

107TH CONGRESS
1ST SESSION

S. 823

To assure access under group health plans and health insurance coverage
to covered emergency medical services.

IN THE SENATE OF THE UNITED STATES

MAY 3, 2001

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

A BILL

To assure access under group health plans and health
insurance coverage to covered emergency medical services.

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 “Access to Emergency
5 Medical Services Act of 2001”.

6 **SEC. 2. EMERGENCY SERVICES.**

7 (a) COVERAGE OF EMERGENCY SERVICES.—

8 (1) IN GENERAL.—If a group health plan, or
9 health insurance coverage offered by a health insur-
10 ance issuer, provides any benefits with respect to

1 emergency services (as defined in paragraph (2)(B)),
2 the plan or issuer shall cover emergency services fur-
3 nished under the plan or coverage—

4 (A) without the need for any prior author-
5 ization determination;

6 (B) whether or not the health care pro-
7 vider furnishing such services is a participating
8 provider with respect to such services;

9 (C) in a manner so that, if such services
10 are provided to a participant, beneficiary, or en-
11 rollee by a nonparticipating health care pro-
12 vider, the participant, beneficiary, or enrollee is
13 not liable for amounts that exceed the amounts
14 of liability that would be incurred if the services
15 were provided by a participating provider; and

16 (D) without regard to any other term or
17 condition of such plan or coverage (other than
18 exclusion or coordination of benefits, or an af-
19 filiation or waiting period, permitted under sec-
20 tion 2701 of the Public Health Service Act, sec-
21 tion 701 of the Employee Retirement Income
22 Security Act of 1974, or section 9801 of the In-
23 ternal Revenue Code of 1986, and other than
24 applicable cost sharing).

25 (2) DEFINITIONS.—In this section:

1 (A) EMERGENCY MEDICAL CONDITION
 2 BASED ON PRUDENT LAYPERSON STANDARD.—
 3 The term “emergency medical condition” means
 4 a medical condition manifesting itself by acute
 5 symptoms of sufficient severity (including se-
 6 vere pain) such that a prudent layperson, who
 7 possesses an average knowledge of health and
 8 medicine, could reasonably expect the absence
 9 of immediate medical attention to result in a
 10 condition described in clause (i), (ii), or (iii) of
 11 section 1867(e)(1)(A) of the Social Security Act
 12 (42 U.S.C. 1395dd(e)(1)(A)).

13 (B) EMERGENCY SERVICES.—The term
 14 “emergency services” means—

15 (i) a medical screening examination
 16 (as required under section 1867 of the So-
 17 cial Security Act, 42 U.S.C. 1395dd)) that
 18 is within the capability of the emergency
 19 department of a hospital, including ancil-
 20 lary services routinely available to the
 21 emergency department to evaluate an
 22 emergency medical condition (as defined in
 23 subparagraph (A)); and

24 (ii) within the capabilities of the staff
 25 and facilities at the hospital, such further

1 medical examination and treatment as are
 2 required under section 1867 of such Act to
 3 stabilize the patient.

4 (C) STABILIZE.—The term “to stabilize”,
 5 with respect to an emergency medical condition
 6 (as defined in subparagraph (A)), has the
 7 meaning give in section 1867(e)(3) of the Social
 8 Security Act (42 U.S.C. 1395dd(e)(3)).

9 (b) REIMBURSEMENT FOR MAINTENANCE CARE AND
 10 POST-STABILIZATION CARE.—A group health plan, and
 11 health insurance coverage offered by a health insurance
 12 issuer, must provide reimbursement for maintenance care
 13 and post-stabilization care in accordance with the require-
 14 ments of section 1852(d)(2) of the Social Security Act (42
 15 U.S.C. 1395w–22(d)(2)). Such reimbursement shall be
 16 provided in a manner consistent with subsection (a)(1)(C).

17 (c) COVERAGE OF EMERGENCY AMBULANCE SERV-
 18 ICES.—

19 (1) IN GENERAL.—If a group health plan, or
 20 health insurance coverage provided by a health in-
 21 surance issuer, provides any benefits with respect to
 22 ambulance services and emergency services, the plan
 23 or issuer shall cover emergency ambulance services
 24 (as defined in paragraph (2)) furnished under the
 25 plan or coverage under the same terms and condi-

1 tions under subparagraphs (A) through (D) of sub-
2 section (a)(1) under which coverage is provided for
3 emergency services.

4 (2) EMERGENCY AMBULANCE SERVICES.—For
5 purposes of this subsection, the term “emergency
6 ambulance services” means ambulance services (as
7 defined for purposes of section 1861(s)(7) of the So-
8 cial Security Act) furnished to transport an indi-
9 vidual who has an emergency medical condition (as
10 defined in subsection (a)(2)(A)) to a hospital for the
11 receipt of emergency services (as defined in sub-
12 section (a)(2)(B)) in a case in which the emergency
13 services are covered under the plan or coverage pur-
14 suant to subsection (a)(1) and a prudent layperson,
15 with an average knowledge of health and medicine,
16 could reasonably expect that the absence of such
17 transport would result in placing the health of the
18 individual in serious jeopardy, serious impairment of
19 bodily function, or serious dysfunction of any bodily
20 organ or part.

