



## Legislative Bulletin.....March 5, 2008

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#### **H.R. 1424**—Paul Wellstone Mental Health and Addiction Equity Act

H.R. 1424, the Paul Wellstone Mental Health and Addiction Equity Act (sponsored by Rep. Patrick Kennedy, D-RI), is scheduled to be considered on the House floor on Wednesday, March 5, 2008, under a closed rule.

The rule provides for two hours of general debate, waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

At the time of engrossment, the rule would also direct the Clerk to insert the text of H.R. 493, the Genetic Information Non-Discrimination Act, at the end of H.R. 1424 as new matter.

For a summary of the underlying bill, see a separate RSC document released yesterday.

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### **LEGISLATION TO BE ADDED TO THE BILL UNDER THE RULE**

#### **H.R. 493—Genetic Information Nondiscrimination Act of 2007** *(Slaughter, D-NY)*

**Summary:** H.R. 493 would prohibit the use of genetic information by employers in employment decisions and by health insurers and health plans in making enrollment determinations and setting insurance premiums. The specific provisions of the bill are summarized below.

- Amends the Employee Retirement Income Security Act (ERISA), the Public Health Service Act, and the Internal Revenue Code to prohibit a group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, from the following:

- Adjusting premium or contribution amounts for the group covered under the plan on the basis of genetic information;
- Requiring an individual or a family member of that individual to undergo a genetic test;
- Requesting, requiring, or purchasing genetic information for underwriting purposes; and
- Requesting, requiring, or purchasing genetic information with respect to any individual prior to that individual's enrollment under the plan or coverage in connection with their enrollment.

The bill allows for certain research exceptions to the above prohibitions.

- Defines an individual or a family member for purposes of this Act as:
  - The fetus inside of a pregnant mother; and
  - Any embryo legally held by the individual or family member (with respect to assisted reproductive technology).
- Defines genetic test as: "an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes." The definition does not include the following:
  - "An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or
  - "An analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved."
- Imposes a penalty against any plan sponsor or group health plan for failure to meet requirements with respect to genetic information in connection with their health plan. The penalty would be \$100 each day in noncompliance with respect to each participant to whom such failure relates. Under certain circumstances, the penalty could not be less than \$2,500. In addition, the Secretary could waive the penalty under certain circumstances.
- Prohibits a health insurance issuer in the individual market from doing the following:
  - Establishing rules for the eligibility of any individual to enroll in individual health insurance coverage based on genetic information;
  - Adjusting premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual;
  - Imposing any preexisting condition exclusion based on the basis of genetic information, with respect to their coverage;
  - Requesting or requiring an individual or family member to undergo a genetic test;
  - Requesting, requiring or purchasing genetic information for underwriting purposes; and
  - Collecting genetic information with respect to any individual prior to the individual's enrollment under the plan.
- Prohibits an issuer of a Medicare supplemental policy from the following:
  - Denying or conditioning the issuance of a policy and from discriminating in the pricing of the policy of an individual on the basis of genetic information;

- Requesting or requiring an individual or family member to undergo a genetic test; and
- Requesting, requiring or purchasing genetic information for underwriting purposes.
- Directs the National Association of Insurance Commissioners (NAIC) to modify its NAIC model regulations to mirror the above prohibitions required by this Act.
- Directs the Secretary of Health and Human Services to revise the Health Insurance Portability and Accountability Act (HIPAA) private regulations to be consistent with provisions in this Act, affecting the use of genetic information.
- Prohibits employers, employment agencies, and labor organizations from the following:
  - Refusing to hire an employee or discriminating against an employee because of genetic information related to that individual;
  - Limiting, segregating or classifying employees in any way that would deprive or adversely affect the status of the employee in light of their genetic information; and
  - Requiring or purchasing genetic information, except in certain circumstances.

**Additional Information:** In Committee Report [110-28](#), Part 1, several Republican Members outlined extensive concerns in the Minority Views section of the report. The following is a small excerpt from the Minority Views portion of the report.

