

107TH CONGRESS
1ST SESSION

S. 595

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2001

Mr. WELLSTONE (for himself, Mr. DASCHLE, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage.

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 “Fairness in Treatment:
5 The Drug and Alcohol Addiction Recovery Act of 2001”.

1 **SEC. 2. PARITY IN SUBSTANCE ABUSE TREATMENT BENE-**
 2 **FITS.**

3 (a) GROUP HEALTH PLANS.—

4 (1) PUBLIC HEALTH SERVICE ACT AMEND-
 5 MENTS.—

6 (A) IN GENERAL.—Subpart 2 of part A of
 7 title XXVII of the Public Health Service Act
 8 (42 U.S.C. 300gg–4 et seq.) is amended by
 9 adding at the end the following:

10 **“SEC. 2707. PARITY IN THE APPLICATION OF TREATMENT**
 11 **LIMITATIONS AND FINANCIAL REQUIRE-**
 12 **MENTS TO SUBSTANCE ABUSE TREATMENT**
 13 **BENEFITS.**

14 “(a) IN GENERAL.—In the case of a group health
 15 plan (or health insurance coverage offered in connection
 16 with such a plan) that provides both medical and surgical
 17 benefits and substance abuse treatment benefits, the plan
 18 or coverage shall not impose treatment limitations or fi-
 19 nancial requirements on the substance abuse treatment
 20 benefits unless similar limitations or requirements are im-
 21 posed for medical and surgical benefits.

22 “(b) CONSTRUCTION.—Nothing in this section shall
 23 be construed—

24 “(1) as requiring a group health plan (or health
 25 insurance coverage offered in connection with such a

1 plan) to provide any substance abuse treatment ben-
 2 efits; or

3 “(2) to prevent a group health plan or a health
 4 insurance issuer offering group health insurance cov-
 5 erage from negotiating the level and type of reim-
 6 bursement with a provider for care provided in ac-
 7 cordance with this section.

8 “(c) SMALL EMPLOYER EXEMPTION.—

9 “(1) IN GENERAL.—This section shall not apply
 10 to any group health plan (and group health insur-
 11 ance coverage offered in connection with a group
 12 health plan) for any plan year of a small employer.

13 “(2) SMALL EMPLOYER.—For purposes of
 14 paragraph (1), the term ‘small employer’ means, in
 15 connection with a group health plan with respect to
 16 a calendar year and a plan year, an employer who
 17 employed an average of at least 2 but not more than
 18 25 employees on business days during the preceding
 19 calendar year and who employs at least 2 employees
 20 on the first day of the plan year.

21 “(3) APPLICATION OF CERTAIN RULES IN DE-
 22 TERMINATION OF EMPLOYER SIZE.—For purposes of
 23 this subsection:

24 “(A) APPLICATION OF AGGREGATION RULE
 25 FOR EMPLOYERS.—Rules similar to the rules

1 under subsections (b), (c), (m), and (o) of sec-
 2 tion 414 of the Internal Revenue Code of 1986
 3 shall apply for purposes of treating persons as
 4 a single employer.

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

14 “(C) PREDECESSORS.—Any reference in
 15 this subsection to an employer shall include a
 16 reference to any predecessor of such employer.

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

23 “(e) DEFINITIONS.—For purposes of this section:

24 “(1) TREATMENT LIMITATION.—The term
 25 ‘treatment limitation’ means, with respect to benefits

1 under a group health plan or health insurance cov-
 2 erage, any day or visit limits imposed on coverage of
 3 benefits under the plan or coverage during a period
 4 of time.

5 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-
 6 nancial requirement’ means, with respect to benefits
 7 under a group health plan or health insurance cov-
 8 erage, any deductible, coinsurance, or cost-sharing
 9 or an annual or lifetime dollar limit imposed with re-
 10 spect to the benefits under the plan or coverage.

11 “(3) MEDICAL OR SURGICAL BENEFITS.—The
 12 term ‘medical or surgical benefits’ means benefits
 13 with respect to medical or surgical services, as de-
 14 fined under the terms of the plan or coverage (as the
 15 case may be), but does not include substance abuse
 16 treatment benefits.

17 “(4) SUBSTANCE ABUSE TREATMENT BENE-
 18 FITS.—The term ‘substance abuse treatment bene-
 19 fits’ means benefits with respect to substance abuse
 20 treatment services.

21 “(5) SUBSTANCE ABUSE TREATMENT SERV-
 22 ICES.—The term ‘substance abuse services’ means
 23 any of the following items and services provided for
 24 the treatment of substance abuse:

1 “(A) Inpatient treatment, including detoxi-
2 fication.

