

103^D CONGRESS
1ST SESSION

S. 765

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

IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, MARCH 3), 1993

Mrs. BOXER (for herself, Mr. DECONCINI, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to improve protection of benefits under group health plans, to provide for adequate notice of adoption of material coverage restrictions under such plans, and to provide for 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Insurance Pro-
5 tection Act of 1993”.

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

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

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

6 (2) by adding at the end the following new sub-
7 section:

8 “(b) DISCRIMINATION BASED ON BENEFIT CLAIMS
9 UNDER GROUP HEALTH PLANS.—

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

17 “(A) such action is specifically related to
18 one or more particular diseases or medical con-
19 ditions,

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

24 “(C) a valid claim under the plan reason-
25 ably related to such course of treatment has
26 been submitted to the plan by or on behalf of

1 such participant or beneficiary prior to the tak-
2 ing of such action.

3 “(2) SPECIAL RULE RELATED TO PLAN TERMI-
4 NATIONS.—Paragraph (1) shall not apply to any
5 cancellation or reduction of a benefit by termination
6 of a group health plan unless the employer replaces
7 the plan.

8 “(3) DEFINITIONS.—For purposes of this sub-
9 section—

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

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

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

24 “(D) VALID CLAIM.—The term ‘valid
25 claim’ under a group health plan means a claim

1 a group health plan if the requirements of paragraph (1)
2 or (2) are met as follows:

3 “(1) COLLECTIVE BARGAINING.—The require-
4 ments of this paragraph are met if—

5 “(A) the participants consist of employees
6 covered by a collective bargaining agreement be-
7 tween employee representatives and one or more
8 employers,

9 “(B) there is evidence that benefits pro-
10 vided under the group health plan established
11 or maintained pursuant to such collective bar-
12 gaining agreement were the subject of good
13 faith bargaining between such employee rep-
14 resentatives and such employer or employers,
15 and

16 “(C) the discrimination consists of a lack
17 of uniformity based solely on—

18 “(i) variations in the required terms
19 of the collective bargaining agreement as
20 applied to separate geographically located
21 facilities of the same employer, or

22 “(ii) different levels of contributions
23 to such plan negotiated between such em-
24 ployee representatives and more than 1

1 employer, as set forth in applicable collec-
2 tive bargaining agreements.

3 “(2) EXEMPTION PROCEDURE.—The require-
4 ments of this paragraph are met if the sponsor of
5 such group health plan demonstrates to the Sec-
6 retary by a preponderance of the evidence that such
7 sponsor will be unable to continue such plan unless
8 granted relief from the applicable requirements of
9 subsection (a), pursuant to an exemption procedure
10 which—

11 “(A) shall be established by the Secretary
12 by regulation for purposes of this subsection,
13 and

14 “(B) shall be subject to standards and pro-
15 cedures similar to those applicable under sec-
16 tion 408(a) with respect to exemptions granted
17 under such section.”.

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

“Sec. 515. Delinquent contributions.

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

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

22 (a) NOTICE OF MODIFICATIONS AND CHANGES.—
23 Section 104(b)(1) of the Employee Retirement Income Se-
24 curity Act of 1974 (29 U.S.C. 1024(b)(1)) is amended by

1 adding at the end the following: “In the case of a group
2 health plan (as defined in section 607(1)), the adoption
3 of any material coverage restriction which constitutes a
4 modification described in section 102(a)(1) or which is
5 represented by any change in the information required
6 under section 102(b), may not take effect until 60 days
7 after such a summary description of such modification or
8 change is furnished to each participant and to each spouse
9 of a participant who is a beneficiary under the plan in
10 language calculated to be easily understood by the typical
11 participant or beneficiary. For purposes of the preceding
12 sentence, the term ‘material coverage restriction’ means
13 any change in the terms of a group health plan that re-
14 sults in elimination of, or increased restrictions on, any
15 form of benefit coverage which was provided by the plan
16 prior to the change, including the establishment of, or in-
17 creases in the amount of, deductibles or coinsurance pay-
18 ments required of participants and beneficiaries under the
19 plan, except that the Secretary may by regulation exclude
20 from such term any such change of a type which the Sec-
21 retary finds to be de minimis.”.

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

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

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

3 “(2)(A) In the case of a self-insured group health
4 plan, in addition to the information required under para-
5 graph (1), the plan description and summary plan descrip-
6 tion shall contain a statement—

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

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

11 “(iii) indicating that the plan is not subject to
12 State guarantee fund protection and that, if the plan
13 does not pay all benefits for which participants or
14 beneficiaries are eligible under the plan, responsibil-
15 ity for payment for medical care may to some extent
16 remain with the participant or beneficiary.

17 “(B) For purposes of this paragraph—

18 “(i) the term ‘group health plan’ has the mean-
19 ing provided in section 607(1); and

20 “(ii) a group health plan is ‘self-insured’ unless
21 all benefits provided under the plan are provided
22 under a contract or policy of insurance issued by a
23 person licensed by a State to engage in the business
24 of insurance.”.

1 **SEC. 5. LEGAL RELIEF FROM DAMAGES FOR INTER-**
2 **REFERENCE WITH RIGHTS UNDER PLAN.**

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

7 “(4)(A) Any person who violates section 510 or 516
8 with respect to any participant or beneficiary under a
9 group health plan shall be liable to such participant or
10 beneficiary for actual and consequential damages. Subject
11 to subparagraph (B), damages for such violation shall not
12 include punitive damages.

13 “(B) In any case in which the violation constitutes
14 willful, fraudulent, or malicious conduct, bad faith, or
15 gross negligence, each person liable under subparagraph
16 (A) may, in the court’s discretion, be liable to such partici-
17 pant or beneficiary for punitive damages in an amount up
18 to 200 percent of the amount of actual damages awarded,
19 but not less than \$50,000. Any such punitive damages
20 shall be in addition to any actual damages under subpara-
21 graph (A).

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

24 (b) ATTORNEY’S FEES.—Section 502(g) of such Act
25 (29 U.S.C. 1132(g)) is amended by adding at the end the
26 following new paragraph:

1 “(3) In any action for damages under subsection
2 (c)(4) in which the plaintiff prevails or substantially pre-
3 vails, the court shall award the plaintiff reasonable attor-
4 ney’s fees and other costs of the action, including reason-
5 able expert witness fees and costs, to be paid by the de-
6 fendant. Fees awarded under this paragraph shall be at
7 generally prevailing hourly rates.”.

8 **SEC. 6. EFFECTIVE DATE.**

9 The amendments made by this Act shall apply with
10 respect to changes in group health plan coverage adopted
11 on or after the date of the enactment of this Act.

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