

105TH CONGRESS  
2D SESSION

# H. R. 4419

To amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to permit physicians to prescribe non-formulary drugs when medically indicated.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. KLINK 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 the Employee Retirement Income Security Act of 1974 to permit physicians to prescribe non-formulary drugs when medically indicated.

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 Guarantee  
5        Act of 1998”.

6        **SEC. 2. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

7        (a) GROUP HEALTH PLANS.—

1           (1) AMENDMENTS TO THE PUBLIC HEALTH  
2 SERVICE ACT.—

3           (A) IN GENERAL.—Subpart 2 of part A of  
4 title XXVII of the Public Health Service Act is  
5 amended by adding at the end the following  
6 new section:

7 **“SEC. 2706. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

8           “(a) REQUIREMENT.—If a group health plan, or  
9 health insurance issuer that offers health insurance cov-  
10 erage in connection with a group health plan, provides  
11 benefits with respect to prescription drugs but the plan  
12 or coverage limits such benefits to (or provides more favor-  
13 able benefits with respect to) drugs included in a for-  
14 mulary, the plan or issuer shall—

15           “(1) upon request, make available to the public  
16 in printed form a description of the nature of any  
17 formulary restrictions; and

18           “(2) provide for exceptions from the formulary  
19 restrictions limitation when the plan or beneficiary’s  
20 physician, subject to reasonable review by the plan  
21 or issuer, determines that a non-formulary alter-  
22 native is medically beneficial based on a therapeutic  
23 difference to the patient involved.

24           “(b) INCREASE COPAYMENTS PERMITTED FOR NON-  
25 FORMULARY DRUGS.—If a participating physician pre-

1 scribes a non-formulary alternative prescription drug, a  
2 group health plan, or health insurance issuer may increase  
3 the copayment rate for such alternative to twice the rate  
4 applicable to comparable prescription drugs included in  
5 the formulary.

6       “(c) COVERAGE OF APPROVED DRUGS.—A group  
7 health plan (or health insurance coverage offered in con-  
8 nection with such a plan) that provides any coverage of  
9 prescription drugs shall not deny coverage of such a drug  
10 if the use is included in the labeling authorized by the  
11 application in effect for the drug pursuant to subsection  
12 (b) or (j) of section 505 of the Federal Food, Drug, and  
13 Cosmetic Act; or under subsection (f) of such section, or  
14 an application approved under section 515 of such Act.

15       “(d) NONDISCRIMINATION.—A group health plan, or  
16 health insurance issuer that offers health insurance cov-  
17 erage, shall not discriminate in participation, reimburse-  
18 ment, or indemnification against a health professional,  
19 who is acting within the scope of the health professional’s  
20 license or certification under applicable State law, solely  
21 based on the extent, type, or pattern of prescription drugs.

22       “(e) ANY WILLING PHARMACIST.—A group health  
23 plan, or health insurance issuer that offers health insur-  
24 ance coverage, shall not exclude a pharmacist from its net-  
25 work of providers if such pharmacist is willing to enter

1 into a contract with the plan or issuer to provide drugs  
2 at the rate prescribed by the plan or issuer.

3 “(f) NOTICE.—A group health plan under this part  
4 shall comply with the notice requirement under section  
5 713(f) of the Employee Retirement Income Security Act  
6 of 1974 with respect to the requirements of this section  
7 as if such section applied to such plan.”.

8 (B) CONFORMING AMENDMENT.—Section  
9 2723(c) of such Act (42 U.S.C. 300gg–23(c)) is  
10 amended by striking “section 2704” and insert-  
11 ing “sections 2704 and 2706”.

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

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

18 **“SEC. 713. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

19 “(a) REQUIREMENT.—If a group health plan, or  
20 health insurance issuer that offers health insurance cov-  
21 erage in connection with a group health plan, provides  
22 benefits with respect to prescription drugs but the plan  
23 or coverage limits such benefits to (or provides more favor-  
24 able benefits with respect to) drugs included in a for-  
25 mulary, the plan or issuer shall—

1           “(1) upon request, make available to the public  
2           in printed form a description of the nature of any  
3           formulary restrictions; and

4           “(2) provide for exceptions from the formulary  
5           restrictions limitation when the plan or beneficiary’s  
6           physician, subject to reasonable review by the plan  
7           or issuer, determines that a non-formulary alter-  
8           native is medically beneficial based on a therapeutic  
9           difference to the patient involved.

10          “(b) INCREASE COPAYMENTS PERMITTED FOR NON-  
11 FORMULARY DRUGS.—If a participating physician pre-  
12 scribes a non-formulary alternative prescription drug, a  
13 group health plan, or health insurance issuer may increase  
14 the co-payment rate for such alternative to twice the rate  
15 applicable to comparable prescription drugs included in  
16 the formulary.