21 (d) INFORMATION FOR PARTICIPANTS, BENE-
22 FICIARIES, AND ENROLLEES.—

23 (1) GROUP HEALTH PLANS.—A group health
24 plan shall—

1 (A) provide to participants and bene-
2 ficiaries at the time of initial coverage under
3 the plan (or the effective date of this Act, in the
4 case of individuals who are participants and
5 beneficiaries as of such date), at least annually
6 thereafter, and at the beginning of any open en-
7 rollment provided under the plan, the informa-
8 tion described in paragraph (3) in printed form;
9 and

10 (B) upon request, make available to par-
11 ticipants and beneficiaries, to the applicable au-
12 thority, and to prospective participants and
13 beneficiaries the information described in para-
14 graph (3) in printed form.

15 (2) HEALTH INSURANCE ISSUERS.—A health
16 insurance issuer, in connection with the provision of
17 health insurance coverage, shall—

18 (A) provide to individuals enrolled under
19 such coverage at the time of enrollment, and at
20 least annually thereafter, (and to plan adminis-
21 trators of group health plans in connection with
22 which such coverage is offered) the information
23 described in paragraph (3) in printed form; and

24 (B) upon request, make available to the
25 applicable authority, to individuals who are pro-

1 spective enrollees, to plan administrators of
 2 group health plans that may obtain such cov-
 3 erage, and to the public the information de-
 4 scribed in paragraph (3) in printed form.

5 (3) REQUIRED INFORMATION.—The informa-
 6 tion described in this paragraph with respect to a
 7 group health plan or health insurance coverage of-
 8 fered by a health insurance issuer is information
 9 about the coverage of emergency services,
 10 including—

11 (A) the appropriate use of emergency serv-
 12 ices, including use of the 911 telephone system
 13 or its local equivalent in emergency situations
 14 and an explanation of what constitutes an
 15 emergency situation;

16 (B) the process and procedures of the plan
 17 or issuer for obtaining emergency services;

18 (C) any cost-sharing applicable to emer-
 19 gency services; and

20 (D) the locations of—

21 (i) emergency departments; and

22 (ii) other settings in which plan physi-
 23 cians and hospitals provide emergency
 24 services and post-stabilization care.

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

1 (1) The term “applicable authority” means—

2 (A) in the case of a group health plan, the
3 Secretary of Health and Human Services and
4 the Secretary of Labor; and

5 (B) in the case of a health insurance issuer
6 with respect to a specific provision of this sec-
7 tion, the applicable State authority or the Sec-
8 retary of Health and Human Services if such
9 Secretary is enforcing such provisions under
10 section 2722(a)(2) or 2761(a)(2) of the Public
11 Health Service Act (42 U.S.C. 300gg–22(a)(2),
12 300gg–61(a)(2)).

13 (2) The terms “applicable State authority”,
14 “beneficiary”, “group health plan”, “health insur-
15 ance coverage”, “health insurance issuer”, and “par-
16 ticipant” shall have the meanings given to such
17 terms in section 2791 of the Public Health Service
18 Act (42 U.S.C. 300gg–91).

19 (3) The term “nonparticipating” means, with
20 respect to a health care provider that provides health
21 care items and services to a participant, beneficiary,
22 or enrollee under a group health plan or health in-
23 surance coverage, a health care provider that is not
24 a participating health care provider with respect to
25 such items and services.

1 (4) The term “participating” means, with re-
 2 spect to a health care provider that provides health
 3 care items and services to a participant, beneficiary,
 4 or enrollee under a group health plan or health in-
 5 surance coverage offered by a health insurance
 6 issuer, a health care provider that furnishes such
 7 items and services under a contract or other ar-
 8 rangement with the plan or issuer.

9 **SEC. 3. STANDARDS UNDER THE PUBLIC HEALTH SERVICE**
 10 **ACT.**

11 (a) GROUP MARKET.—Subpart 2 of part A of title
 12 XXVII of the Public Health Service Act is amended by
 13 adding at the end the following new section:

14 **“SEC. 2707. EMERGENCY SERVICES.**

15 “(a) IN GENERAL.—Each group health plan (and
 16 each health insurance issuer offering group health insur-
 17 ance coverage in connection with such a plan) shall comply
 18 with the requirements of section 2 of the Access to Emer-
 19 gency Medical Services Act of 2001, and such require-
 20 ments shall be deemed to be incorporated into this sub-
 21 section.

22 “(b) NOTICE.—A group health plan shall comply with
 23 the notice requirement under section 711(d) of the Em-
 24 ployee Retirement Income Security Act with respect to the
 25 requirements referred to in subsection (a), and a health

1 insurance issuer shall comply with such notice requirement
 2 as if such section applied to such issuer and such issuer
 3 were a group health plan.”.

