

104TH CONGRESS
2D SESSION

H. R. 3145

To amend the Public Health Service Act to prohibit health insurance discrimination with respect to victims of domestic violence.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1996

Mrs. MORELLA (for herself and Mr. SCHUMER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on 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

A BILL

To amend the Public Health Service Act to prohibit health insurance discrimination with respect to victims of domestic violence.

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 “Insurance Protection
5 for Victims of Domestic Violence Act of 1996”.

1 **SEC. 2. PROHIBITION OF HEALTH INSURANCE DISCRIMINA-**
2 **TION WITH RESPECT TO VICTIMS OF DOMES-**
3 **TIC VIOLENCE.**

4 The Public Health Service Act (42 U.S.C. 201 et
5 seq.) is amended by adding at the end the following new
6 title:

7 **“TITLE XXVII—PROHIBITION OF**
8 **HEALTH INSURANCE DIS-**
9 **CRIMINATION WITH RESPECT**
10 **TO VICTIMS OF DOMESTIC VI-**
11 **OLENCE**

12 **“SEC. 2701. LIMITATIONS ON UNDERWRITING.**

13 “An insurer may not deny or cancel health insurance,
14 or vary the terms and conditions of health insurance—

15 “(1) to an individual on the basis that the indi-
16 vidual or family member—

17 “(A) is, has been, or may be the subject of
18 an act of domestic violence;

19 “(B) has had prior injuries that resulted
20 from an act of domestic violence;

21 “(C) seeks, has sought, or should have
22 sought medical or psychological treatment for
23 protection against an act of domestic violence;

24 or

1 “(D) seeks, has sought, or should have
2 sought shelter from an act of domestic violence;

3 or

4 “(2) to or for a group or employer on the basis
5 that the group includes or the employer employs, or
6 provides or subsidizes insurance for, an individual
7 described in paragraph (1).

8 **“SEC. 2702. LIMITATION ON DISCLOSURE OF INFORMATION.**

9 “(a) PROHIBITION.—Except as provided in para-
10 graph (2), regardless of the manner in which information
11 was received, an insurer may not disclose or be compelled
12 (by subpoena or any other means) to disclose information
13 concerning the status of an individual as a victim of do-
14 mestic violence (including the relationship of a medical
15 condition to an incident or pattern of domestic violence),
16 or the status of an individual as a family member, em-
17 ployer, associate, or person in a relationship with an indi-
18 vidual who is the victim of domestic violence, unless the
19 individual involved provides a written authorization.

20 “(b) EXCEPTION.—Notwithstanding paragraph (1),
21 information concerning the abuse status of an individual
22 may be disclosed if such disclosure—

23 “(1) is required under the specific order of a
24 Federal or State court; or

1 “(2) is required by the State Insurance Com-
2 missioner.

3 **“SEC. 2703. ESTABLISHMENT OF STANDARDS.**

4 “(a) ROLE OF NATIONAL ASSOCIATION OF INSUR-
5 ANCE COMMISSIONERS.—

6 “(1) IN GENERAL.—The Secretary shall request
7 the National Association of Insurance Commis-
8 sioners to develop, in consultation with nonprofit do-
9 mestic violence victim advocacy organizations, within
10 9 months after the date of the enactment of this
11 title, model standards that incorporate the limita-
12 tions on underwriting set forth in section 2701, and
13 provide procedures for enforcement for such provi-
14 sions, including a private right of action.

15 “(2) REVIEW OF STANDARDS.—If the Associa-
16 tion develops recommended regulations specifying
17 the standards within the period, the Secretary shall
18 review the standards. The review shall be completed
19 within 90 days after the date the regulations are de-
20 veloped. Unless the Secretary determines within the
21 period that such standards do not meet the require-
22 ments, such standards shall serve as the standards
23 under this title, with such amendments as the Sec-
24 retary determines to be necessary.

1 “(b) CONTINGENCY.—If the Association does not de-
2 velop the model regulations within the 9 month period be-
3 ginning on the date of the enactment of this title, or the
4 Secretary determines that the regulations do not specify
5 standards that meet the requirements described in sub-
6 section (a), the Secretary shall specify, within 15 months
7 after the date of the enactment of this title, standards to
8 carry out the requirements.

9 “(c) APPLICATION OF STANDARDS.—

10 “(1) IN GENERAL.—Each State shall submit to
11 the Secretary, by the deadline specified in paragraph
12 (2), a report on actions the State is taking to imple-
13 ment and enforce the standards established under
14 this section with respect to insurers and health in-
15 surance coverage offered or renewed not later than
16 such deadline.

17 “(2) DEADLINE FOR REPORT.—Each State
18 shall file the report described in paragraph (1) not
19 later than 1 year after the date that standards are
20 established under subsection (a) or, in the event of
21 the failure of the Association to develop timely model
22 regulations, under subsection (b).

23 “(d) FEDERAL ROLE.—

24 “(1) NOTICE OF DEFICIENCY.—If the Secretary
25 determines that a State has failed to submit a report

1 by the deadline specified by subsection (c), or finds
2 that the State has not implemented and provided
3 adequate enforcement of the standards established
4 under subsection (a) or (b), the Secretary shall no-
5 tify the State and provide the State a period of 60
6 days in which to submit the report.

7 “(2) IMPLEMENTATION OF ALTERNATIVE EN-
8 FORCEMENT MECHANISM.—

9 “(A) IN GENERAL.—If, after the 60-day
10 period, the Secretary finds that such a failure
11 has not been corrected, the Secretary shall
12 within 30 days provide for a mechanism for the
13 implementation and enforcement of such stand-
14 ards in the State as the Secretary determines to
15 be appropriate.