17          “(c) COVERAGE OF APPROVED DRUGS.—A group  
18 health plan (or health insurance coverage offered in con-  
19 nection with such a plan) that provides any coverage of  
20 prescription drugs shall not deny coverage of such a drug  
21 if the use is included in the labeling authorized by the  
22 application in effect for the drug pursuant to subsection  
23 (b) or (j) of section 505 of the Federal Food, Drug, and  
24 Cosmetic Act; or under subsection (f) of such section, or  
25 an application approved under section 515 of such Act.

1           “(d) NONDISCRIMINATION.—A group health plan, or  
2 health insurance issuer that offers health insurance cov-  
3 erage, shall not discriminate in participation, reimburse-  
4 ment, or indemnification against a health professional,  
5 who is acting within the scope of the health professional’s  
6 license or certification under applicable State law, solely  
7 based on the extent, type, or pattern of prescription drugs.

8           “(e) ANY WILLING PHARMACIST.—A group health  
9 plan, or health insurance issuer that offers health insur-  
10 ance coverage, shall not exclude a pharmacist from its net-  
11 work of providers if such pharmacist is willing to enter  
12 into a contract with the plan or issuer to provide drugs  
13 at the rate prescribed by the plan or issuer.

14           “(f) NOTICE UNDER GROUP HEALTH PLAN.—The  
15 imposition of the requirements of this section shall be  
16 treated as a material modification in the terms of the plan  
17 described in section 102(a)(1), for purposes of assuring  
18 notice of such requirements under the plan; except that  
19 the summary description required to be provided under the  
20 last sentence of section 104(b)(1) with respect to such  
21 modification shall be provided by not later than 60 days  
22 after the first day of the first plan year in which such  
23 requirements apply.”.

24                           (B) CONFORMING AND CLERICAL AMEND-  
25                           MENTS.—(i) Section 731(c) of such Act (29

1 U.S.C. 1191(c)) is amended by striking “sec-  
2 tion 711” and inserting “sections 711 and  
3 713”.

4 (ii) Section 732(a) of such Act (29 U.S.C.  
5 1191a(a)) is amended by striking “section 711”  
6 and inserting “sections 711 and 713”.

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

“Sec. 713. Access to needed prescription drugs.”.

10 (b) INDIVIDUAL HEALTH INSURANCE.—

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

14 **“SEC. 2752. ACCESS TO NEEDED PRESCRIPTION DRUGS.**

15 “(a) IN GENERAL.—The provisions of section 2706  
16 shall apply to health insurance coverage offered by a  
17 health insurance issuer in the individual market in the  
18 same manner as they apply to health insurance coverage  
19 offered by a health insurance issuer in connection with a  
20 group health plan in the small or large group market.

21 “(b) NOTICE.—A health insurance issuer under this  
22 part shall comply with the notice requirement under sec-  
23 tion 713(f) of the Employee Retirement Income Security  
24 Act of 1974 with respect to the requirements referred to

1 in subsection (a) as if such section applied to such issuer  
2 and such issuer were a group health plan.”.

3 (2) CONFORMING AMENDMENT.—Section  
4 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2))  
5 is amended by striking “section 2751” and inserting  
6 “sections 2751 and 2752”.

7 (d) EFFECTIVE DATES.—

8 (1) GROUP MARKET REFORMS.—

9 (A) IN GENERAL.—The amendments made  
10 by subsection (a) shall apply with respect to  
11 plan years beginning on or after January 1,  
12 1999.

13 (B) SPECIAL RULE FOR COLLECTIVE BAR-  
14 GAINING AGREEMENTS.—In the case of a group  
15 health plan maintained pursuant to 1 or more  
16 collective bargaining agreements between em-  
17 ployee representatives and 1 or more employers  
18 ratified before such date, the amendments made  
19 by such subsections shall not apply to plan  
20 years beginning before the later of—

21 (i) the date on which the last collec-  
22 tive bargaining agreements relating to the  
23 plan terminates (determined without re-  
24 gard to any extension thereof agreed to  
25 after the date of enactment of this Act), or

1 (ii) January 1, 1999.

2 For purposes of clause (i), any plan amendment  
3 made pursuant to a collective bargaining agree-  
4 ment relating to the plan which amends the  
5 plan solely to conform to any requirement  
6 added by such clause shall not be treated as a  
7 termination of such collective bargaining agree-  
8 ment.

9 (2) INDIVIDUAL MARKET AMENDMENTS.—The  
10 amendments made by subsection (c) shall apply with  
11 respect to health insurance coverage offered, sold,  
12 issued, renewed, in effect, or operated in the individ-  
13 ual market on or after January 1, 1999.

14 (e) COORDINATED REGULATIONS.—Section 104(1) of  
15 Health Insurance Portability and Accountability Act of  
16 1996 is amended by striking “this subtitle (and the  
17 amendments made by this subtitle and section 401)” and  
18 inserting “the provisions of part 7 of subtitle B of title  
19 I of the Employee Retirement Income Security Act of  
20 1974, the provisions of parts A and C of title XXVII of  
21 the Public Health Service Act, and chapter 100 of the In-  
22 ternal Revenue Code of 1986”.

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