“Advocates of federal genetic nondiscrimination legislation argue that such legislation is necessary to ensure that individuals avail themselves of genetic testing without fear of reprisal in their employment or health insurance coverage. Others argue that the case has not yet been made that federal legislation is prudent or necessary—there has been no evidence of large-scale employer genetic testing or discrimination—and in any case, if federal legislation is to be adopted, it should be carefully drawn to address real concerns and not lead to frivolous litigation, inconsistent or contradictory standards, or undue burden on employers. Finally, many question whether existing federal laws and regulations provide adequate protection from the potential of genetic nondiscrimination. In addition, more than half of the states have enacted laws that restrict the use of genetic information in health insurance and employment decisions.”

**Committee Action:** H.R. 493 was introduced on January 16, 2007, and referred to the House Committees on Education and Labor, Energy and Commerce, and Ways and Means. The Education and Labor Committee held a mark-up and reported the bill, as amended, by voice vote on February 14, 2007. The Energy and Commerce Committee held a mark-up and reported the bill, as amended, on March 23, 2007. The Ways and Means Committee held a mark-up and reported the bill, as amended, by voice vote on March 21, 2007. The bill was passed on April 25, 2007 by a vote of 420 to three.

**Possible Conservative Concerns:** In addition to the broader question of the bill’s necessity (as discussed above), some conservatives may be concerned that the bill’s imprecise language may provide regulatory confusion for business—and an avenue for potential lawsuits for sponsors of group health insurance—in several key respects:

- Title I imposes requirements on health plans regarding insurance coverage, while Title II imposes requirements on employers regarding employment and related hiring decisions. However, there is no explicit language clarifying that group health insurance plan sponsors may not be subjected to the more expansive remedies provided by Title II, which provides for rulemaking by the Equal Employment Opportunity Commission (EEOC), and remedies before the same body and, ultimately, federal courts. In fact, during floor debate on H.R. 493, Congressman Rob Andrews (D-NJ) [suggested](#) that “employers, including to the extent employers control or direct benefit plans, are subject to the requirements of Title II of this bill”—including the much broader definition of genetic test and tougher penalties associated with that title. This lack of clarity could lead to additional lawsuits, through use of the broader remedies available in Title II that are intended to be reserved for employers who violate their employees’ civil rights, not for employees seeking to litigate group health plan disputes.
- The bill does not include a “business necessity” exemption for employers, consistent with the Americans with Disabilities Act, to ensure that businesses are not punished for non-discriminatory use of their workers’ genetic information. For example, a new exemption for law enforcement usage of genetic information during employee DNA testing, was added to the bill just prior to House consideration—even though the bill has been introduced for over a decade. Because there may be additional scenarios yet unforeseen that may require similar exemptions, lack of a general business necessity exemption could subject businesses to unnecessary and costly litigation.
- Lastly, the bill as written does not clearly distinguish whether “manifested” diseases are covered by GINA provisions. In general, health plans can receive information about whether an individual has a manifested disease, and these facts can be used during the underwriting process for individual and small group coverage in some states. Lack of clarity in the language would disrupt long-established underwriting processes for *diseases already manifested* in patients—which is not consistent with the bill’s focus on genetic information.

**Cost to Taxpayers:** According to CBO, enacting H.R. 493 “would increase the number of individuals who obtain health insurance by about 600 people per year, nearly all of whom would obtain insurance in the individual market. The bill would affect federal revenues because the premiums paid by some of those newly insured individuals would be tax-deductible.” As such, CBO estimates that the bill would reduce revenues by less than \$500,000 in each year from 2008 through 2017, by \$1 million over the 2008-2012 period, and by \$2 million over the 2008 through 2017 period.

In addition, CBO states, that “the bill’s requirements would apply to Medicare supplemental insurance, which would affect direct spending for Medicare.” However, CBO estimates that the

bill would have no significant effect on direct spending. Finally, CBO estimates that H.R. 493 would result in discretionary costs of less than \$500,000 in FY 2008, and \$2 million over the FY 2008 through FY 2017 period.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes. According to CBO, the bill would “preempt some state laws that establish confidentiality standards for generic information, and would restrict how state and local governments use such information in employment practices and in the provision of health care to employees.” In addition, CBO explains that the bill “contains private-sector mandates on health insurers, health plans, employers, labor unions, and other organizations.”

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