

110TH CONGRESS
2D SESSION

S. 3517

To amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to provide parity under group health plans and group health insurance coverage for the provision of benefits for prosthetic devices and components and benefits for other medical and surgical services.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18 (legislative day, SEPTEMBER 17), 2008

Ms. SNOWE (for herself, Mr. HARKIN, Mr. INOUE, and Mr. FEINGOLD) 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 and the Public Health Service Act to provide parity under group health plans and group health insurance coverage for the provision of benefits for prosthetic devices and components and benefits for other medical and surgical 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 “Prosthetics Parity Act
5 of 2008”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) There are more than 1,800,000 people in
5 the United States living with limb loss.

6 (2) Every year, there are more than 130,000
7 people in the United States who undergo amputation
8 procedures.

9 (3) In addition, United States military per-
10 sonnel serving in Iraq and Afghanistan and around
11 the world have sustained traumatic injuries resulting
12 in amputation.

13 (4) The number of amputations in the United
14 States is projected to increase in the years ahead
15 due to the rising incidence of diabetes and other
16 chronic illness.

17 (5) Those suffering from limb loss can and
18 want to regain their lives as productive members of
19 society.

20 (6) Prosthetic devices enable amputees to con-
21 tinue working and living productive lives.

22 (7) Insurance companies have begun to limit re-
23 imbursement of prosthetic equipment costs to unre-
24 alistic levels or not at all and often restrict coverage
25 over an individual's lifetime, which shifts costs onto
26 the Medicare and Medicaid programs.

1 (8) Eleven States have addressed this problem
2 and have prosthetic parity legislation.

3 (9) Prosthetic parity legislation has been intro-
4 duced and is being actively considered in 30 States.

5 (10) The States in which prosthetic parity laws
6 have been enacted have found there to be minimal
7 or no increases in insurance premiums and have re-
8 duced Medicare and Medicaid costs.

9 (11) Prosthetic parity legislation will not add to
10 the size of government or to the costs associated
11 with the Medicare and Medicaid programs.

12 (12) If coverage for prosthetic devices and com-
13 ponents are offered by a group health insurance pol-
14 icy, then providing such coverage of prosthetic de-
15 vices on par with other medical and surgical benefits
16 will not increase the incidence of amputations or the
17 number of individuals for which a prosthetic device
18 would be medically necessary and appropriate.

19 (13) In States where prosthetic parity legisla-
20 tion has been enacted, amputees are able to return
21 to a productive life, State funds have been saved,
22 and the health insurance industry has continued to
23 prosper.

24 (14) Prosthetic services allow people to return
25 more quickly to their preexisting work.

1 (b) PURPOSE.—It is the purpose of this Act to require
 2 that each group health plan that provides both coverage
 3 for prosthetic devices and components and medical and
 4 surgical benefits, provide such coverage under terms and
 5 conditions that are no less favorable than the terms and
 6 conditions under which such benefits are provided for
 7 other benefits under such plan.

8 **SEC. 3. PROSTHETICS PARITY.**

9 (a) ERISA.—

10 (1) IN GENERAL.—Subpart B of part 7 of sub-
 11 title B of title I of the Employee Retirement Income
 12 Security Act of 1974 (29 U.S.C. 1185 et seq.) is
 13 amended by adding at the end the following:

14 **“SEC. 714. PROSTHETICS PARITY.**

15 “(a) IN GENERAL.—In the case of a group health
 16 plan (or health insurance coverage offered in connection
 17 with a group health plan) that provides both medical and
 18 surgical benefits for prosthetic devices and components (as
 19 defined under subsection (d)(1))—

20 “(1) such benefits for prosthetic devices and
 21 components under the plan (or coverage) shall be
 22 provided under terms and conditions that are no less
 23 favorable than the terms and conditions applicable
 24 to substantially all medical and surgical benefits pro-
 25 vided under the plan (or coverage);

