

111TH CONGRESS
1ST SESSION

H. R. 1339

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2009

Mrs. MCCARTHY of New York (for herself, Mr. TIBERI, Mr. GORDON of Tennessee, Mr. McDERMOTT, Mr. INSLEE, Mr. BARTLETT, Mr. BISHOP of Georgia, Mr. HINCHEY, Mr. ISRAEL, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KENNEDY, Mr. LEWIS of Georgia, Mr. MOORE of Kansas, Mr. MORAN of Virginia, Mr. PASCRELL, Mr. SMITH of New Jersey, Mr. TIERNEY, Mr. VAN HOLLEN, Mr. FILNER, Mr. McHUGH, Mr. CARSON of Indiana, Ms. SUTTON, Mr. CUMMINGS, Mr. WOLF, Mr. BISHOP of New York, Mr. GENE GREEN of Texas, Ms. HIRONO, Ms. SLAUGHTER, Mr. HOLT, Mr. LINCOLN DIAZ-BALART of Florida, Mr. GRIJALVA, Mr. MCGOVERN, Ms. SCHAKOWSKY, Ms. KAPTUR, Mr. NADLER of New York, Mr. WEXLER, Ms. LEE of California, Mr. SCOTT of Virginia, Mr. PIERLUISI, Ms. BERKLEY, Mrs. EMERSON, Mr. TAYLOR, and Mrs. MALONEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, 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

A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and indi-

vidual health insurance coverage and group health plans provide coverage for treatment of a minor child’s congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease.

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 “Children’s Access to
 5 Reconstructive Evaluation & Surgery (CARES) Act of
 6 2009”.

7 **SEC. 2. COVERAGE OF MINOR CHILD’S CONGENITAL OR DE-**
 8 **VELOPMENTAL DEFORMITY OR DISORDER.**

9 (a) GROUP HEALTH PLANS.—

10 (1) PUBLIC HEALTH SERVICE ACT AMEND-
 11 MENTS.—(A) Subpart 2 of part A of title XXVII of
 12 the Public Health Service Act is amended by adding
 13 at the end the following new section:

14 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR**
 15 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
 16 **MENTAL DEFORMITY OR DISORDER.**

17 **“(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-**
 18 **GERY.—**

19 **“(1) IN GENERAL.—**A group health plan, and a
 20 health insurance issuer offering group health insur-
 21 ance coverage, that provides coverage for surgical
 22 benefits shall provide coverage for outpatient and in-

1 patient diagnosis and treatment of a minor child's
2 congenital or developmental deformity, disease, or
3 injury. A minor child shall include any individual
4 through 21 years of age.

5 “(2) REQUIREMENTS.—Any coverage provided
6 under paragraph (1) shall be subject to pre-author-
7 ization or pre-certification as required by the plan or
8 issuer, and such coverage shall include any surgical
9 treatment which, in the opinion of the treating phy-
10 sician, is medically necessary to approximate a nor-
11 mal appearance.

12 “(3) TREATMENT DEFINED.—

13 “(A) IN GENERAL.—In this section, the
14 term ‘treatment’ includes reconstructive sur-
15 gical procedures (procedures that are generally
16 performed to improve function, but may also be
17 performed to approximate a normal appear-
18 ance) that are performed on abnormal struc-
19 tures of the body caused by congenital defects,
20 developmental abnormalities, trauma, infection,
21 tumors, or disease, including—

22 “(i) procedures that do not materially
23 affect the function of the body part being
24 treated; and

1 “(ii) procedures for secondary condi-
2 tions and follow-up treatment.

3 “(B) EXCEPTION.—Such term does not in-
4 clude cosmetic surgery performed to reshape
5 normal structures of the body to improve ap-
6 pearance or self-esteem.

7 “(b) NOTICE.—A group health plan under this part
8 shall comply with the notice requirement under section
9 714(b) of the Employee Retirement Income Security Act
10 of 1974 with respect to the requirements of this section
11 as if such section applied to such plan.”.

12 (B) Section 2723(c) of such Act (42 U.S.C.
13 300gg-23(c)) is amended by striking “section 2704”
14 and inserting “sections 2704 and 2708”.

15 (2) ERISA AMENDMENTS.—(A) Subpart B of
16 part 7 of subtitle B of title I of the Employee Re-
17 tirement Income Security Act of 1974 is amended by
18 adding at the end the following new section:

19 **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR MINOR**
20 **CHILD’S CONGENITAL OR DEVELOPMENTAL**
21 **DEFORMITY OR DISORDER.**

22 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
23 GERY.—

24 “(1) IN GENERAL.—A group health plan, and a
25 health insurance issuer offering group health insur-

1 ance coverage, that provides coverage for surgical
2 benefits shall provide coverage for outpatient and in-
3 patient diagnosis and treatment of a minor child's
4 congenital or developmental deformity, disease, or
5 injury. A minor child shall include any individual
6 who has not attained age 22.

7 “(2) REQUIREMENTS.—Any coverage provided
8 under paragraph (1) shall be subject to pre-author-
9 ization or pre-certification as required by the plan or
10 issuer, and such coverage shall include any surgical
11 treatment which, in the opinion of the treating phy-
12 sician, is medically necessary to approximate a nor-
13 mal appearance.

14 “(3) TREATMENT DEFINED.—

15 “(A) IN GENERAL.—For purposes of this
16 section, the term ‘treatment’ includes recon-
17 structive surgical procedures (procedures that
18 are generally performed to improve function,
19 but may also be performed to approximate a
20 normal appearance) that are performed on ab-
21 normal structures of the body caused by con-
22 genital defects, developmental abnormalities,
23 trauma, infection, tumors, or disease, includ-
24 ing—

1 “(i) procedures that do not materially
2 affect the function of the body part being
3 treated; and

4 “(ii) procedures for secondary condi-
5 tions and follow-up treatment.

