

105TH CONGRESS  
2D SESSION

# H. R. 4093

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require group health plans and health insurance coverage to establish hospital lengths of stay based on a determination by an appropriate physician in consultation with the patient.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1998

Ms. DELAURO (for herself, Mr. HILLIARD, Mr. HASTINGS of Florida, Mr. FROST, Mr. KLECZKA, Mr. SANDLIN, Mr. LAMPSON, Ms. PELOSI, Mr. MALONEY of Connecticut, Mr. WYNN, Mr. MENENDEZ, Mr. LEWIS of Georgia, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Education and the Workforce, 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 amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require group health plans and health insurance coverage to establish hospital lengths of stay based on a determination by an appropriate physician in consultation with the patient.

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 “Hospital Stay Protec-  
3 tion Act”.

4 **SEC. 2. STANDARD RELATING TO HOSPITAL LENGTHS OF**  
5 **STAY.**

6 (a) GROUP HEALTH PLANS.—

7 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
8 MENTS.—

9 (A) IN GENERAL.—Subpart 2 of part A of  
10 title XXVII of the Public Health Service Act,  
11 as amended by section 703(a) of Public Law  
12 104–204, is amended by adding at the end the  
13 following new section:

14 **“SEC. 2706. STANDARD RELATING TO HOSPITAL LENGTHS**  
15 **OF STAY.**

16 “(a) REQUIREMENT.—A group health plan, and a  
17 health insurance issuer offering group health insurance  
18 coverage in connection with a group health plan, shall en-  
19 sure that inpatient coverage is provided for a period of  
20 time as is determined by a physician, in consultation with  
21 the patient, to be medically appropriate.

22 “(b) PROHIBITIONS.—A group health plan, and a  
23 health insurance issuer offering group health insurance  
24 coverage in connection with a group health plan, may  
25 not—

1           “(1) deny eligibility, or continued eligibility, to  
2           enroll or to renew coverage under the terms of the  
3           plan, solely for the purpose of avoiding the minimum  
4           coverage requirements of subsection (a);

5           “(2) penalize or otherwise reduce or limit the  
6           reimbursement of a provider because such provider  
7           provided care to a participant or beneficiary in ac-  
8           cordance with this section;

9           “(3) provide incentives (monetary or otherwise)  
10          to a provider to induce such provider to keep the  
11          length of inpatient stays of patients below certain  
12          levels; or

13          “(4) require preauthorization for determination  
14          of a length of stay.

15          “(c) APPEALS PROCESS AND PENALTY.—The Sec-  
16          retary, in consultation with the Secretary of Labor shall  
17          establish—

18                 “(1) a process for a participant, enrollee, or  
19                 beneficiary to appeal the decision of a plan or issuer;  
20                 and

21                 “(2) a penalty for plans or issuers that violate  
22                 the provisions of this section.

23          “(d) NOTICE.—A group health plan under this part  
24          shall comply with the notice requirement under section  
25          713(d) of the Employee Retirement Income Security Act

1 of 1974 with respect to the requirements of this section  
2 as if such section applied to such plan.”.

3 (B) CONFORMING AMENDMENT.—Section  
4 2723(c) of such Act (42 U.S.C. 300gg–23(c)) is  
5 amended by striking “section 2704” and insert-  
6 ing “sections 2704 and 2706”.

7 (2) AMENDMENTS TO THE EMPLOYEE RETIRE-  
8 MENT INCOME SECURITY ACT OF 1974.—

9 (A) IN GENERAL.—Subpart B of part 7 of  
10 subtitle B of title I of the Employee Retirement  
11 Income Security Act of 1974 is amended by  
12 adding at the end the following new section:

13 **“SEC. 713. STANDARDS FOR HOSPITAL LENGTHS OF STAY.**

14 “(a) REQUIREMENT.—A group health plan, and a  
15 health insurance issuer offering group health insurance  
16 coverage in connection with a group health plan, shall en-  
17 sure that inpatient coverage is provided for a period of  
18 time as is determined by a physician, in consultation with  
19 the patient, to be medically appropriate.

20 “(b) PROHIBITIONS.—A group health plan, and a  
21 health insurance issuer offering group health insurance  
22 coverage in connection with a group health plan, may  
23 not—

24 “(1) deny eligibility, or continued eligibility, to  
25 enroll or to renew coverage under the terms of the

1 plan, solely for the purpose of avoiding the minimum  
2 coverage requirements of subsection (a);

3 “(2) penalize or otherwise reduce or limit the  
4 reimbursement of a provider because such provider  
5 provided care to a participant or beneficiary in ac-  
6 cordance with this section;

7 “(3) provide incentives (monetary or otherwise)  
8 to a provider to induce such provider to keep the  
9 length of inpatient stays of patients below certain  
10 levels; or

11 “(4) require preauthorization for determination  
12 of a length of stay.