1 “(2) such benefits for prosthetic devices and
2 components under the plan (or coverage) may not be
3 subject to separate financial requirements (as de-
4 fined in subsection (d)(2)) that are applicable only
5 with respect to such benefits, and any financial re-
6 quirements applicable to such benefits shall be no
7 more restrictive than the financial requirements ap-
8 plicable to substantially all medical and surgical ben-
9 efits provided under the plan (or coverage); and

10 “(3) any treatment limitations (as defined in
11 subsection (d)(3)) applicable to such benefits for
12 prosthetic devices and components under the plan
13 (or coverage) may not be more restrictive than the
14 treatment limitations applicable to substantially all
15 medical and surgical benefits provided under the
16 plan (or coverage).

17 “(b) IN NETWORK AND OUT-OF-NETWORK STAND-
18 ARDS.—

19 “(1) IN GENERAL.—In the case of a group
20 health plan (or health insurance coverage offered in
21 connection with a group health plan) that provides
22 both medical and surgical benefits and benefits for
23 prosthetic devices and components, and that pro-
24 vides both in-network benefits for prosthetic devices
25 and components and out-of-network benefits for

1 prosthetic devices and components, the requirements
2 of this section shall apply separately with respect to
3 benefits under the plan (or coverage) on an in-net-
4 work basis and benefits provided under the plan (or
5 coverage) on an out-of-network basis.

6 “(2) CLARIFICATION.—Nothing in paragraph
7 (1) shall be construed as requiring that a group
8 health plan (or health insurance coverage offered in
9 connection with a group health plan) eliminate an
10 out-of-network provider option from such plan (or
11 coverage) pursuant to the terms of the plan (or cov-
12 erage).

13 “(c) ADDITIONAL REQUIREMENTS.—

14 “(1) PRIOR AUTHORIZATION.—In the case of a
15 group health plan (or health insurance coverage of-
16 fered in connection with a group health plan) that
17 requires, as a condition of coverage or payment for
18 prosthetic devices and components under the plan
19 (or coverage), prior authorization, such prior author-
20 ization must be required in the same manner as
21 prior authorization is required by the plan (or cov-
22 erage) as a condition of coverage or payment for all
23 similar benefits provided under the plan (or cov-
24 erage).

1 “(2) LIMITATION ON MANDATED BENEFITS.—
2 Coverage for required benefits for prosthetic devices
3 and components under this section shall be limited
4 to coverage of the most appropriate device or compo-
5 nent model that adequately meets the medical re-
6 quirements of the patient, as determined by the
7 treating physician of the patient involved.

8 “(3) COVERAGE FOR REPAIR OR REPLACE-
9 MENT.—Benefits for prosthetic devices and compo-
10 nents required under this section shall include cov-
11 erage for the repair or replacement of prosthetic de-
12 vices and components, if the repair or replacement
13 is determined appropriate by the treating physician
14 of the patient involved.

15 “(4) ANNUAL OR LIFETIME DOLLAR LIMITA-
16 TIONS.—A group health plan (or health insurance
17 coverage offered in connection with a group health
18 plan) shall not impose any annual or lifetime dollar
19 limitation on benefits for prosthetic devices and com-
20 ponents required to be covered under this section
21 unless such limitation applies in the aggregate to all
22 medical and surgical benefits provided under the
23 plan (or coverage) and benefits for prosthetic devices
24 components.

25 “(d) DEFINITIONS.—In this section:

1 “(1) PROSTHETIC DEVICES AND COMPO-
 2 NENTS.—The term ‘prosthetic devices and compo-
 3 nents’ means those devices and components that
 4 may be used to replace, in whole or in part, an arm
 5 or leg, as well as the services required to do so and
 6 includes external breast prostheses incident to mas-
 7 tectomy resulting from breast cancer.

8 “(2) FINANCIAL REQUIREMENTS.—The term
 9 ‘financial requirements’ includes deductibles, coin-
 10 surance, co-payments, other cost sharing, and limita-
 11 tions on the total amount that may be paid by a
 12 participant or beneficiary with respect to benefits
 13 under the plan or health insurance coverage and also
 14 includes the application of annual and lifetime lim-
 15 its.