6 “(B) EXCEPTION.—Such term does not in-
7 clude cosmetic surgery performed to reshape
8 normal structures of the body to improve ap-
9 pearance or self-esteem.

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

20 (B) Section 731(c) of such Act (29 U.S.C.
21 1191(c)) is amended by striking “section 711” and
22 inserting “sections 711 and 715”.

23 (C) Section 732(a) of such Act (29 U.S.C.
24 1191a(a)) is amended by striking “section 711” and
25 inserting “sections 711 and 715”.

1 (D) The table of contents in section 1 of such
2 Act is amended by inserting after the item relating
3 to section 714 the following new item:

“Sec. 715. Standards relating to benefits for minor child’s congenital or developmental deformity or disorder.”.

4 (3) INTERNAL REVENUE CODE AMEND-
5 MENTS.—

6 (A) IN GENERAL.—Subchapter B of chap-
7 ter 100 of the Internal Revenue Code of 1986
8 is amended by adding at the end the following
9 new section:

10 **“SEC. 9813. STANDARDS RELATING TO BENEFITS FOR**
11 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
12 **MENTAL DEFORMITY OR DISORDER.**

13 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
14 GERY.—

15 “(1) IN GENERAL.—A group health plan, and a
16 health insurance issuer offering group health insur-
17 ance coverage, that provides coverage for surgical
18 benefits shall provide coverage for outpatient and in-
19 patient diagnosis and treatment of a minor child’s
20 congenital or developmental deformity, disease, or
21 injury. A minor child shall include any individual
22 who has not attained age 22.

23 “(2) REQUIREMENTS.—Any coverage provided
24 under paragraph (1) shall be subject to pre-author-

1 ization or pre-certification as required by the plan or
2 issuer, and such coverage shall include any surgical
3 treatment which, in the opinion of the treating phy-
4 sician, is medically necessary to approximate a nor-
5 mal appearance.

6 “(3) TREATMENT DEFINED.—

7 “(A) IN GENERAL.—For purposes of this
8 section, the term ‘treatment’ includes recon-
9 structive surgical procedures (procedures that
10 are generally performed to improve function,
11 but may also be performed to approximate a
12 normal appearance) that are performed on ab-
13 normal structures of the body caused by con-
14 genital defects, developmental abnormalities,
15 trauma, infection, tumors, or disease, includ-
16 ing—

17 “(i) procedures that do not materially
18 affect the function of the body part being
19 treated; and

20 “(ii) procedures for secondary condi-
21 tions and follow-up treatment.

22 “(B) EXCEPTION.—Such term does not in-
23 clude cosmetic surgery performed to reshape
24 normal structures of the body to improve ap-
25 pearance or self-esteem.”.

1 (B) CLERICAL AMENDMENT.—The table of
 2 sections for such subchapter is amended by
 3 adding at the end the following new item:

“Sec. 9813. Standards relating to benefits for minor child’s congenital or developmental deformity or disorder.”.

4 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
 5 of title XXVII of the Public Health Service Act is amend-
 6 ed by inserting after section 2752 the following new sec-
 7 tion:

8 **“SEC. 2754. STANDARDS RELATING TO BENEFITS FOR**
 9 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
 10 **MENTAL DEFORMITY OR DISORDER.**

11 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
 12 GERY.—

13 “(1) IN GENERAL.—A group health plan, and a
 14 health insurance issuer offering group health insur-
 15 ance coverage, that provides coverage for surgical
 16 benefits shall provide coverage for outpatient and in-
 17 patient diagnosis and treatment of a minor child’s
 18 congenital or developmental deformity, disease, or
 19 injury. A minor child shall include any individual
 20 through 21 years of age.

21 “(2) REQUIREMENTS.—Any coverage provided
 22 under paragraph (1) shall be subject to pre-author-
 23 ization or pre-certification as required by the plan or
 24 issuer, and such coverage shall include any surgical

1 treatment which, in the opinion of the treating phy-
2 sician, is medically necessary to approximate a nor-
3 mal appearance.

4 “(3) TREATMENT DEFINED.—

5 “(A) IN GENERAL.—In this section, the
6 term ‘treatment’ includes reconstructive sur-
7 gical procedures (procedures that are generally
8 performed to improve function, but may also be
9 performed to approximate a normal appear-
10 ance) that are performed on abnormal struc-
11 tures of the body caused by congenital defects,
12 developmental abnormalities, trauma, infection,
13 tumors, or disease, including—

14 “(i) procedures that do not materially
15 affect the function of the body part being
16 treated; and

17 “(ii) procedures for secondary condi-
18 tions and follow-up treatment.

19 “(B) EXCEPTION.—Such term does not in-
20 clude cosmetic surgery performed to reshape
21 normal structures of the body to improve ap-
22 pearance or self-esteem.

23 “(b) NOTICE.—A health insurance issuer under this
24 part shall comply with the notice requirement under sec-
25 tion 714(b) of the Employee Retirement Income Security

1 Act of 1974 with respect to the requirements referred to
2 in subsection (a) as if such section applied to such issuer
3 and such issuer were a group health plan.”.

4 (2) Section 2762(b)(2) of such Act (42 U.S.C.
5 300gg-62(b)(2)) is amended by striking “section 2751”
6 and inserting “sections 2751 and 2754”.

7 (c) EFFECTIVE DATES.—(1) The amendments made
8 by subsection (a) shall apply with respect to group health
9 plans for plan years beginning on or after January 1,
10 2010.

11 (2) The amendment made by subsection (b) shall
12 apply with respect to health insurance coverage offered,
13 sold, issued, renewed, in effect, or operated in the indi-
14 vidual market on or after such date.

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

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