

108TH CONGRESS
1ST SESSION

S. 1138

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance coverage.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mr. COLEMAN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974, Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance 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 “Help Expand Access
5 to Recovery and Treatment Act of 2003” or the “HEART
6 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Substance abuse, if left untreated, is a med-
4 ical emergency and a private and public health cri-
5 sis.

6 (2) Nothing in this Act should be construed as
7 prohibiting application of the concept of parity to
8 substance abuse treatment provided by faith-based
9 treatment providers.

10 **SEC. 3. PARITY IN SUBSTANCE ABUSE TREATMENT BENE-**
11 **FITS.**

12 (a) GROUP HEALTH PLANS.—

13 (1) PUBLIC HEALTH SERVICE ACT AMEND-
14 MENTS.—

15 (A) IN GENERAL.—Subpart 2 of part A of
16 title XXVII of the Public Health Service Act is
17 amended by adding at the end the following
18 new section:

19 **“SEC. 2707. PARITY IN THE APPLICATION OF TREATMENT**
20 **LIMITATIONS AND FINANCIAL REQUIRE-**
21 **MENTS TO SUBSTANCE ABUSE TREATMENT**
22 **BENEFITS.**

23 “(a) IN GENERAL.—In the case of a group health
24 plan (or health insurance coverage offered in connection
25 with such a plan) that provides both medical and surgical
26 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) EXEMPTIONS.—

17 “(1) SMALL EMPLOYER EXEMPTION.—

18 “(A) IN GENERAL.—This section shall not
 19 apply to any group health plan (and group
 20 health insurance coverage offered in connection
 21 with a group health plan) for any plan year of
 22 a small employer.

23 “(B) SMALL EMPLOYER.—For purposes of
 24 subparagraph (A), the term ‘small employer’
 25 means, in connection with a group health plan

1 with respect to a calendar year and a plan year,
2 an employer who employed an average of at
3 least 2 but not more than 50 employees on
4 business days during the preceding calendar
5 year and who employs at least 2 employees on
6 the first day of the plan year.

7 “(C) APPLICATION OF CERTAIN RULES IN
8 DETERMINATION OF EMPLOYER SIZE.—For
9 purposes of this paragraph—

10 “(i) APPLICATION OF AGGREGATION
11 RULE FOR EMPLOYERS.—Rules similar to
12 the rules under subsections (b), (c), (m),
13 and (o) of section 414 of the Internal Rev-
14 enue Code of 1986 shall apply for purposes
15 of treating persons as a single employer.

16 “(ii) EMPLOYERS NOT IN EXISTENCE
17 IN PRECEDING YEAR.—In the case of an
18 employer which was not in existence
19 throughout the preceding calendar year,
20 the determination of whether such em-
21 ployer is a small employer shall be based
22 on the average number of employees that
23 it is reasonably expected such employer
24 will employ on business days in the current
25 calendar year.

1 “(iii) PREDECESSORS.—Any reference
 2 in this paragraph to an employer shall in-
 3 clude a reference to any predecessor of
 4 such employer.

5 “(2) INCREASED COST EXEMPTION.—This sec-
 6 tion shall not apply with respect to a group health
 7 plan (or health insurance coverage offered in connec-
 8 tion with a group health plan) if the application of
 9 this section to such plan (or to such coverage) re-
 10 sults in an increase in the cost under the plan (or
 11 for such coverage) of at least 1 percent.

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

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

19 “(1) TREATMENT LIMITATION.—The term
 20 ‘treatment limitation’ means, with respect to benefits
 21 under a group health plan or health insurance cov-
 22 erage, any day or visit limits imposed on coverage of
 23 benefits under the plan or coverage during a period
 24 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 treatment serv-
 19 ices’ means any of the following items and services
 20 provided for the treatment of substance abuse:

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

23 “(B) Nonhospital 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.—A group health plan under this part
10 shall comply with the notice requirement under section
11 714(f) of the Employee Retirement Income Security Act
12 of 1974 with respect to the requirements of this section
13 as if such section applied to such plan.”.

14 (B) CONFORMING AMENDMENT.—Section
15 2723(c) of such Act (42 U.S.C. 300gg–23(c)) is
16 amended by striking “section 2704” and insert-
17 ing “sections 2704 and 2707”.

18 (2) ERISA AMENDMENTS.—

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

1 **“SEC. 714. PARITY IN THE APPLICATION OF TREATMENT**
 2 **LIMITATIONS AND FINANCIAL REQUIRE-**
 3 **MENTS TO SUBSTANCE ABUSE TREATMENT**
 4 **BENEFITS.**

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

13 “(b) CONSTRUCTION.—Nothing in this section shall
 14 be construed—

15 “(1) as requiring a group health plan (or health
 16 insurance coverage offered in connection with such a
 17 plan) to provide any substance abuse treatment ben-
 18 efits; or

19 “(2) to prevent a group health plan or a health insur-
 20 ance issuer offering group health insurance coverage from
 21 negotiating the level and type of reimbursement with a
 22 provider for care provided in accordance with this section.

