

111TH CONGRESS  
2D SESSION

# S. 3223

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 prosthetics and custom orthotics and benefits for other medical and surgical services.

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## IN THE SENATE OF THE UNITED STATES

APRIL 19, 2010

Ms. SNOWE (for herself and Mr. HARKIN) 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 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 prosthetics and custom orthotics 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 and Cus-  
5 tom Orthotics Parity Act of 2010”.

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

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

4 (1) There are more than 1,700,000 people in  
5 the United States living with limb loss, many of  
6 whom are appropriate candidates for prosthetic care.  
7 A comparable number experience trauma, illness, or  
8 disability that results in musculoskeletal or neuro-  
9 muscular impairment of the limbs, back, and neck  
10 requiring the use of orthotic care.

11 (2) Every year, there are more than 130,000  
12 people in the United States who undergo amputation  
13 procedures.

14 (3) In addition, United States military per-  
15 sonnel serving in Iraq and Afghanistan and around  
16 the world have sustained traumatic injuries resulting  
17 in amputation and musculoskeletal or neuromuscular  
18 injury.

19 (4) The number of amputations in the United  
20 States is projected to increase in the years ahead  
21 due to the rising incidence of diabetes and other  
22 chronic illness.

23 (5) Those experiencing limb loss and limb dys-  
24 function can and want to regain their lives as pro-  
25 ductive members of society.

1           (6) Prosthetic and orthotic care often enables  
2           amputees and others with orthopedic impairments to  
3           continue working and living productive lives.

4           (7) Insurance companies have begun to limit re-  
5           imbursement of prosthetic and custom orthotic care  
6           costs to unrealistic levels and often restrict coverage  
7           over an individual's lifetime, which shifts costs onto  
8           the Medicare and Medicaid programs.

9           (8) Eighteen States have addressed this prob-  
10          lem and have prosthetic or orthotic parity legisla-  
11          tion.

12          (9) Prosthetic and orthotic parity legislation  
13          has been introduced and is being actively considered  
14          in 20 States.

15          (10) The States in which prosthetic or orthotic  
16          parity laws have been enacted have found there to  
17          be minimal or no increases in insurance premiums  
18          and have reduced Medicare and Medicaid costs.

19          (11) Prosthetic or orthotic parity legislation will  
20          not add to the size of government or to the costs as-  
21          sociated with the Medicare and Medicaid programs.

22          (12) If coverage for prosthetics and custom  
23          orthotics are offered by a group health insurance  
24          policy, then providing such prosthetic coverage on  
25          par with other medical and surgical benefits will not

1       increase the incidence of amputations or the number  
2       of individuals for which a prosthetic or custom  
3       orthotic device would be medically necessary and ap-  
4       propriate.

5           (13) In States where prosthetic or orthotic par-  
6       ity legislation has been enacted, amputees and oth-  
7       ers with orthopedic impairments are able to return  
8       to productive lives, State funds have been saved, and  
9       the health insurance industry has continued to pros-  
10      per.

11          (14) Prosthetic and orthotic devices and related  
12      services allow people to return more quickly to their  
13      preexisting work.

14          (15) States have, and should continue to be  
15      permitted to, create consumer protections that ex-  
16      ceed the Federal floor of protection provided for in  
17      this Act.

18      (b) PURPOSE.—It is the purpose of this Act to re-  
19      quire that each group health plan that provides medical  
20      and surgical benefits and also provides coverage for pros-  
21      thetics or custom orthotics (or both), provide such cov-  
22      erage under terms and conditions that are no less favor-  
23      able than the terms and conditions under which medical  
24      and surgical benefits are provided under such plan.

1 **SEC. 3. PROSTHETICS AND CUSTOM ORTHOTICS PARITY.**

2 (a) ERISA.—

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

7 **“SEC. 715. PROSTHETICS AND CUSTOM ORTHOTICS PARITY.**

8 “(a) IN GENERAL.—In the case of a group health  
9 plan (or health insurance coverage offered in connection  
10 with a group health plan) that provides medical and sur-  
11 gical benefits and also provides benefits for prosthetics or  
12 custom orthotics (as defined under paragraphs (1) and (2)  
13 of subsection (e)) (or both)—

14 “(1) such benefits for prosthetics or custom  
15 orthotics (or both) under the plan (or coverage) shall  
16 be provided under terms and conditions that are no  
17 less favorable than the terms and conditions applica-  
18 ble to substantially all medical and surgical benefits  
19 provided under the plan (or coverage);

20 “(2) such benefits for prosthetics or custom  
21 orthotics (or both) under the plan (or coverage) may  
22 not be subject to separate financial requirements (as  
23 defined in subsection (e)(2)) that are applicable only  
24 with respect to such benefits, and any financial re-  
25 quirements applicable to such benefits shall be no  
26 more restrictive than the financial requirements ap-

1 plicable to substantially all medical and surgical ben-  
 2 efits provided under the plan (or coverage); and

3 “(3) any treatment limitations (as defined in  
 4 subsection (e)(3)) applicable to such benefits for  
 5 prosthetics or custom orthotics (or both) under the  
 6 plan (or coverage) may not be more restrictive than  
 7 the treatment limitations applicable to substantially  
 8 all medical and surgical benefits provided under the  
 9 plan (or coverage).

