

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 22, 2001

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

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## 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 Representatives 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.—

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 detoxification.

3                   “(B) Non-hospital residential treatment.

4                   “(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, 5 and relapse prevention.

6                   “(D) Prevention services, including health 7 education and individual and group counseling to encourage the reduction of risk factors for 8 substance abuse.

9                   “(6) SUBSTANCE ABUSE.—The term ‘substance 10 abuse’ includes chemical dependency.

11                   “(f) NOTICE.—A group health plan under this part 12 shall comply with the notice requirement under section 13 713(f) of the Employee Retirement Income Security Act 14 of 1974 with respect to the requirements of this section 15 as if such section applied to such plan.”.

16                   (B) CONFORMING AMENDMENT.—Section 17 2723(c) of the Public Health Service Act (42 18 U.S.C. 300gg-23(c)) is amended by striking 19 “section 2704” and inserting “sections 2704 20 and 2707”.

21                   (2) ERISA AMENDMENTS.—

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 requirements to substance abuse treatment benefits.”.

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 OFFERED.—In the case of a group health plan that offers  
2       a participant or beneficiary two or more benefit package  
3       options under the plan, the requirements of this section  
4       shall be applied separately with respect to each such op-  
5       tion.

6  
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:

“See. 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.”.

6 (c) EFFECTIVE DATES.—

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.