23 “(c) EXEMPTIONS.—

24 “(1) SMALL EMPLOYER EXEMPTION.—

25 “(A) IN GENERAL.—This section shall not
 26 apply to any group health plan (and group

1 health insurance coverage offered in connection
2 with a group health plan) for any plan year of
3 a small employer.

4 “(B) SMALL EMPLOYER.—For purposes of
5 subparagraph (A), the term ‘small employer’
6 means, in connection with a group health plan
7 with respect to a calendar year and a plan year,
8 an employer who employed an average of at
9 least 2 but not more than 50 employees on
10 business days during the preceding calendar
11 year and who employs at least 2 employees on
12 the first day of the plan year.

13 “(C) APPLICATION OF CERTAIN RULES IN
14 DETERMINATION OF EMPLOYER SIZE.—For
15 purposes of this paragraph—

16 “(i) APPLICATION OF AGGREGATION
17 RULE FOR EMPLOYERS.—Rules similar to
18 the rules under subsections (b), (c), (m),
19 and (o) of section 414 of the Internal Rev-
20 enue Code of 1986 shall apply for purposes
21 of treating persons as a single employer.

22 “(ii) EMPLOYERS NOT IN EXISTENCE
23 IN PRECEDING YEAR.—In the case of an
24 employer which was not in existence
25 throughout the preceding calendar year,

1 the determination of whether such em-
2 ployer is a small employer shall be based
3 on the average number of employees that
4 it is reasonably expected such employer
5 will employ on business days in the current
6 calendar year.

7 “(iii) PREDECESSORS.—Any reference
8 in this paragraph to an employer shall in-
9 clude a reference to any predecessor of
10 such employer.

11 “(2) INCREASED COST EXEMPTION.—This sec-
12 tion shall not apply with respect to a group health
13 plan (or health insurance coverage offered in connec-
14 tion with a group health plan) if the application of
15 this section to such plan (or to such coverage) re-
16 sults in an increase in the cost under the plan (or
17 for such coverage) of at least 1 percent.

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

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

1 “(1) TREATMENT LIMITATION.—The term
2 ‘treatment limitation’ means, with respect to benefits
3 under a group health plan or health insurance cov-
4 erage, any day or visit limits imposed on coverage of
5 benefits under the plan or coverage during a period
6 of time.

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

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

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

23 “(5) SUBSTANCE ABUSE TREATMENT SERV-
24 ICES.—The term ‘substance abuse treatment serv-

1 ices’ means any of the following items and services
2 provided for the treatment of substance abuse:

3 “(A) Inpatient treatment, including detoxi-
4 fication.

5 “(B) Nonhospital residential treatment.

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

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

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

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

1 (B) Section 731(c) of such Act (29 U.S.C.
 2 1191(c)) is amended by striking “section 711”
 3 and inserting “sections 711 and 714”.

4 (C) Section 732(a) of such Act (29 U.S.C.
 5 1191a(a)) is amended by striking “section 711”
 6 and inserting “sections 711 and 714”.

7 (D) The table of contents in section 1 of
 8 such Act is amended by inserting after the item
 9 relating to section 713 the following new item:

“714. Parity in the application of treatment limitations and financial require-
 ments to substance abuse treatment benefits.”.

10 (3) INTERNAL REVENUE CODE AMEND-
 11 MENTS.—(A) Subchapter B of chapter 100 of the
 12 Internal Revenue Code of 1986 (relating to other re-
 13 quirements) is amended by adding at the end the
 14 following new section:

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

19 “(a) IN GENERAL.—In the case of a group health
 20 plan that provides both medical and surgical benefits and
 21 substance abuse treatment benefits, the plan shall not im-
 22 pose treatment limitations or financial requirements on
 23 the substance abuse treatment benefits unless similar limi-

1 tations or requirements are imposed for medical and sur-
 2 gical benefits.

3 “(b) CONSTRUCTION.—Nothing in this section shall
 4 be construed—

5 “(1) as requiring a group health plan to provide
 6 any substance abuse treatment benefits; or

7 “(2) to prevent a group health plan from nego-
 8 tiating the level and type of reimbursement with a
 9 provider for care provided in accordance with this
 10 section.

11 “(c) EXEMPTIONS.—

12 “(1) SMALL EMPLOYER EXEMPTION.—

13 “(A) IN GENERAL.—This section shall not
 14 apply to any group health plan for any plan
 15 year of a small employer.

