

106TH CONGRESS  
1ST SESSION

# S. 1822

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.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 1999

Mr. MCCAIN (for himself and Mrs. SNOWE) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## 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 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.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Treatment of Chil-  
3 dren’s Deformities Act of 1999”.

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

6 (a) GROUP HEALTH PLANS.—

7 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
8 MENTS.—

9 (A) IN GENERAL.—Subpart 2 of part A of  
10 title XXVII of the Public Health Service Act  
11 (42 U.S.C. 300gg–4 et seq.) is amended by  
12 adding at the end the following new section:

13 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR**  
14 **MINOR CHILD’S CONGENITAL OR DEVELOP-**  
15 **MENTAL DEFORMITY OR DISORDER.**

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

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

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

8           “(3) TREATMENT DEFINED.—

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

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

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

23           “(B) EXCEPTION.—Such term does not in-  
 24          clude cosmetic surgery performed to reshape

1 normal structures of the body to improve ap-  
 2 pearance or self-esteem.

3 “(b) NOTICE.—A group health plan under this part  
 4 shall comply with the notice requirement under section  
 5 713(b) 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 the Public Health Service Act (42  
 10 U.S.C. 300gg–23(c)) is amended by striking  
 11 “section 2704” and inserting “sections 2704  
 12 and 2707”.

13 (2) ERISA AMENDMENTS.—

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 (29 U.S.C. 1185  
 17 et seq.) is amended by adding at the end the  
 18 following new section:

19 **“SEC. 714. 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 up  
6       to 21 years of age.

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

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 section 102(a)(1), for purposes of assuring  
 14 notice of such requirements under the plan; except that  
 15 the summary description required to be provided under the  
 16 last sentence of section 104(b)(1) with respect to such  
 17 modification shall be provided by not later than 60 days  
 18 after the first day of the first plan year in which such  
 19 requirements apply.”.

20 (B) CONFORMING AMENDMENTS.—

21 (i) Section 731(c) of the Employee  
 22 Retirement Income Security Act of 1974  
 23 (29 U.S.C. 1191(c)) is amended by strik-  
 24 ing “section 711” and inserting “sections  
 25 711 and 714”.

1 (ii) Section 732(a) of the Employee  
 2 Retirement Income Security Act of 1974  
 3 (29 U.S.C. 1191a(a)) is amended by strik-  
 4 ing “section 711” and inserting “sections  
 5 711 and 714”.

6 (iii) The table of contents in section 1  
 7 of the Employee Retirement Income Secu-  
 8 rity Act of 1974 (29 U.S.C. 1001) is  
 9 amended by inserting after the item relat-  
 10 ing to section 713 the following new item:

“Sec. 714. Standards relating to benefits for minor child’s congenital or develop-  
 mental deformity or disorder.”.

11 (3) INTERNAL REVENUE CODE AMEND-  
 12 MENTS.—Subchapter B of chapter 100 of the Inter-  
 13 nal Revenue Code of 1986 is amended—

14 (A) in the table of sections, by inserting after  
 15 the item relating to section 9812 the following new  
 16 item:

“Sec. 9813. Standards relating to benefits for minor child’s con-  
 genital or developmental deformity or disorder.”;  
 and

17 (B) by inserting after section 9812 the fol-  
 18 lowing:

1 **“SEC. 9813. STANDARDS RELATING TO BENEFITS FOR**  
 2 **MINOR CHILD’S CONGENITAL OR DEVELOP-**  
 3 **MENTAL DEFORMITY OR DISORDER.**

4 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-  
 5 GERY.—

6 “(1) IN GENERAL.—A group health plan, and a  
 7 health insurance issuer offering group health insur-  
 8 ance coverage, that provides coverage for surgical  
 9 benefits shall provide coverage for outpatient and in-  
 10 patient diagnosis and treatment of a minor child’s  
 11 congenital or developmental deformity, disease, or  
 12 injury. A minor child shall include any individual up  
 13 to 21 years of age.

14 “(2) REQUIREMENTS.—Any coverage provided  
 15 under paragraph (1) shall be subject to pre-author-  
 16 ization or pre-certification as required by the plan or  
 17 issuer, and such coverage shall include any surgical  
 18 treatment which, in the opinion of the treating phy-  
 19 sician, is medically necessary to approximate a nor-  
 20 mal appearance.

21 “(3) TREATMENT DEFINED.—

22 “(A) IN GENERAL.—In this section, the  
 23 term ‘treatment’ includes reconstructive sur-  
 24 gical procedures (procedures that are generally  
 25 performed to improve function, but may also be  
 26 performed to approximate a normal appear-

ance) that are performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—

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

“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.”.

(b) INDIVIDUAL HEALTH INSURANCE.—

(1) IN GENERAL.—Part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–41 et seq.) is amended by inserting after section 2752 the following new section:

**“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR MINOR CHILD’S CONGENITAL OR DEVELOPMENTAL DEFORMITY OR DISORDER.**

“(a) REQUIREMENTS FOR RECONSTRUCTIVE SURGERY.—

“(1) IN GENERAL.—A group health plan, and a 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 up  
 6       to 21 years of age.

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

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.—A health insurance issuer under this  
11 part shall comply with the notice requirement under sec-  
12 tion 714(b) of the Employee Retirement Income Security  
13 Act of 1974 with respect to the requirements referred to  
14 in subsection (a) as if such section applied to such issuer  
15 and such issuer were a group health plan.”.

16 (2) CONFORMING AMENDMENT.—Section  
17 2762(b)(2) of the Public Health Service Act (42  
18 U.S.C. 300gg–62(b)(2)) is amended by striking  
19 “section 2751” and inserting “sections 2751 and  
20 2753”.

21 (c) EFFECTIVE DATES.—

22 (1) GROUP MARKET.—The amendments made  
23 by subsection (a) shall apply with respect to group  
24 health plans for plan years beginning on or after  
25 January 1, 2000.

1           (2) INDIVIDUAL MARKET.—The amendment  
 2       made by subsection (b) shall apply with respect to  
 3       health insurance coverage offered, sold, issued, re-  
 4       newed, in effect, or operated in the individual mar-  
 5       ket on or after such date.

6       (d) COORDINATED REGULATIONS.—Section 104(1)  
 7       of Health Insurance Portability and Accountability Act of  
 8       1996 is amended by striking “this subtitle (and the  
 9       amendments made by this subtitle and section 401)” and  
 10      inserting “the provisions of part 7 of subtitle B of title  
 11      I of the Employee Retirement Income Security Act of  
 12      1974, the provisions of parts A and C of title XXVII of  
 13      the Public Health Service Act, and chapter 100 of the In-  
 14      ternal Revenue Code of 1986”.

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