3 “(B) Non-hospital residential treatment.

4 “(C) Outpatient treatment, including
5 screening and assessment, medication manage-
6 ment, individual, group, and family counseling,
7 and relapse prevention.

8 “(D) Prevention services, including health
9 education and individual and group counseling
10 to encourage the reduction of risk factors for
11 substance abuse.

12 “(6) SUBSTANCE ABUSE.—The term ‘substance
13 abuse’ includes chemical dependency.

14 “(f) NOTICE.—A group health plan under this part
15 shall comply with the notice requirement under section
16 713(f) of the Employee Retirement Income Security Act
17 of 1974 with respect to the requirements of this section
18 as if such section applied to such plan.”.

19 (B) CONFORMING AMENDMENT.—Section
20 2723(c) of the Public Health Service Act (42
21 U.S.C. 300gg–23(c)) is amended by striking
22 “section 2704” and inserting “sections 2704
23 and 2707”.

24 (2) ERISA AMENDMENTS.—

1 (A) IN GENERAL.—Subpart B of part 7 of
 2 subtitle B of title I of the Employee Retirement
 3 Income Security Act of 1974 (29 U.S.C. 1185
 4 et seq.) is amended by adding at the end the
 5 following:

6 **“SEC. 714. PARITY IN THE APPLICATION OF TREATMENT**
 7 **LIMITATIONS AND FINANCIAL REQUIRE-**
 8 **MENTS TO SUBSTANCE ABUSE TREATMENT**
 9 **BENEFITS.**

10 “(a) IN GENERAL.—In the case of a group health
 11 plan (or health insurance coverage offered in connection
 12 with such a plan) that provides both medical and surgical
 13 benefits and substance abuse treatment benefits, the plan
 14 or coverage shall not impose treatment limitations or fi-
 15 nancial requirements on the substance abuse treatment
 16 benefits unless similar limitations or requirements are im-
 17 posed for medical and surgical benefits.

18 “(b) CONSTRUCTION.—Nothing in this section shall
 19 be construed—

20 “(1) as requiring a group health plan (or health
 21 insurance coverage offered in connection with such a
 22 plan) to provide any substance abuse treatment ben-
 23 efits; or

24 “(2) to prevent a group health plan or a health
 25 insurance issuer offering group health insurance cov-

1 erage from negotiating the level and type of reim-
 2 bursement with a provider for care provided in ac-
 3 cordance with this section.

4 “(c) SMALL EMPLOYER EXEMPTION.—

5 “(1) IN GENERAL.—This section shall not apply
 6 to any group health plan (and group health insur-
 7 ance coverage offered in connection with a group
 8 health plan) for any plan year of a small employer.

9 “(2) SMALL EMPLOYER.—For purposes of
 10 paragraph (1), the term ‘small employer’ means, in
 11 connection with a group health plan with respect to
 12 a calendar year and a plan year, an employer who
 13 employed an average of at least 2 but not more than
 14 25 employees on business days during the preceding
 15 calendar year and who employs at least 2 employees
 16 on the first day of the plan year.

17 “(3) APPLICATION OF CERTAIN RULES IN DE-
 18 TERMINATION OF EMPLOYER SIZE.—For purposes of
 19 this subsection:

20 “(A) APPLICATION OF AGGREGATION RULE
 21 FOR EMPLOYERS.—Rules similar to the rules
 22 under subsections (b), (c), (m), and (o) of sec-
 23 tion 414 of the Internal Revenue Code of 1986
 24 shall apply for purposes of treating persons as
 25 a single employer.

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

10 “(C) PREDECESSORS.—Any reference in
 11 this subsection to an employer shall include a
 12 reference to any predecessor of such employer.

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

19 “(e) DEFINITIONS.—For purposes of this section:

20 “(1) TREATMENT LIMITATION.—The term
 21 ‘treatment limitation’ means, with respect to benefits
 22 under a group health plan or health insurance cov-
 23 erage, any day or visit limits imposed on coverage of
 24 benefits under the plan or coverage during a period
 25 of time.

1 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-
 2 nancial requirement’ means, with respect to benefits
 3 under a group health plan or health insurance cov-
 4 erage, any deductible, coinsurance, or cost-sharing
 5 or an annual or lifetime dollar limit imposed with re-
 6 spect to the benefits under the plan or coverage.

7 “(3) MEDICAL OR SURGICAL BENEFITS.—The
 8 term ‘medical or surgical benefits’ means benefits
 9 with respect to medical or surgical services, as de-
 10 fined under the terms of the plan or coverage (as the
 11 case may be), but does not include substance abuse
 12 treatment benefits.

