sections 2704 and 2707”.

4 (2) ERISA AMENDMENTS.—(A) Subpart B of
5 part 7 of subtitle B of title I of the Employee Re-
6 tirement Income Security Act of 1974 is amended by
7 adding at the end the following new section:

8 **“SEC. 714. STANDARD RELATING TO ACCESS TO EMER-**
9 **GENCY SERVICES AND EMERGENCY AMBU-**
10 **LANCE SERVICES.**

11 “(a) COVERAGE OF EMERGENCY SERVICES.—

12 “(1) IN GENERAL.—If a group health plan, or
13 health insurance coverage offered in connection with
14 a health insurance issuer, provides any benefits with
15 respect to emergency services (as defined in para-
16 graph (2)(B)), the plan or issuer shall cover emer-
17 gency services furnished under the plan or
18 coverage—

19 “(A) without the need for any prior au-
20 thorization determination;

21 “(B) whether or not the health care pro-
22 vider furnishing such services is a participating
23 provider with respect to such services;

24 “(C) in a manner so that, if such services
25 are provided to a participant, beneficiary, or en-

1 rollee by a nonparticipating health care provider
2 without prior authorization by the plan or
3 issuer, the participant, beneficiary, or enrollee
4 is not liable for amounts that exceed the
5 amounts of liability that would be incurred if
6 the services were provided by a participating
7 health care provider with prior authorization by
8 the plan or issuer; and

9 “(D) without regard to any other term or
10 condition of such coverage (other than exclusion
11 or coordination of benefits, or an affiliation or
12 waiting period, permitted under section 2701 of
13 the Public Health Service Act, section 701 of
14 this Act, or section 9801 of the Internal Rev-
15 enue Code of 1986, and other than applicable
16 cost-sharing).

17 “(2) DEFINITIONS.—In this section:

18 “(A) EMERGENCY MEDICAL CONDITION
19 BASED ON PRUDENT LAYPERSON STANDARD.—
20 The term ‘emergency medical condition’ means
21 a medical condition manifesting itself by acute
22 symptoms of sufficient severity (including se-
23 vere pain) such that a prudent layperson, who
24 possesses an average knowledge of health and
25 medicine, could reasonably expect the absence

1 of immediate medical attention to result in a
2 condition described in clause (i), (ii), or (iii) of
3 section 1867(e)(1)(A) of the Social Security
4 Act.

5 “(B) EMERGENCY SERVICES.—The term
6 ‘emergency services’ means—

7 “(i) a medical screening examination
8 (as required under section 1867 of the So-
9 cial Security Act) that is within the capa-
10 bility of the emergency department of a
11 hospital, including ancillary services rou-
12 tinely available to the emergency depart-
13 ment to evaluate an emergency medical
14 condition (as defined in subparagraph
15 (A)), and

16 “(ii) within the capabilities of the
17 staff and facilities available at the hospital,
18 such further medical examination and
19 treatment as are required under section
20 1867 of such Act to stabilize the patient.

21 “(C) NONPARTICIPATING.—The term ‘non-
22 participating’ means, with respect to a health
23 care provider that provides health care items
24 and services to a participant, beneficiary, or en-
25 rollee under group health plan or health insur-

1 ance coverage, a health care provider that is not
2 a participating health care provider with respect
3 to such items and services.

4 “(D) PARTICIPATING.—The term ‘partici-
5 pating’ means, with respect to a health care
6 provider that provides health care items and
7 services to a participant, beneficiary, or enrollee
8 under group health plan or health insurance
9 coverage offered by a health insurance issuer, a
10 health care provider that furnishes such items
11 and services under a contract or other arrange-
12 ment with the plan or issuer.

13 “(b) COVERAGE OF EMERGENCY AMBULANCE SERV-
14 ICES.—

15 “(1) IN GENERAL.—If a group health plan, or
16 health insurance coverage offered in connection with
17 a group health plan by a health insurance issuer,
18 provides any benefits with respect to ambulance
19 services and emergency services, the plan or issuer
20 shall cover emergency ambulance services (as defined
21 in paragraph (2)) furnished under the plan or cov-
22 erage under the same terms and conditions under
23 subparagraphs (A) through (D) of subsection (a)(1)
24 under which coverage is provided for emergency
25 services.

1 “(2) EMERGENCY AMBULANCE SERVICES.—For
2 purposes of this subsection, the term ‘emergency
3 ambulance services’ means ambulance services (as
4 defined for purposes of section 1861(s)(7) of the So-
5 cial Security Act) furnished to transport an indi-
6 vidual who has an emergency medical condition (as
7 defined in subsection (a)(2)(A)) to a hospital for the
8 receipt of emergency services (as defined in sub-
9 section (a)(2)(B)) in a case in which the emergency
10 services are covered under the plan or coverage pur-
11 suant to subsection (a)(1) and a prudent layperson,
12 with an average knowledge of health and medicine,
13 could reasonably expect that the absence of such
14 transport would result in placing the health of the
15 individual in serious jeopardy, serious impairment of
16 bodily function, or serious dysfunction of any bodily
17 organ or part.

