

104TH CONGRESS  
2D SESSION

# H. R. 3991

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

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## 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.

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 “Prescription Drug  
5 Benefit Equity Act of 1996”.

6 **SEC. 2. EQUITY IN PROVISION OF PRESCRIPTION DRUG**  
7 **COVERAGE.**

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

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

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

7 (1) benefits under the non-mail-order prescrip-  
8 tion coverage are provided for in the case of all  
9 drugs and all circumstances under which benefits  
10 are provided under the mail-order prescription drug  
11 coverage;

12 (2) no deductible or similar cost-sharing is im-  
13 posed with respect to benefits under the non-mail-  
14 order prescription drug coverage unless such a de-  
15 ductible or similar cost-sharing is imposed with re-  
16 spect to benefits under the mail-order prescription  
17 drug coverage; and

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

21 (A) The dollar amount of payment for pre-  
22 scription drug coverage is not less than the dol-  
23 lar amount of benefits provided with respect to  
24 the mail-order coverage for that same coverage.

1           (B)     The     cost-sharing     (including  
2     deductibles, copayments, or coinsurance) im-  
3     posed with respect to non-mail-order coverage  
4     that is not greater (as a percentage of charges  
5     or dollar amount, as specified under the cov-  
6     erage) than the cost-sharing imposed with re-  
7     spect to the mail-order coverage.

8           (c) APPLICATION TO ORGANIZATIONS AND INSUR-  
9     ERS.—A requirement imposed under this section on a  
10    health plan offered by a health maintenance organization  
11    or insurer shall be deemed to be a requirement imposed  
12    on the organization or insurer.

13    **SEC. 3. ENFORCEMENT.**

14           (a) HEALTH PLAN ISSUED BY HMOS AND INSUR-  
15    ERS.—

16           (1) IN GENERAL.—Each State shall require  
17    that each health plan issued, sold, renewed, offered  
18    for sale or operated in such State by a health main-  
19    tenance organization meet the requirements of sec-  
20    tion 2 pursuant to an enforcement plan filed by the  
21    State with the Secretary of Health and Human  
22    Services. A State shall submit such information as  
23    required by such Secretary demonstrating effective  
24    implementation of the State enforcement plan.

1           (2) FAILURE TO IMPLEMENT PLAN.—In the  
2 case of the failure of a State to substantially enforce  
3 the requirements of section 2 with respect to health  
4 plans as provided for under the State enforcement  
5 plan filed under paragraph (1), the Secretary of  
6 Health and Human Services shall implement an en-  
7 forcement plan to enforce such requirements for or-  
8 ganizations and insurers in such State. In the case  
9 of a State that fails to substantially enforce such re-  
10 quirements, each health maintenance organization  
11 and insurer operating in such State shall be subject  
12 to civil enforcement as provided for under sections  
13 502, 504, 506, and 510 of the Employee Retirement  
14 Income Security Act of 1974 (29 U.S.C. 1132,  
15 1134, 1136, and 1140) through the Secretary of  
16 Health and Human Services. The civil penalties con-  
17 tained in paragraphs (1) and (2) of section 502(c)  
18 of such Act (29 U.S.C. 1132(c) (1) and (2)) shall  
19 apply to any information required by such Secretary  
20 to be disclosed and reported under this subsection.

21           (b) EMPLOYEE HEALTH BENEFIT PLANS.—With re-  
22 spect to employee health benefit plans, the Secretary of  
23 Labor shall enforce the requirements of section 2 in the  
24 same manner as provided for under sections 502, 504,  
25 506, and 510 of the Employee Retirement Income Secu-

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

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

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

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

18 (f) REGULATIONS.—The Secretaries of Labor and  
19 Health and Human Services and the Director of the Office  
20 of Personnel Management may promulgate such regula-  
21 tions as may be necessary or appropriate to carry out this  
22 Act.

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

1 scription Drug Benefit Equity Act of 1996” before the  
2 period.

