Pre-Existing Conditions Protection Act of 2017 (HR 1121, 115th Congress)

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Last Action
Referred to Subcommittee

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Originating Entity
House of Representatives

The Policy

What it does
In the event the Patient Protection and Affordable Care Act is repealed: prohibits the application of health insurance exclusions based on pre-existing conditions, guarantees availability of health insurance for every employer and individual applying for coverage, and prohibits health insurance discrimination based on health status and health status-related factors, including genetic information.

Synopsis
HR 1121, the Pre-Existing Conditions Protection Act of 2017, has provisions that will take effect if the Patient Protection and Affordable Care Act (ACA) and the health care provisions of the Health Care and Education Reconciliation Act of 2010 are repealed. In the event of such a repeal, HR 1121 preserves health insurance consumer protections provided by the ACA, such as the pre-existing conditions provision. Specifically, this bill will amend the Public Health Service Act (42 U.S.C. 300gg-41 et seq.), title I of the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1181 et seq.), and Subchapter B of chapter 100 of the Internal Revenue Code (IRC) of 1986 (26 U.S.C. 9815) to uphold the following consumer protections:

- Health insurance issuers and group health plans (hereafter collectively referred to as health insurers) may not deny or limit benefits for pre-existing condition, which is defined as “a condition that was present before the date of enrollment.”
  - Genetic information may not be treated as a pre-existing condition in the absence of a diagnosis.
- Health insurers must accept every employer and individual who applies for group market insurance, and every individual that applies for individual market insurance.
• Health insurers are prohibited from discrimination based on health status and health status-related factors (including genetic information [23]) both in the group market and individual market:
  ◦ Health insurers are prohibited from adjusting individual premiums or contributions based upon health status-related factors. However, health insurance issuers offering employee group health plans retain the ability to increase the premiums for employers when individuals insured within the plan develop a disease or a disorder;
  ◦ Health insurers are largely prohibited from requesting an individual or a family member to undergo genetic testing [24];
    ▪ Health insurers may obtain and use the results of a genetic test in order to make a determination regarding payment for services; and
    ▪ Limited exemptions for research purposes are permitted.
  ◦ Health insurers are prohibited from requesting, requiring, or purchasing genetic information with respect to any individual or group, either for underwriting purposes or before enrollment in a plan. An individual’s or family member’s genetic information includes the genetic information of a fetus [25] carried by or embryo [26] legally held by that individual or family member;
  ◦ For the purpose of health promotion or disease prevention programs (wellness programs [27]), discounts or rewards based on satisfying a standard that is related to health status factors cannot exceed a value of 30 percent of the cost of coverage under the plan. A reasonable alternative standard [28] must be made available for individuals for whom it would be medically difficult or inadvisable to meet the original standard.

Context

Efforts to pass federal legislation protecting individuals from discrimination based on their genetic information began in 1995. The 104th U.S. Congress [29] (1995-1996) proposed bills for both genetic privacy [30] and nondiscrimination [31], and passed The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104–191 [32], which was enacted on August 21, 1996. HIPAA stipulated privacy protections for individually identifiable health information (including genetic information) and provided limited protection from genetic discrimination by group health insurers.

On May 21, 2008, The 110th U.S. Congress [33] enacted GINA, an act that protects individuals from genetic discrimination by restricting the collection and use of genetic information by health insurers and employers.

On March 23, 2010, the 111th U.S. Congress [34] enacted the ACA. The ACA further protects individuals from genetic discrimination as a result of obtained genetic information by limiting the factors that influence how health insurance issuers can vary premiums (limited to age and geographic location); this prevents the alteration of premiums based on genetic information. The ACA also prohibits health insurance issuers from discriminating against pre-existing conditions, which includes genetic conditions.