18 “(c) NOTICE UNDER GROUP HEALTH PLAN.—The
19 imposition of the requirement of this section shall be treat-
20 ed as a material modification in the terms of the plan de-
21 scribed in section 102(a)(1), for purposes of assuring no-
22 tice of such requirements under the plan; except that the
23 summary description required to be provided under the
24 last sentence of section 104(b)(1) with respect to such
25 modification shall be provided by not later than 60 days

1 after the first day of the first plan year in which such
2 requirement apply.”.

3 (B) Section 731(e) of such Act (29 U.S.C.
4 1191(e)) is amended by striking “section 711” and
5 inserting “sections 711 and 714”.

6 (C) The table of contents in section 1 of such
7 Act is amended by inserting after the item relating
8 to section 713 the following new item:

“Sec. 714. Standard relating to access to emergency services and emergency ambulance services.”.

9 (3) INTERNAL REVENUE CODE AMEND-
10 MENTS.—

11 (A) IN GENERAL.—Subchapter B of chap-
12 ter 100 of the Internal Revenue Code of 1986
13 is amended by inserting after section 9812 the
14 following new section:

15 **“SEC. 9813. STANDARD RELATING TO ACCESS TO EMER-
16 GENCY SERVICES AND EMERGENCY AMBU-
17 LANCE SERVICES.**

18 “(a) COVERAGE OF EMERGENCY SERVICES.—

19 “(1) IN GENERAL.—If a group health plan pro-
20 vides any benefits with respect to emergency services
21 (as defined in paragraph (2)(B)), the plan shall
22 cover emergency services furnished under the plan—

23 “(A) without the need for any prior au-
24 thorization determination;

1 “(B) whether or not the health care pro-
2 vider furnishing such services is a participating
3 provider with respect to such services;

4 “(C) in a manner so that, if such services
5 are provided to a participant or beneficiary by
6 a nonparticipating health care provider without
7 prior authorization by the plan, the participant
8 or beneficiary is not liable for amounts that ex-
9 ceed the amounts of liability that would be in-
10 curred if the services were provided by a par-
11 ticipating health care provider with prior au-
12 thorization by the plan; and

13 “(D) without regard to any other term or
14 condition of such coverage (other than exclusion
15 or coordination of benefits, or an affiliation or
16 waiting period, permitted under section 2701 of
17 the Public Health Service Act, section 701 of
18 the Employee Retirement Income Security Act
19 of 1974, or section 9801 of this Code, and
20 other than applicable cost-sharing).

21 “(2) DEFINITIONS.—In this section:

22 “(A) EMERGENCY MEDICAL CONDITION
23 BASED ON PRUDENT LAYPERSON STANDARD.—
24 The term ‘emergency medical condition’ means
25 a medical condition manifesting itself by acute

1 symptoms of sufficient severity (including se-
2 vere pain) such that a prudent layperson, who
3 possesses an average knowledge of health and
4 medicine, could reasonably expect the absence
5 of immediate medical attention to result in a
6 condition described in clause (i), (ii), or (iii) of
7 section 1867(e)(1)(A) of the Social Security
8 Act.

9 “(B) EMERGENCY SERVICES.—The term
10 ‘emergency services’ means—

11 “(i) a medical screening examination
12 (as required under section 1867 of the So-
13 cial Security Act) that is within the capa-
14 bility of the emergency department of a
15 hospital, including ancillary services rou-
16 tinely available to the emergency depart-
17 ment to evaluate an emergency medical
18 condition (as defined in subparagraph
19 (A)), and

20 “(ii) within the capabilities of the
21 staff and facilities available at the hospital,
22 such further medical examination and
23 treatment as are required under section
24 1867 of such Act to stabilize the patient.

1 “(C) NONPARTICIPATING.—The term ‘non-
2 participating’ means, with respect to a health
3 care provider that provides health care items
4 and services to a participant or beneficiary
5 under group health plan, a health care provider
6 that is not a participating health care provider
7 with respect to such items and services.

8 “(D) PARTICIPATING.—The term ‘partici-
9 pating’ means, with respect to a health care
10 provider that provides health care items and
11 services to a participant or beneficiary under
12 group health plan, a health care provider that
13 furnishes such items and services under a con-
14 tract or other arrangement with the plan.

15 “(b) COVERAGE OF EMERGENCY AMBULANCE SERV-
16 ICES.—

17 “(1) IN GENERAL.—If a group health plan pro-
18 vides any benefits with respect to ambulance services
19 and emergency services, the plan shall cover emer-
20 gency ambulance services (as defined in paragraph
21 (2)) furnished under the coverage under the same
22 terms and conditions under subparagraphs (A)
23 through (D) of subsection (a)(1) under which cov-
24 erage is provided for emergency services.

