

108TH CONGRESS
1ST SESSION

S. 486

To provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2003

Mr. DOMENICI (for himself, Mr. KENNEDY, Mr. COLEMAN, Mr. DAYTON, Mr. GRASSLEY, Mr. REED, Mr. COCHRAN, Mr. DODD, Mr. WARNER, Mr. REID, Mr. THOMAS, Mr. JOHNSON, Mr. SPECTER, Mr. HARKIN, Mr. LUGAR, Mr. DASCHLE, Mr. GRAHAM of South Carolina, Mrs. MURRAY, Ms. COLLINS, Ms. CANTWELL, Mr. ROBERTS, Mr. EDWARDS, Mr. CHAFEE, Mrs. LINCOLN, Mr. BENNETT, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

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 “Senator Paul
5 Wellstone Mental Health Equitable Treatment Act of
6 2003”.

1 **SEC. 2. AMENDMENT TO THE EMPLOYEE RETIREMENT IN-**
 2 **COME SECURITY ACT OF 1974.**

3 (a) IN GENERAL.—Section 712 of the Employee Re-
 4 tirement Income Security Act of 1974 (29 U.S.C. 1185a)
 5 is amended to read as follows:

6 **“SEC. 712. MENTAL HEALTH PARITY.**

7 “(a) IN GENERAL.—In the case of a group health
 8 plan (or health insurance coverage offered in connection
 9 with such a plan) that provides both medical and surgical
 10 benefits and mental health benefits, such plan or coverage
 11 shall not impose any treatment limitations or financial re-
 12 quirements with respect to the coverage of benefits for
 13 mental illnesses unless comparable treatment limitations
 14 or financial requirements are imposed on medical and sur-
 15 gical benefits.

16 “(b) CONSTRUCTION.—

17 “(1) IN GENERAL.—Nothing in this section
 18 shall be construed as requiring a group health plan
 19 (or health insurance coverage offered in connection
 20 with such a plan) to provide any mental health bene-
 21 fits.

22 “(2) MEDICAL MANAGEMENT OF MENTAL
 23 HEALTH BENEFITS.—Consistent with subsection (a),
 24 nothing in this section shall be construed to prevent
 25 the medical management of mental health benefits,
 26 including through concurrent and retrospective utili-

1 zation review and utilization management practices,
 2 preauthorization, and the application of medical ne-
 3 cessity and appropriateness criteria applicable to be-
 4 havioral health and the contracting and use of a net-
 5 work of participating providers.

6 “(3) NO REQUIREMENT OF SPECIFIC SERV-
 7 ICES.—Nothing in this section shall be construed as
 8 requiring a group health plan (or health insurance
 9 coverage offered in connection with such a plan) to
 10 provide coverage for specific mental health services,
 11 except to the extent that the failure to cover such
 12 services would result in a disparity between the cov-
 13 erage of mental health and medical and surgical
 14 benefits.

15 “(c) SMALL EMPLOYER EXEMPTION.—

16 “(1) IN GENERAL.—This section shall not apply
 17 to any group health plan (and group health insur-
 18 ance coverage offered in connection with a group
 19 health plan) for any plan year of any employer who
 20 employed an average of at least 2 but not more than
 21 50 employees on business days during the preceding
 22 calendar year.

23 “(2) APPLICATION OF CERTAIN RULES IN DE-
 24 TERMINATION OF EMPLOYER SIZE.—For purposes of
 25 this subsection—

1 “(A) APPLICATION OF AGGREGATION RULE
 2 FOR EMPLOYERS.—Rules similar to the rules
 3 under subsections (b), (c), (m), and (o) of sec-
 4 tion 414 of the Internal Revenue Code of 1986
 5 shall apply for purposes of treating persons as
 6 a single employer.

7 “(B) EMPLOYERS NOT IN EXISTENCE IN
 8 PRECEDING YEAR.—In the case of an employer
 9 which was not in existence throughout the pre-
 10 ceding calendar year, the determination of
 11 whether such employer is a small employer shall
 12 be based on the average number of employees
 13 that it is reasonably expected such employer
 14 will employ on business days in the current cal-
 15 endar year.

16 “(C) PREDECESSORS.—Any reference in
 17 this paragraph to an employer shall include a
 18 reference to any predecessor of such employer.

19 “(d) SEPARATE APPLICATION TO EACH OPTION OF-
 20 FERED.—In the case of a group health plan that offers
 21 a participant or beneficiary two or more benefit package
 22 options under the plan, the requirements of this section
 23 shall be applied separately with respect to each such op-
 24 tion.