4 (b) INDIVIDUAL MARKET.—Part B of title XXVII of
 5 the Public Health Service Act is amended by inserting
 6 after section 2752 the following new section:

7 **“SEC. 2753. EMERGENCY SERVICES.**

8 “(a) IN GENERAL.—Each health insurance issuer
 9 shall comply with the requirements of section 2 of the Ac-
 10 cess to Emergency Medical Services Act of 2001 with re-
 11 spect to individual health insurance coverage it offers, and
 12 such requirements shall be deemed to be incorporated into
 13 this subsection.

14 “(b) NOTICE.—A health insurance issuer under this
 15 part shall comply with the notice requirement under sec-
 16 tion 711(d) of the Employee Retirement Income Security
 17 Act with respect to the requirements referred to in sub-
 18 section (a) as if such section applied to such issuer and
 19 such issuer were a group health plan.”.

20 **SEC. 4. STANDARDS UNDER THE EMPLOYEE RETIREMENT**
 21 **INCOME SECURITY ACT OF 1974.**

22 (a) IN GENERAL.—Subpart B of part 7 of subtitle
 23 B of title I of the Employee Retirement Income Security
 24 Act of 1974 is amended by adding at the end the following
 25 new section:

1 **“SEC. 714. EMERGENCY SERVICES.**

2 “(a) IN GENERAL.—Subject to subsection (b), a
3 group health plan (and a health insurance issuer offering
4 group health insurance coverage in connection with such
5 a plan) shall comply with the requirements of section 2
6 of the Access to Emergency Medical Services Act of 2001,
7 and such requirements shall be deemed to be incorporated
8 into this subsection.

9 “(b) SATISFACTION OF REQUIREMENTS.—For pur-
10 poses of subsection (a), insofar as a group health plan pro-
11 vides benefits in the form of health insurance coverage
12 through a health insurance issuer, the plan shall be treat-
13 ed as meeting the requirements of the Access to Emer-
14 gency Medical Services Act of 2001 with respect to such
15 benefits and not be considered as failing to meet such re-
16 quirements because of a failure of the issuer to meet such
17 requirements so long as the plan sponsor or its representa-
18 tives did not cause such failure by the issuer.”.

19 (b) CONFORMING AMENDMENT.—Section 732(a) of
20 such Act (29 U.S.C. 1191a(a)) is amended by striking
21 “section 711” and inserting “sections 711 and 714”.

22 (c) CLERICAL AMENDMENT.—The table of contents
23 in section 1 of such Act is amended by inserting after the
24 item relating to section 713 the following new item:

“Sec. 714. Emergency services.”.

1 **SEC. 5. STANDARDS UNDER THE INTERNAL REVENUE CODE**
 2 **OF 1986.**

3 Subchapter B of chapter 100 of the Internal Revenue
 4 Code of 1986 is amended—

5 (1) in the table of sections, by inserting after
 6 the item relating to section 9812 the following new
 7 item:

“Sec. 9813. Standard relating to emergency services.”; and

8 (2) by inserting after section 9812 the fol-
 9 lowing:

10 **“SEC. 9813. STANDARD RELATING TO EMERGENCY SERV-**
 11 **ICES.**

12 “A group health plan shall comply with the require-
 13 ments of section 2 of the Access to Emergency Medical
 14 Services Act of 2001, and such requirements shall be
 15 deemed to be incorporated into this section.”.

16 **SEC. 6. EFFECTIVE DATE.**

17 (a) GROUP HEALTH COVERAGE.—

18 (1) IN GENERAL.—Subject to paragraph (2),
 19 the amendments made by sections 3(a), 4, and 5
 20 (and section 2 insofar as it relates to such sections)
 21 apply to group health plans for plan years beginning
 22 on or after January 1, 2002.

23 (2) TREATMENT OF COLLECTIVE BARGAINING
 24 AGREEMENTS.—In the case of a group health plan
 25 maintained pursuant to 1 or more collective bar-

1 gaining agreements between employee representa-
 2 tives and 1 or more employers ratified before the
 3 date of the enactment of this Act, the amendments
 4 made by sections 3(a), 4, and 5 (and section 2 inso-
 5 far as it relates to such sections) shall not apply to
 6 plan years beginning before the later of—

7 (A) the date on which the last collective
 8 bargaining agreement relating to the plan ter-
 9 minates (determined without regard to any ex-
 10 tension thereof agreed to after the date of the
 11 enactment of this Act); or

12 (B) January 1, 2002.

13 For purposes of subparagraph (A), any plan amend-
 14 ment made pursuant to a collective bargaining
 15 agreement relating to the plan that amends the plan
 16 solely to conform to any requirement of this Act
 17 shall not be treated as a termination of such collec-
 18 tive bargaining agreement.

19 (b) INDIVIDUAL MARKET.—The amendment made by
 20 section 3(b) (and section 2 insofar as it relates to such
 21 section) applies with respect to health insurance coverage
 22 offered, sold, issued, renewed, in effect, or operated in the
 23 individual market on or after January 1, 2002.

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