16 “(3) TREATMENT LIMITATIONS.—The term
 17 ‘treatment limitations’ includes limits on the fre-
 18 quency of treatment, number of visits, days of cov-
 19 erage, or other similar limits on the scope or dura-
 20 tion of treatment.”.

21 (2) CLERICAL AMENDMENT.—The table of con-
 22 tents in section 1 of the Employee Retirement In-
 23 come Security Act of 1974 is amended by inserting
 24 after the item relating to section 713 the following:

“Sec. 714. Prosthetics parity.”.

1 (b) PHSA.—Subpart 2 of part A of title XXVII of
 2 the Public Health Service Act (42 U.S.C. 300gg–4 et seq.)
 3 is amended by adding at the end the following:

4 **“SEC. 2707. PROSTHETICS PARITY.**

5 “(a) IN GENERAL.—In the case of a group health
 6 plan (or health insurance coverage offered in connection
 7 with a group health plan) that provides both medical and
 8 surgical benefits for prosthetic devices and components (as
 9 defined under subsection (d)(1))—

10 “(1) such benefits for prosthetic devices and
 11 components under the plan (or coverage) shall be
 12 provided under terms and conditions that are no less
 13 favorable than the terms and conditions applicable
 14 to substantially all medical and surgical benefits pro-
 15 vided under the plan (or coverage);

16 “(2) such benefits for prosthetic devices and
 17 components under the plan (or coverage) may not be
 18 subject to separate financial requirements (as de-
 19 fined in subsection (d)(2)) that are applicable only
 20 with respect to such benefits, and any financial re-
 21 quirements applicable to such benefits shall be no
 22 more restrictive than the financial requirements ap-
 23 plicable to substantially all medical and surgical ben-
 24 efits provided under the plan (or coverage); and

1 “(3) any treatment limitations (as defined in
2 subsection (d)(3)) applicable to such benefits for
3 prosthetic devices and components under the plan
4 (or coverage) may not be more restrictive than the
5 treatment limitations applicable to substantially all
6 medical and surgical benefits provided under the
7 plan (or coverage).

8 “(b) IN NETWORK AND OUT-OF-NETWORK STAND-
9 ARDS.—

10 “(1) IN GENERAL.—In the case of a group
11 health plan (or health insurance coverage offered in
12 connection with a group health plan) that provides
13 both medical and surgical benefits and benefits for
14 prosthetic devices and components, and that pro-
15 vides both in-network benefits for prosthetic devices
16 and components and out-of-network benefits for
17 prosthetic devices and components, the requirements
18 of this section shall apply separately with respect to
19 benefits under the plan (or coverage) on an in-net-
20 work basis and benefits provided under the plan (or
21 coverage) on an out-of-network basis.

22 “(2) CLARIFICATION.—Nothing in paragraph
23 (1) shall be construed as requiring that a group
24 health plan (or health insurance coverage offered in
25 connection with a group health plan) eliminate an

1 out-of-network provider option from such plan (or
2 coverage) pursuant to the terms of the plan (or cov-
3 erage).

4 “(c) ADDITIONAL REQUIREMENTS.—

5 “(1) PRIOR AUTHORIZATION.—In the case of a
6 group health plan (or health insurance coverage of-
7 fered in connection with a group health plan) that
8 requires, as a condition of coverage or payment for
9 prosthetic devices and components under the plan
10 (or coverage), prior authorization, such prior author-
11 ization must be required in the same manner as
12 prior authorization is required by the plan (or cov-
13 erage) as a condition of coverage or payment for all
14 similar benefits provided under the plan (or cov-
15 erage).

16 “(2) LIMITATION ON MANDATED BENEFITS.—
17 Coverage for required benefits for prosthetic devices
18 and components under this section shall be limited
19 to coverage of the most appropriate device or compo-
20 nent model that adequately meets the medical re-
21 quirements of the patient, as determined by the
22 treating physician of the patient involved.