1 “(e) IN-NETWORK AND OUT-OF-NETWORK RULES.—

2 In the case of a plan or coverage option that provides in-
 3 network mental health benefits, out-of-network mental
 4 health benefits may be provided using treatment limita-
 5 tions or financial requirements that are not comparable
 6 to the limitations and requirements applied to medical and
 7 surgical benefits if the plan or coverage provides such in-
 8 network mental health benefits in accordance with sub-
 9 section (a) and provides reasonable access to in-network
 10 providers and facilities.

11 “(f) DEFINITIONS.—For purposes of this section—

12 “(1) FINANCIAL REQUIREMENTS.—The term
 13 ‘financial requirements’ includes deductibles, coin-
 14 surance, co-payments, other cost sharing, and limita-
 15 tions on the total amount that may be paid by a
 16 participant or beneficiary with respect to benefits
 17 under the plan or health insurance coverage and
 18 shall include the application of annual and lifetime
 19 limits.

20 “(2) MEDICAL OR SURGICAL BENEFITS.—The
 21 term ‘medical or surgical benefits’ means benefits
 22 with respect to medical or surgical services, as de-
 23 fined under the terms of the plan or coverage (as the
 24 case may be), but does not include mental health
 25 benefits.

1 “(3) MENTAL HEALTH BENEFITS.—The term
 2 ‘mental health benefits’ means benefits with respect
 3 to services, as defined under the terms and condi-
 4 tions of the plan or coverage (as the case may be),
 5 for all categories of mental health conditions listed
 6 in the Diagnostic and Statistical Manual of Mental
 7 Disorders, Fourth Edition (DSM IV–TR), or the
 8 most recent edition if different than the Fourth Edi-
 9 tion, if such services are included as part of an au-
 10 thorized treatment plan that is in accordance with
 11 standard protocols and such services meet the plan
 12 or issuer’s medical necessity criteria. Such term does
 13 not include benefits with respect to the treatment of
 14 substance abuse or chemical dependency.

15 “(4) TREATMENT LIMITATIONS.—The term
 16 ‘treatment limitations’ means limitations on the fre-
 17 quency of treatment, number of visits or days of cov-
 18 erage, or other similar limits on the duration or
 19 scope of treatment under the plan or coverage.”.

20 (b) EFFECTIVE DATE.—The amendment made by
 21 this section shall apply with respect to plan years begin-
 22 ning on or after January 1, 2004.

1 **SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 2 **RELATING TO THE GROUP MARKET.**

3 (a) IN GENERAL.—Section 2705 of the Public Health
 4 Service Act (42 U.S.C. 300gg–5) is amended to read as
 5 follows:

6 **“SEC. 2705. MENTAL HEALTH PARITY.**

7 “(a) IN GENERAL.—In the case of a group health
 8 plan (or health insurance coverage offered in connection
 9 with such a plan) that provides both medical and surgical
 10 benefits and mental health benefits, such plan or coverage
 11 shall not impose any treatment limitations or financial re-
 12 quirements with respect to the coverage of benefits for
 13 mental illnesses unless comparable treatment limitations
 14 or financial requirements are imposed on medical and sur-
 15 gical benefits.

16 “(b) CONSTRUCTION.—

17 “(1) IN GENERAL.—Nothing in this section
 18 shall be construed as requiring a group health plan
 19 (or health insurance coverage offered in connection
 20 with such a plan) to provide any mental health bene-
 21 fits.

22 “(2) MEDICAL MANAGEMENT OF MENTAL
 23 HEALTH BENEFITS.—Consistent with subsection (a),
 24 nothing in this section shall be construed to prevent
 25 the medical management of mental health benefits,
 26 including through concurrent and retrospective utili-

1 zation review and utilization management practices,
 2 preauthorization, and the application of medical ne-
 3 cessity and appropriateness criteria applicable to be-
 4 havioral health and the contracting and use of a net-
 5 work of participating providers.

6 “(3) NO REQUIREMENT OF SPECIFIC SERV-
 7 ICES.—Nothing in this section shall be construed as
 8 requiring a group health plan (or health insurance
 9 coverage offered in connection with such a plan) to
 10 provide coverage for specific mental health services,
 11 except to the extent that the failure to cover such
 12 services would result in a disparity between the cov-
 13 erage of mental health and medical and surgical
 14 benefits.

15 “(c) SMALL EMPLOYER EXEMPTION.—

16 “(1) IN GENERAL.—This section shall not apply
 17 to any group health plan (and group health insur-
 18 ance coverage offered in connection with a group
 19 health plan) for any plan year of any employer who
 20 employed an average of at least 2 but not more than
 21 50 employees on business days during the preceding
 22 calendar year.

23 “(2) APPLICATION OF CERTAIN RULES IN DE-
 24 TERMINATION OF EMPLOYER SIZE.—For purposes of
 25 this subsection—

1 “(A) APPLICATION OF AGGREGATION RULE
 2 FOR EMPLOYERS.—Rules similar to the rules
 3 under subsections (b), (c), (m), and (o) of sec-
 4 tion 414 of the Internal Revenue Code of 1986
 5 shall apply for purposes of treating persons as
 6 a single employer.