3 **SEC. 4. CONSTRUCTION; PREEMPTION.**

4 (a) IN GENERAL.—Nothing in this Act shall be con-  
5 strued as preventing a health plan from—

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

8 (2) imposing a limitation on the amount of ben-  
9 efits provided with respect to such coverage or the  
10 cost-sharing that may be imposed with respect to  
11 such coverage,

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

14 (b) PREEMPTION OF STATE LAW.—

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

19 (A) not prescribed in this Act; or

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

1           (2) RULE OF CONSTRUCTION.—Nothing in  
2 paragraph (1) shall be construed to affect or modify  
3 the provisions of section 514 of the Employee Re-  
4 tirement Income Security Act of 1974 (29 U.S.C.  
5 1144).

6 **SEC. 5. DEFINITIONS.**

7 In this Act:

8           (1) HEALTH PLAN.—The term “health plan”  
9 means—

10                   (A) an employee welfare benefit plan to the  
11 extent that the plan provides medical care to  
12 employees or their dependents (as defined  
13 under the terms of the plan) directly or through  
14 insurance, reimbursement, or otherwise, and in-  
15 cludes a group health plan (within the meaning  
16 of section 5000(b)(1) of the Internal Revenue  
17 Code of 1986);

18                   (B) benefits consisting of medical care  
19 (provided directly, through insurance or reim-  
20 bursement, or otherwise and whether or not  
21 provided to a group, association, or individual)  
22 under any hospital or medical service policy or  
23 certificate, hospital or medical service plan con-  
24 tract, or health maintenance organization group

1 contract offered by an insurer or a health main-  
2 tenance organization;

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

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

7 (E) a health plan under chapter 89 of title  
8 5, United States Code; and

9 (F) benefits provided under a risk-sharing  
10 contract under section 1876 of the Social Secu-  
11 rity Act.

12 (2) MAIL-ORDER PRESCRIPTION DRUG COV-  
13 ERAGE.—The term “mail-order prescription drug  
14 coverage” means provision of benefits for prescrip-  
15 tion drugs and biologicals that are delivered directly  
16 to beneficiaries through the mail or similar means.

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

22 (4) LOCAL PHARMACY.—The term “local phar-  
23 macy” means, with respect to a prescription drug or  
24 biological and a beneficiary, an establishment that is  
25 authorized to dispense such drug or biological and

1 that is located within such distance (not to exceed  
2 5 miles in the case of a beneficiary residing in an  
3 urban area or 10 miles in the case of a beneficiary  
4 residing in a non-urban area) of the residence of  
5 such beneficiary, as the Secretary of Health and  
6 Human Services shall prescribe.

7 (5) EMPLOYEE HEALTH BENEFIT PLAN.—The  
8 term “employee health benefit plan” means any em-  
9 ployee welfare benefit plan, governmental plan, or  
10 church plan (as defined under paragraphs (1), (32),  
11 and (33) of section 3 of the Employee Retirement  
12 Income Security Act of 1974 (29 U.S.C. 1002 (1),  
13 (32), and (33))), that provides or pays for health  
14 benefits (such as provider and hospital benefits) for  
15 participants and beneficiaries (as defined in such  
16 section) whether—

17 (A) directly;

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

20 (C) otherwise.

21 Such term includes any health benefit plan under  
22 section 5(e) of the Peace Corps Act (22 U.S.C.  
23 2504(e)).

1           (6) HEALTH MAINTENANCE ORGANIZATION;  
2 HMO.—The terms “health maintenance organiza-  
3 tion” and “HMO” mean—

4           (A) a federally qualified health mainte-  
5 nance organization (as defined in section  
6 1301(a) of the Public Health Service Act (42  
7 U.S.C. 300e(a))),

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

10           (C) a similar organization regulated under  
11 State law for solvency in the same manner and  
12 to the same extent as such a health mainte-  
13 nance organization,

14 if it is subject to State law which regulates insur-  
15 ance (within the meaning of section 514(b)(2) of the  
16 Employee Retirement Income Security Act of 1974).

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

24           (8) STATE.—The term “State” means each of  
25 the several States, the District of Columbia, Puerto

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

4 **SEC. 6. EFFECTIVE DATE.**

5 This Act shall apply to coverage provided under—

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

9 (2) other health plans, for contract years begin-  
10 ning more than 6 months after the date of the en-  
11 actment of this Act.

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