23 “(3) COVERAGE FOR REPAIR OR REPLACE-
24 MENT.—Benefits for prosthetic devices and compo-
25 nents required under this section shall include cov-

1 erage for the repair or replacement of prosthetic de-
 2 vices and components, if the repair or replacement
 3 is determined appropriate by the treating physician
 4 of the patient involved.

5 “(4) ANNUAL OR LIFETIME DOLLAR LIMITA-
 6 TIONS.—A group health plan (or health insurance
 7 coverage offered in connection with a group health
 8 plan) shall not impose any annual or lifetime dollar
 9 limitation on benefits for prosthetic devices and com-
 10 ponents required to be covered under this section
 11 unless such limitation applies in the aggregate to all
 12 medical and surgical benefits provided under the
 13 plan (or coverage) and benefits for prosthetic devices
 14 components.

15 “(d) DEFINITIONS.—In this section:

16 “(1) PROSTHETIC DEVICES AND COMPO-
 17 NENTS.—The term ‘prosthetic devices and compo-
 18 nents’ means those devices and components that
 19 may be used to replace, in whole or in part, an arm
 20 or leg, as well as the services required to do so and
 21 includes external breast prostheses incident to mas-
 22 tectomy resulting from breast cancer.

23 “(2) FINANCIAL REQUIREMENTS.—The term
 24 ‘financial requirements’ includes deductibles, coin-
 25 surance, co-payments, other cost sharing, and limita-

1 tions on the total amount that may be paid by an
2 enrollee with respect to benefits under the plan or
3 health insurance coverage and also includes the ap-
4 plication of annual and lifetime limits.

5 “(3) TREATMENT LIMITATIONS.—The term
6 ‘treatment limitations’ includes limits on the fre-
7 quency of treatment, number of visits, days of cov-
8 erage, or other similar limits on the scope or dura-
9 tion of treatment.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to group health plans
12 (and health insurance coverage offered in connection with
13 group health plans) for plan years beginning on or after
14 the date of the enactment of this Act.

15 **SEC. 4. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

16 (a) ASSISTANCE TO ENROLLEES.—The Secretary of
17 Labor, in consultation with the Secretary of Health and
18 Human Services, shall provide assistance to enrollees
19 under plans or coverage to which the amendment made
20 by section 3 apply with any questions or problems with
21 respect to compliance with the requirements of such
22 amendment.

23 (b) AUDITS.—The Secretary of Labor, in consulta-
24 tion with the Secretary of Health and Human Services,
25 shall provide for the conduct of random audits of group

1 health plans (and health insurance coverage offered in
2 connection with such plans) to ensure that such plans (or
3 coverage) are in compliance with the amendments made
4 by section (3).

5 (c) GAO STUDY.—

6 (1) STUDY.—The Comptroller General of the
7 United States shall conduct a study that evaluates
8 the effect of the implementation of the amendments
9 made by this Act on the cost of the health insurance
10 coverage, on access to health insurance coverage (in-
11 cluding the availability of in-network providers), on
12 the quality of health care, on benefits and coverage
13 for prosthetics devices and components, on any addi-
14 tional cost or savings to group health plans, on State
15 prosthetic devices and components benefit mandate
16 laws, on the business community and the Federal
17 Government, and on other issues as determined ap-
18 propriate by the Comptroller General.

19 (2) REPORT.—Not later than 2 years after the
20 date of the enactment of this Act, the Comptroller
21 General of the United States shall prepare and sub-
22 mit to the appropriate committee of Congress a re-
23 port containing the results of the study conducted
24 under paragraph (1).

1 (d) REGULATIONS.—Not later than 1 year after the
2 date of the enactment of this Act, the Secretary of Labor,
3 in consultation with the Secretary of Health and Human
4 Services, shall promulgate final regulations to carry out
5 this Act and the amendments made by this Act.