Policy History

• HR 628 [35], the Guaranteed Health Coverage for Pre-Existing Conditions Act, was introduced on January 24, 2017, several weeks before HR 1121 was introduced. It also proposed to amend the Public Health Service Act (42 U.S.C. 300gg-41[36] et seq.) upon the repeal of the Patient Protection and Affordable Care Act [15] (ACA) and the provisions of the Health Care and Education Reconciliation Act [16] of 2010. Similar to HR 1121, HR 628 would maintain the requirements that health insurance covers pre-existing conditions and that health insurers accept every employer and individual applying for coverage, but it does not include provisions on health insurers collecting genetic information or discriminating based on health status.
  • HR 1628 [37], 115th Congress, also known as the American Health Care Act of 2017, was passed in the House of Representatives on May 4, 2017 by a recorded yea-nay vote of 217–213. However, it failed to pass the Senate by a recorded yea-nay vote of 49-51. HR 1628 is considered a partial repeal of the ACA, so if it had passed it would likely not have triggered the provisions of HR 1121.
  • S 106 [38], 115th Congress; S 222 [39], 115th Congress; HR 175 [40], 115th Congress; HR 370 [41], 115th Congress; and HR 1072 [42], 115th Congress have each been introduced by Republicans and referred to committees to repeal the Patient Protection and Affordable Care Act. None have passed in their respective chambers.

The Science

Science Synopsis

Genetic Information:

"Genetic information [43]," as defined in the U.S. Code (42 U.S.C. 300gg-91(d)(16) [44]), is information about an individual's or family member's:

• Family history [45] of diseases and disorders; or
• Genetic test [24] results: results of voluntary medical test that identify changes or variations [46] in a person's genetic makeup (namely, their genes [47]) by analyzing their DNA [48], RNA [49], proteins [50], or metabolites [51].

This includes genetic information acquired during participation in research or clinical trials that require genetic testing or services by either an individual or a family member (including testing conducted on fetuses and embryos). It also includes any request/receipt of genetic tests, genetic counseling [52], genetic education, or other genetic services.
Genetic Testing:

Genetic testing involves the analysis of human DNA, either directly or indirectly, in order to identify genetic differences or mutations that may prove to be pathological. Genetic tests are performed by analyzing a sample of blood, saliva, hair, skin, or amniotic fluid in a laboratory. The results of a genetic test can confirm or rule out the possibility of a genetic condition and can assess the probability of an individual developing a genetic condition in the future. Genetic test results can also determine the probability that an individual will pass on genetic traits, diseases, and conditions to their children. Because of rapid technological development, specifically within sequencing techniques used to "read" the information encoded in DNA, acquiring insights into disease risk has become progressively easier and less expensive.

Relevant Experts

Sara Katsanis, MS is a Duke University instructor in the Duke Initiative for Science & Society. Her research focuses on policies for DNA testing in law enforcement and human rights contexts.

Relevant Publications:


The Debate

Endorsements & Opposition

Endorsements:

- **Energy and Commerce Committee Chairman Greg Walden (R-OR-2)**, the bill's sponsor, stated: "The push to rebuild our health care system is all about patients, which is why we are making this commitment to protect patients living with pre-existing conditions – it's only fair.... House Republicans are committed to patient-centered reforms that increase access to quality, affordable care and guarantee that all Americans are protected from unfair, higher premium costs simply due to how healthy or sick they may be."

- **Representative Cathy McMorris Rodgers (R-WA-5)**, a co-sponsor, stated: "Every American, including those with disabilities or other pre-existing conditions, should have access to affordable coverage that puts patients back in control of their health care decisions. With this bill, we are giving individuals with pre-existing conditions the peace of mind that they will have protections beyond Obamacare."

- **Representative Stephen Knight (R-CA-25)**, a co-sponsor, stated: "We must repair our healthcare system to make it work for all Americans, but that does not mean getting rid of recent changes to healthcare policy that are in now in place and working. The Pre-Existing Conditions Protection Act will make that guarantee for one of those critical changes."

Opposition:

At present, there has been no publicly reported opposition to this bill.

Status

HR 1121 was introduced in the House on February 16, 2017, and referred to the House Committee on Energy and Commerce, the House Committee on Education and the Workforce, and the House Committee on Ways and Means. On February 28, 2017, HR 1121 was referred to the Subcommittee on Health.

Recommended Citation


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pre-existing conditions, genetic information, Affordable Care Act (ACA)