13 “(4) SUBSTANCE ABUSE TREATMENT BENE-
 14 FITS.—The term ‘substance abuse treatment bene-
 15 fits’ means benefits with respect to substance abuse
 16 treatment services.

17 “(5) SUBSTANCE ABUSE TREATMENT SERV-
 18 ICES.—The term ‘substance abuse services’ means
 19 any of the following items and services provided for
 20 the treatment of substance abuse:

21 “(A) Inpatient treatment, including detoxi-
 22 fication.

23 “(B) Non-hospital residential treatment.

24 “(C) Outpatient treatment, including
 25 screening and assessment, medication manage-

1 ment, individual, group, and family counseling,
2 and relapse prevention.

3 “(D) Prevention services, including health
4 education and individual and group counseling
5 to encourage the reduction of risk factors for
6 substance abuse.

7 “(6) SUBSTANCE ABUSE.—The term ‘substance
8 abuse’ includes chemical dependency.

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

19 (B) CONFORMING AMENDMENTS.—

20 (i) Section 731(c) of the Employee
21 Retirement Income Security Act of 1974
22 (29 U.S.C. 1191(c)) is amended by strik-
23 ing “section 711” and inserting “sections
24 711 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 is amended by inserting
 9 after the item relating to section 713 the
 10 following new item:

“Sec. 714. Parity in the application of treatment limitations and financial re-
 quirements to substance abuse treatment benefits.”.

11 (3) INTERNAL REVENUE CODE AMEND-
 12 MENTS.—

13 (A) IN GENERAL.—Subchapter B of chap-
 14 ter 100 of the Internal Revenue Code of 1986
 15 is amended by inserting after section 9812, the
 16 following:

17 **“SEC. 9813. PARITY IN THE APPLICATION OF TREATMENT**
 18 **LIMITATIONS AND FINANCIAL REQUIRE-**
 19 **MENTS TO SUBSTANCE ABUSE TREATMENT**
 20 **BENEFITS.**

21 “(a) IN GENERAL.—In the case of a group health
 22 plan (or health insurance coverage offered in connection
 23 with such a plan) that provides both medical and surgical
 24 benefits and substance abuse treatment benefits, the plan

1 or coverage shall not impose treatment limitations or fi-
 2 nancial requirements on the substance abuse treatment
 3 benefits unless similar limitations or requirements are im-
 4 posed for medical and surgical benefits.

5 “(b) CONSTRUCTION.—Nothing in this section shall
 6 be construed—

7 “(1) as requiring a group health plan (or health
 8 insurance coverage offered in connection with such a
 9 plan) to provide any substance abuse treatment ben-
 10 efits; or

11 “(2) to prevent a group health plan or a health
 12 insurance issuer offering group health insurance cov-
 13 erage from negotiating the level and type of reim-
 14 bursement with a provider for care provided in ac-
 15 cordance with this section.

16 “(c) SMALL EMPLOYER EXEMPTION.—

17 “(1) IN GENERAL.—This section shall not apply
 18 to any group health plan (and group health insur-
 19 ance coverage offered in connection with a group
 20 health plan) for any plan year of a small employer.

21 “(2) SMALL EMPLOYER.—For purposes of
 22 paragraph (1), the term ‘small employer’ means, in
 23 connection with a group health plan with respect to
 24 a calendar year and a plan year, an employer who
 25 employed an average of at least 2 but not more than

1 25 employees on business days during the preceding
2 calendar year and who employs at least 2 employees
3 on the first day of the plan year.

4 “(3) APPLICATION OF CERTAIN RULES IN DE-
5 TERMINATION OF EMPLOYER SIZE.—For purposes of
6 this subsection:

7 “(A) APPLICATION OF AGGREGATION RULE
8 FOR EMPLOYERS.—Rules similar to the rules
9 under subsections (b), (c), (m), and (o) of sec-
10 tion 414 of the Internal Revenue Code of 1986
11 shall apply for purposes of treating persons as
12 a single employer.

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

22 “(C) PREDECESSORS.—Any reference in
23 this subsection to an employer shall include a
24 reference to any predecessor of such employer.

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

7 “(e) DEFINITIONS.—For purposes of this section:

8 “(1) TREATMENT LIMITATION.—The term
 9 ‘treatment limitation’ means, with respect to benefits
 10 under a group health plan or health insurance cov-
 11 erage, any day or visit limits imposed on coverage of
 12 benefits under the plan or coverage during a period
 13 of time.

14 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-
 15 nancial requirement’ means, with respect to benefits
 16 under a group health plan or health insurance cov-
 17 erage, any deductible, coinsurance, or cost-sharing
 18 or an annual or lifetime dollar limit imposed with re-
 19 spect to the benefits under the plan or coverage.