13 “(c) APPEALS PROCESS AND PENALTY.—The Sec-  
14 retary, in consultation with the Secretary of Health and  
15 Human Services shall establish—

16 “(1) a process for a participant, enrollee, or  
17 beneficiary to appeal the decision of a plan or issuer;  
18 and

19 “(2) a penalty for plans or issuers that violate  
20 the provisions of this section.

21 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
22 imposition of the requirements of this section shall be  
23 treated as a material modification in the terms of the plan  
24 described in section 102(a)(1), for purposes of assuring  
25 notice of such requirements under the plan; except that

1 the summary description required to be provided under the  
2 last sentence of section 104(b)(1) with respect to such  
3 modification shall be provided by not later than 60 days  
4 after the first day of the first plan year in which such  
5 requirements apply.”.

6 (B) CONFORMING AND CLERICAL AMEND-  
7 MENTS.—(i) Section 731(c) of such Act (29 U.S.C.  
8 1191(e)) is amended by striking “section 711” and  
9 inserting “sections 711 and 713”.

10 (ii) Section 732(a) of such Act (29 U.S.C.  
11 1191a(a)) is amended by striking “section 711” and  
12 inserting “sections 711 and 713”.

13 (iii) The table of contents in section 1 of such  
14 Act is amended by inserting after the item relating  
15 to section 712 the following new item:

“Sec. 713. Standard for hospital lengths of stay.”.

16 (b) INDIVIDUAL HEALTH INSURANCE.—

17 (1) IN GENERAL.—Subpart 3 of part B of title  
18 XXVII of the Public Health Service Act is amended  
19 by adding at the end the following new section:

20 **“SEC. 2752. STANDARDS FOR HOSPITAL LENGTHS OF STAY.**

21 “(a) IN GENERAL.—The provisions of section 2706  
22 (other than subsection (d)) shall apply to health insurance  
23 coverage offered by a health insurance issuer in the indi-  
24 vidual market in the same manner as they apply to health  
25 insurance coverage offered by a health insurance issuer

1 in connection with a group health plan in the small or  
2 large group market.

3 “(b) NOTICE.—A health insurance issuer under this  
4 part shall comply with the notice requirement under sec-  
5 tion 713(d) of the Employee Retirement Income Security  
6 Act of 1974 with respect to the requirements referred to  
7 in subsection (a) as if such section applied to such issuer  
8 and such issuer were a group health plan.”.

9 (2) CONFORMING AMENDMENT.—Section  
10 2762(b)(2) of such Act (42 U.S.C. 300gg-62(b)(2))  
11 is amended by striking “section 2751” and inserting  
12 “sections 2751 and 2752”.

13 (c) EFFECTIVE DATES.—

14 (1) GROUP MARKET REFORMS.—

15 (A) IN GENERAL.—The amendments made  
16 by subsections (a) and (b) shall apply with re-  
17 spect to plan years beginning on or after Janu-  
18 ary 1, 1999.

19 (B) SPECIAL RULE FOR COLLECTIVE BAR-  
20 GAINING AGREEMENTS.—In the case of a group  
21 health plan maintained pursuant to 1 or more  
22 collective bargaining agreements between em-  
23 ployee representatives and 1 or more employers  
24 ratified before such date, the amendments made

1 by such subsections shall not apply to plan  
2 years beginning before the later of—

3 (i) the date on which the last collec-  
4 tive bargaining agreements relating to the  
5 plan terminates (determined without re-  
6 gard to any extension thereof agreed to  
7 after the date of enactment of this Act), or

8 (ii) January 1, 1999.

9 For purposes of clause (i), any plan amendment  
10 made pursuant to a collective bargaining agree-  
11 ment relating to the plan which amends the  
12 plan solely to conform to any requirement  
13 added by such subsections shall not be treated  
14 as a termination of such collective bargaining  
15 agreement.

16 (2) INDIVIDUAL MARKET AMENDMENTS.—The  
17 amendments made by subsection (b) shall apply with  
18 respect to health insurance coverage offered, sold,  
19 issued, renewed, in effect, or operated in the individ-  
20 ual market on or after January 1, 1999.

21 (d) COORDINATED REGULATIONS.—Section 104(1)  
22 of Health Insurance Portability and Accountability Act of  
23 1996 is amended by striking “this subtitle (and the  
24 amendments made by this subtitle and section 401)” and  
25 inserting “the provisions of part 7 of subtitle B of title

1 I of the Employee Retirement Income Security Act of  
2 1974, the provisions of parts A and C of title XXVII of  
3 the Public Health Service Act, and chapter 100 of the In-  
4 ternal Revenue Code of 1986”.

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