7 “(B) EMPLOYERS NOT IN EXISTENCE IN
 8 PRECEDING YEAR.—In the case of an employer
 9 which was not in existence throughout the pre-
 10 ceding calendar year, the determination of
 11 whether such employer is a small employer shall
 12 be based on the average number of employees
 13 that it is reasonably expected such employer
 14 will employ on business days in the current cal-
 15 endar year.

16 “(C) PREDECESSORS.—Any reference in
 17 this paragraph to an employer shall include a
 18 reference to any predecessor of such employer.

19 “(d) SEPARATE APPLICATION TO EACH OPTION OF-
 20 FERED.—In the case of a group health plan that offers
 21 a participant or beneficiary two or more benefit package
 22 options under the plan, the requirements of this section
 23 shall be applied separately with respect to each such op-
 24 tion.

1 “(e) IN-NETWORK AND OUT-OF-NETWORK RULES.—

2 In the case of a plan or coverage option that provides in-
 3 network mental health benefits, out-of-network mental
 4 health benefits may be provided using treatment limita-
 5 tions or financial requirements that are not comparable
 6 to the limitations and requirements applied to medical and
 7 surgical benefits if the plan or coverage provides such in-
 8 network mental health benefits in accordance with sub-
 9 section (a) and provides reasonable access to in-network
 10 providers and facilities.

11 “(f) DEFINITIONS.—For purposes of this section—

12 “(1) FINANCIAL REQUIREMENTS.—The term
 13 ‘financial requirements’ includes deductibles, coin-
 14 surance, co-payments, other cost sharing, and limita-
 15 tions on the total amount that may be paid by a
 16 participant, beneficiary or enrollee with respect to
 17 benefits under the plan or health insurance coverage
 18 and shall include the application of annual and life-
 19 time limits.

20 “(2) MEDICAL OR SURGICAL BENEFITS.—The
 21 term ‘medical or surgical benefits’ means benefits
 22 with respect to medical or surgical services, as de-
 23 fined under the terms of the plan or coverage (as the
 24 case may be), but does not include mental health
 25 benefits.

1 “(3) MENTAL HEALTH BENEFITS.—The term
 2 ‘mental health benefits’ means benefits with respect
 3 to services, as defined under the terms and condi-
 4 tions of the plan or coverage (as the case may be),
 5 for all categories of mental health conditions listed
 6 in the Diagnostic and Statistical Manual of Mental
 7 Disorders, Fourth Edition (DSM IV–TR), or the
 8 most recent edition if different than the Fourth Edi-
 9 tion, if such services are included as part of an au-
 10 thorized treatment plan that is in accordance with
 11 standard protocols and such services meet the plan
 12 or issuer’s medical necessity criteria. Such term does
 13 not include benefits with respect to the treatment of
 14 substance abuse or chemical dependency.

15 “(4) TREATMENT LIMITATIONS.—The term
 16 ‘treatment limitations’ means limitations on the fre-
 17 quency of treatment, number of visits or days of cov-
 18 erage, or other similar limits on the duration or
 19 scope of treatment under the plan or coverage.”.

20 (b) EFFECTIVE DATE.—The amendment made by
 21 this section shall apply with respect to plan years begin-
 22 ning on or after January 1, 2004.

23 **SEC. 4. PREEMPTION.**

24 Nothing in the amendments made by this Act shall
 25 be construed to preempt any provision of State law, with

1 respect to health insurance coverage offered by a health
2 insurance issuer in connection with a group health plan,
3 that provides protections to enrollees that are greater than
4 the protections provided under such amendments. Nothing
5 in the amendments made by this Act shall be construed
6 to affect or modify section 514 of the Employee Retirement
7 Income Security Act of 1974 (29 U.S.C. 1144).

8 **SEC. 5. GENERAL ACCOUNTING OFFICE STUDY.**

9 (a) STUDY.—The Comptroller General shall conduct
10 a study that evaluates the effect of the implementation
11 of the amendments made by this Act on the cost of health
12 insurance coverage, access to health insurance coverage
13 (including the availability of in-network providers), the
14 quality of health care, and other issues as determined ap-
15 propriate by the Comptroller General. Such study shall
16 also include an estimate of the cost that would be incurred
17 if such amendments were extended in a manner so as to
18 provide coverage for the treatment of substance abuse and
19 chemical dependency.

20 (b) REPORT.—Not later than 2 years after the date
21 of enactment of this Act, the Comptroller General shall
22 prepare and submit to the appropriate committees of Con-
23 gress a report containing the results of the study con-
24 ducted under subsection (a).

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