20 “(3) 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 substance abuse
 25 treatment benefits.

1 “(4) SUBSTANCE ABUSE TREATMENT BENE-
 2 FITS.—The term ‘substance abuse treatment bene-
 3 fits’ means benefits with respect to substance abuse
 4 treatment services.

5 “(5) SUBSTANCE ABUSE TREATMENT SERV-
 6 ICES.—The term ‘substance abuse services’ means
 7 any of the following items and services provided for
 8 the treatment of substance abuse:

9 “(A) Inpatient treatment, including detoxi-
 10 fication.

11 “(B) Non-hospital residential treatment.

12 “(C) Outpatient treatment, including
 13 screening and assessment, medication manage-
 14 ment, individual, group, and family counseling,
 15 and relapse prevention.

16 “(D) Prevention services, including health
 17 education and individual and group counseling
 18 to encourage the reduction of risk factors for
 19 substance abuse.

20 “(6) SUBSTANCE ABUSE.—The term ‘substance
 21 abuse’ includes chemical dependency.”.

22 (B) CONFORMING AMENDMENT.—The
 23 table of contents for chapter 100 of the Inter-
 24 nal Revenue Code of 1986 is amended by in-

1 serting after the item relating to section 9812
 2 the following new item:

“Sec. 9813. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.”.

3 (b) INDIVIDUAL HEALTH INSURANCE.—

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

8 **“SEC. 2753. PARITY IN THE APPLICATION OF TREATMENT**
 9 **LIMITATIONS AND FINANCIAL REQUIRE-**
 10 **MENTS TO SUBSTANCE ABUSE BENEFITS.**

11 “(a) IN GENERAL.—The provisions of section 2707
 12 (other than subsection (e)) shall apply to health insurance
 13 coverage offered by a health insurance issuer in the indi-
 14 vidual market in the same manner as it applies to health
 15 insurance coverage offered by a health insurance issuer
 16 in connection with a group health plan in the small or
 17 large group market.

18 “(b) NOTICE.—A health insurance issuer under this
 19 part shall comply with the notice requirement under sec-
 20 tion 713(f) of the Employee Retirement Income Security
 21 Act of 1974 with respect to the requirements referred to
 22 in subsection (a) as if such section applied to such issuer
 23 and such issuer were a group health plan.”.

1 (2) CONFORMING AMENDMENT.—Section
 2 2762(b)(2) of the Public Health Service Act (42
 3 U.S.C. 300gg–62(b)(2)) is amended by striking
 4 “section 2751” and inserting “sections 2751 and
 5 2753”.

6 (c) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Subject to paragraph (3),
 8 the amendments made by subsection (a) shall apply
 9 with respect to group health plans for plan years be-
 10 ginning on or after January 1, 2002.

11 (2) INDIVIDUAL MARKET.—The amendments
 12 made by subsection (b) shall apply with respect to
 13 health insurance coverage offered, sold, issued, re-
 14 newed, in effect, or operated in the individual mar-
 15 ket on or after January 1, 2002.

16 (3) COLLECTIVE BARGAINING AGREEMENTS.—
 17 In the case of a group health plan maintained pur-
 18 suant to 1 or more collective bargaining agreements
 19 between employee representatives and 1 or more em-
 20 ployers ratified before the date of enactment of this
 21 Act, the amendments made subsection (a) shall not
 22 apply to plan years beginning before the later of—

23 (A) the date on which the last collective
 24 bargaining agreements relating to the plan ter-
 25 minates (determined without regard to any ex-

1 tension thereof agreed to after the date of en-
2 actment of this Act), or

3 (B) January 1, 2002.

4 For purposes of subparagraph (A), any plan amend-
5 ment made pursuant to a collective bargaining
6 agreement relating to the plan which amends the
7 plan solely to conform to any requirement added by
8 subsection (a) shall not be treated as a termination
9 of such collective bargaining agreement.

10 (d) COORDINATED REGULATIONS.—Section 104(1)
11 of Health Insurance Portability and Accountability Act of
12 1996 is amended by striking “this subtitle (and the
13 amendments made by this subtitle and section 401)” and
14 inserting “the provisions of part 7 of subtitle B of title
15 I of the Employee Retirement Income Security Act of
16 1974, and the provisions of parts A and C of title XXVII
17 of the Public Health Service Act, and chapter 1000 of the
18 Internal Revenue Code of 1986”.

19 **SEC. 3. PREEMPTION.**

20 Nothing in the amendments made by this Act shall
21 be construed to preempt any provision of State law that
22 provides protections to enrollees that are greater than the
23 protections provided under such amendments.

○