16 “(B) CIVIL PENALTY.—Under any imple-
17 mentation and enforcement mechanism estab-
18 lished by the Secretary pursuant to this para-
19 graph, the Secretary shall have the authority to
20 impose on an insurer a civil monetary penalty
21 in the amount of \$10,000 for each day during
22 which such insurer violates the requirements
23 described in section 2701, or the standards de-
24 veloped under this section. Liability for such
25 penalty shall begin to accrue on the 30th day

1 after the Secretary has provided such insurer
2 with notice of its noncompliance, if the insurer
3 has failed to correct the deficiency by such date.

4 “(C) EFFECTIVE PERIOD.—Any such im-
5 plementation and enforcement mechanism es-
6 tablished by the Secretary shall take effect with
7 respect to insurers, and health insurance cov-
8 erage offered or renewed, on or after 3 months
9 after the date of the Secretary’s finding under
10 paragraph (1), and until the date the Secretary
11 finds that such a failure has been corrected.

12 “(3) FEDERAL CIVIL RIGHT OF ACTION.—

13 “(A) IN GENERAL.—Any individual
14 aggrieved as a result of conduct prohibited
15 by section 2701 may bring a civil action in
16 the appropriate United States district
17 court against the insurer.

18 “(B) RELIEF.—Upon proof of such
19 conduct by a preponderance of the evi-
20 dence, the insurer shall be subject to a civil
21 penalty that may include temporary, pre-
22 liminary, or permanent injunctive relief
23 and compensatory and punitive damages,
24 as well as the costs of suit and reasonable
25 fees for the aggrieved individual’s attor-

1 neys. With respect to compensatory dam-
2 ages, the aggrieved individual may elect, at
3 any time prior to the rendering of final
4 judgment, to recover in lieu of actual dam-
5 ages, an award of statutory damages in the
6 amount of \$5,000 for each violation.

7 **“SEC. 2704. APPLICATION TO GROUP HEALTH PLANS AND**
8 **ENFORCEMENT.**

9 “(a) APPLICATION.—Subject to subsection (b), the
10 prohibitions in section 2701 and the standards developed
11 under section 2702 shall apply to group health plans pro-
12 viding health coverage in the same manner as they apply
13 to insurers providing health insurance coverage. The pen-
14 alty described in section 2702(d)(2)(B) may be imposed
15 by the Secretary of Labor on group health plans that are
16 not in compliance with the requirements of sections 2701
17 and 2702.

18 “(b) SUBSTITUTION OF FEDERAL OFFICIALS.—For
19 purposes of subsection (a), any reference in section 2702
20 to—

21 “(1) a State or the Secretary of Health and
22 Human Services is deemed to be a reference to the
23 Secretary of Labor; and

1 “(2) an insurer or health insurance coverage is
2 deemed to be a reference to a group health plan and
3 health coverage, respectively.

4 “(c) ENFORCEMENT.—For purposes of part 5 of sub-
5 title B of title I of the Employee Retirement Income Secu-
6 rity Act of 1974 (29 U.S.C 1131 et seq.) the provisions
7 of this title insofar as they relate to group health plans
8 shall be deemed to be provisions of title I of such Act irre-
9 spective of exclusions under section 4(b) of such Act.

10 “(d) REGULATORY AUTHORITY.—With respect to the
11 regulatory authority of the Secretary of Labor under this
12 title pursuant to subsection (c), section 505 of the Em-
13 ployee Retirement Income Security Act of 1974 (29
14 U.S.C. 1135) shall apply.

15 **“SEC. 2705. DEFINITIONS.**

16 “For purposes of this title:

17 “(1) ACT OF DOMESTIC VIOLENCE.—The term
18 ‘act of domestic violence’ means the occurrence of
19 one or more of the following acts between family or
20 household members, current or former sexual or inti-
21 mate partners, or persons sharing biological parent-
22 hood—

23 “(A) attempting to cause or intentionally,
24 knowingly, or recklessly causing bodily injury,

1 rape, or sexual abuse as such term is defined in
2 section 2242 of title 18, United States Code;

3 “(B) placing, by physical menace, another
4 individual in reasonable fear of imminent seri-
5 ous bodily injury;

6 “(C) infliction of false imprisonment; or

7 “(D) physically or sexually abusing minor
8 children.

9 “(2) ASSOCIATION.—The term ‘Association’
10 means the National Association of Insurance Com-
11 missioners.

12 “(3) INSURER.—

13 “(A) IN GENERAL.—The term ‘insurer’
14 means a health benefit plan or a health care
15 provider that conducts activities related to the
16 protection of public health.

17 “(B) HEALTH BENEFIT PLAN.—The term
18 ‘health benefit plan’ means any public or pri-
19 vate entity or program that provides for pay-
20 ments for health care, including—

21 “(i) a group health plan (as defined in
22 section 607 of the Employee Retirement
23 Income Security Act of 1974 (29 U.S.C.
24 1167)) or a multiple employer welfare ar-
25 rangement (as defined in section 3(40) of

1 such Act) that provides health benefits;
2 and

3 “(ii) any other health insurance ar-
4 rangement, including any arrangement
5 consisting of a hospital or medical expense
6 incurred policy or certificate, hospital or
7 medical service plan contract, or health
8 maintenance organization subscriber con-
9 tract.

10 “(C) HEALTH CARE PROVIDER.—The term
11 ‘health care provider’ means a provider of serv-
12 ices (as defined in section 1861(u) of the Social
13 Security Act (42 U.S.C. 1395u)), a physician,
14 a supplier, or any other person furnishing
15 health care, including a Federal or State pro-
16 gram that provides directly for the provision of
17 health care to beneficiaries.”.

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