1 “(2) EMERGENCY AMBULANCE SERVICES.—For
2 purposes of this subsection, the term ‘emergency
3 ambulance services’ means ambulance services (as
4 defined for purposes of section 1861(s)(7) of the So-
5 cial Security Act) furnished to transport an indi-
6 vidual who has an emergency medical condition (as
7 defined in subsection (a)(2)(A)) to a hospital for the
8 receipt of emergency services (as defined in sub-
9 section (a)(2)(B)) in a case in which the emergency
10 services are covered under the plan pursuant to sub-
11 section (a)(1) and a prudent layperson, with an av-
12 erage knowledge of health and medicine, could rea-
13 sonably expect that the absence of such transport
14 would result in placing the health of the individual
15 in serious jeopardy, serious impairment of bodily
16 function, or serious dysfunction of any bodily organ
17 or part.”.

18 (B) CLERICAL AMENDMENT.—The table of
19 section of such subchapter is amended by in-
20 serting after the item relating to section 9812
21 the following new item:

“Sec. 9813. Standard relating to access to emergency services
and emergency ambulance services.”.

22 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
23 of title XXVII of the Public Health Service Act is amend-

1 ed by inserting after section 2752 the following new sec-
2 tion:

3 **“SEC. 2753. STANDARD RELATING TO ACCESS TO EMER-**
4 **GENCY SERVICES AND EMERGENCY AMBU-**
5 **LANCE SERVICES.**

6 “(a) IN GENERAL.—The provisions of subsections (a)
7 and (b) of section 2707 shall apply to health insurance
8 coverage offered by a health insurance issuer in the indi-
9 vidual market in the same manner as they apply to health
10 insurance coverage offered by a health insurance issuer
11 in connection with a group health plan in the small or
12 large group market.

13 “(b) NOTICE.—A health insurance issuer under this
14 part shall comply with the notice requirement under sec-
15 tion 714(b) of the Employee Retirement Income Security
16 Act of 1974 with respect to the requirements referred to
17 in subsection (a) as if such section applied to such issuer
18 and such issuer were a group health plan.”.

19 (2) Section 2762(b)(2) of such Act (42 U.S.C.
20 300gg–62(b)(2)) is amended by striking “section 2751”
21 and inserting “sections 2751 and 2753”.

22 (c) EFFECTIVE DATES.—

23 (1) GROUP HEALTH PLANS AND GROUP
24 HEALTH INSURANCE COVERAGE.—Subject to para-
25 graph (3), the amendments made by subsection (a)

1 apply with respect to group health plans for plan
2 years beginning on or after January 1, 2002.

3 (2) INDIVIDUAL HEALTH INSURANCE COV-
4 ERAGE.—The amendments made by subsection (b)
5 apply with respect to health insurance coverage of-
6 fered, sold, issued, renewed, in effect, or operated in
7 the individual market on or after such date.

8 (3) COLLECTIVE BARGAINING EXCEPTION.—In
9 the case of a group health plan maintained pursuant
10 to 1 or more collective bargaining agreements be-
11 tween employee representatives and 1 or more em-
12 ployers ratified before the date of enactment of this
13 Act, the amendments made by subsection (a) shall
14 not apply to plan years beginning before the later
15 of—

16 (A) the date on which the last collective
17 bargaining agreements relating to the plan ter-
18 minates (determined without regard to any ex-
19 tension thereof agreed to after the date of en-
20 actment of this Act), or

21 (B) January 1, 2002.

22 For purposes of subparagraph (A), any plan amend-
23 ment made pursuant to a collective bargaining
24 agreement relating to the plan which amends the
25 plan solely to conform to any requirement added by

1 subsection (a) shall not be treated as a termination
2 of such collective bargaining agreement.

3 (4) LIMITATION ON ENFORCEMENT ACTIONS.—

4 No enforcement action shall be taken, pursuant to
5 the amendments made by this subsections (a) and
6 (b), against a group health plan or health insurance
7 issuer with respect to a violation of a requirement
8 imposed by such amendments, to the extent that vio-
9 lation or failure occurs before the date of issuance
10 of regulations issued in connection with such re-
11 quirement, if the plan or issuer has sought to com-
12 ply in good faith with such requirement.

13 (d) COORDINATION OF ADMINISTRATION.—The Sec-
14 retary of Labor, the Secretary of the Treasury, and the
15 Secretary of Health and Human Services shall ensure,
16 through the execution of an interagency memorandum of
17 understanding among such Secretaries, that—

18 (1) regulations, rulings, and interpretations
19 issued by such Secretaries relating to the same mat-
20 ter over which two or more such Secretaries have re-
21 sponsibility under the provisions of this Act (and the
22 amendments made thereby) are administered so as
23 to have the same effect at all times; and

24 (2) coordination of policies relating to enforcing
25 the same requirements through such Secretaries in

- 1 order to have a coordinated enforcement strategy
- 2 that avoids duplication of enforcement efforts and
- 3 assigns priorities in enforcement.

○