16 “(B) SMALL EMPLOYER.—For purposes of
 17 subparagraph (A), the term ‘small employer’
 18 means, in connection with a group health plan
 19 with respect to a calendar year and a plan year,
 20 an employer who employed an average of at
 21 least 2 but not more than 50 employees on
 22 business days during the preceding calendar
 23 year and who employs at least 2 employees on
 24 the first day of the plan year.

1 “(C) APPLICATION OF CERTAIN RULES IN
2 DETERMINATION OF EMPLOYER SIZE.—For
3 purposes of this paragraph—

4 “(i) APPLICATION OF AGGREGATION
5 RULE FOR EMPLOYERS.—Rules similar to
6 the rules under subsections (b), (c), (m),
7 and (o) of section 414 shall apply for pur-
8 poses of treating persons as a single em-
9 ployer.

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

20 “(iii) PREDECESSORS.—Any reference
21 in this paragraph to an employer shall in-
22 clude a reference to any predecessor of
23 such employer.

24 “(2) INCREASED COST EXEMPTION.—This sec-
25 tion shall not apply with respect to a group health

1 plan if the application of this section to such plan
 2 results in an increase in the cost under the plan of
 3 at least 1 percent.

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

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

11 “(1) TREATMENT LIMITATION.—The term
 12 ‘treatment limitation’ means, with respect to benefits
 13 under a group health plan, any day or visit limits
 14 imposed on coverage of benefits under the plan dur-
 15 ing a period of time.

16 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-
 17 nancial requirement’ means, with respect to benefits
 18 under a group health plan, any deductible, coinsur-
 19 ance, or cost-sharing or an annual or lifetime dollar
 20 limit imposed with respect to the benefits under the
 21 plan.

22 “(3) MEDICAL OR SURGICAL BENEFITS.—The
 23 term ‘medical or surgical benefits’ means benefits
 24 with respect to medical or surgical services, as de-

1 fined under the terms of the plan, but does not in-
 2 clude substance abuse treatment benefits.

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

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

11 “(A) Inpatient treatment, including detoxi-
 12 fication.

13 “(B) Nonhospital residential treatment.

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

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

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

1 (B) Section 4980D(d)(1) of such Code is
 2 amended by inserting “(other than a failure attrib-
 3 utable to section 9813)” after “on any failure”.

4 (C) The table of sections of subchapter B of
 5 chapter 100 of such Code is amended by adding at
 6 the end the following new item:

“9813. Parity in the application of treatment limitations and financial require-
 ments to substance abuse treatment benefits.”.

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

11 **“SEC. 2753. PARITY IN THE APPLICATION OF TREATMENT**
 12 **LIMITATIONS AND FINANCIAL REQUIRE-**
 13 **MENTS TO SUBSTANCE ABUSE BENEFITS.**

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

21 “(b) NOTICE.—A health insurance issuer under this
 22 part shall comply with the notice requirement under sec-
 23 tion 714(f) of the Employee Retirement Income Security
 24 Act of 1974 with respect to the requirements referred to

1 in subsection (a) as if such section applied to such issuer
2 and such issuer were a group health plan.”.

3 (2) Section 2762(b)(2) of such Act (42 U.S.C.
4 300gg-62(b)(2)) is amended by striking “section 2751”
5 and inserting “sections 2751 and 2753”.

6 (c) EFFECTIVE DATES.—(1) Subject to paragraph
7 (3), the amendments made by subsection (a) apply with
8 respect to group health plans for plan years beginning on
9 or after January 1, 2004.

10 (2) The amendments made by subsection (b) apply
11 with respect to health insurance coverage offered, sold,
12 issued, renewed, in effect, or operated in the individual
13 market on or after January 1, 2004.

14 (3) In the case of a group health plan maintained
15 pursuant to 1 or more collective bargaining agreements
16 between employee representatives and 1 or more employ-
17 ers ratified before the date of enactment of this Act, the
18 amendments made by subsection (a) shall not apply to
19 plan years beginning before the later of—

20 (A) the date on which the last collective bar-
21 gaining agreements relating to the plan terminates
22 (determined without regard to any extension thereof
23 agreed to after the date of enactment of this Act),
24 or

25 (B) January 1, 2004.

1 For purposes of subparagraph (A), any plan amendment
 2 made pursuant to a collective bargaining agreement relat-
 3 ing to the plan which amends the plan solely to conform
 4 to any requirement added by subsection (a) shall not be
 5 treated as a termination of such collective bargaining
 6 agreement.

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

16 (e) PREEMPTION.—Nothing in the amendments made
 17 by this section shall be construed to preempt any provision
 18 of State law that provides protections to individuals that
 19 are greater than the protections provided under such
 20 amendments.