10 “(b) IN NETWORK AND OUT-OF-NETWORK STAND-  
 11 ARDS.—

12 “(1) IN GENERAL.—In the case of a group  
 13 health plan (or health insurance coverage offered in  
 14 connection with a group health plan) that provides  
 15 medical or surgical benefits and also provides bene-  
 16 fits for prosthetics or custom orthotics (or both),  
 17 and that provides both in-network benefits for pros-  
 18 thetics and custom orthotics and out-of-network ben-  
 19 efits for prosthetics and custom orthotics, the re-  
 20 quirements of this section shall apply separately with  
 21 respect to benefits under the plan (or coverage) on  
 22 an in-network basis and benefits provided under the  
 23 plan (or coverage) on an out-of-network basis.

24 “(2) CLARIFICATION.—Nothing in paragraph  
 25 (1) shall be construed as requiring that a group

1 health plan (or health insurance coverage offered in  
2 connection with a group health plan) eliminate an  
3 out-of-network provider option from such plan (or  
4 coverage) pursuant to the terms of the plan (or cov-  
5 erage).

6 “(c) PATIENT ACCESS.—A group health plan (or  
7 health insurance coverage offered in connection with a  
8 group health plan) described in subsection (a) that does  
9 not provide coverage for benefits outside of a network shall  
10 ensure that such provider network is adequate to ensure  
11 enrollee access to prosthetic and custom orthotic devices  
12 and related services provided by appropriately credentialed  
13 practitioners and accredited suppliers of prosthetics and  
14 custom orthotics.

15 “(d) ADDITIONAL REQUIREMENTS.—

16 “(1) PRIOR AUTHORIZATION.—In the case of a  
17 group health plan (or health insurance coverage of-  
18 fered in connection with a group health plan) that  
19 requires, as a condition of coverage or payment for  
20 prosthetics or custom orthotics (or both) under the  
21 plan (or coverage), prior authorization, such prior  
22 authorization must be required in the same manner  
23 as prior authorization is required by the plan (or  
24 coverage) as a condition of coverage or payment for

1 all similar medical and surgical benefits provided  
2 under the plan (or coverage).

3 “(2) LIMITATION ON MANDATED BENEFITS.—  
4 Coverage for required benefits for prosthetics and  
5 custom orthotics under this section may be limited  
6 to coverage of the most appropriate device or compo-  
7 nent model that meets the medical requirements of  
8 the patient, as determined by the treating physician  
9 of the patient involved.

10 “(3) COVERAGE FOR REPAIR OR REPLACE-  
11 MENT.—Benefits for prosthetics and custom  
12 orthotics required under this section shall include  
13 coverage for the repair or replacement of prosthetics  
14 and custom orthotics, if the repair or replacement is  
15 due to normal wear and tear, irreparable damage, a  
16 change in the condition of the patient as determined  
17 by the treating physician, or otherwise determined  
18 appropriate by the treating physician of the patient  
19 involved.

20 “(4) ANNUAL OR LIFETIME DOLLAR LIMITA-  
21 TIONS.—A group health plan (or health insurance  
22 coverage offered in connection with a group health  
23 plan) shall not impose any annual or lifetime dollar  
24 limitation on benefits for prosthetics and custom  
25 orthotics required to be covered under this section

1 unless such limitation applies in the aggregate to all  
 2 medical and surgical benefits provided under the  
 3 plan (or coverage) and benefits for prosthetics and  
 4 custom orthotics.

5 “(e) DEFINITIONS.—In this section:

6 “(1) PROSTHETICS.—The term ‘prosthetics’  
 7 means those devices and components that may be  
 8 used to replace, in whole or in part, an arm or leg,  
 9 as well as the services required to do so and includes  
 10 external breast prostheses incident to mastectomy  
 11 resulting from breast cancer.

12 “(2) CUSTOM ORTHOTICS.—The term ‘custom  
 13 orthotics’ means the following:

14 “(A) Custom-fabricated orthotics and re-  
 15 lated services, which include custom-fabricated  
 16 devices that are individually made for a specific  
 17 patient, as well as all services and supplies that  
 18 are medically necessary for the effective use of  
 19 the orthotic device and instructing the patient  
 20 in the use of the device. No other patient would  
 21 be able to use this particular orthosis. A cus-  
 22 tom-fabricated orthosis is a device which is fab-  
 23 ricated based on clinically derived and rectified  
 24 castings, tracings, measurements, or other im-  
 25 ages (such as x-rays) of the body part. The fab-

1       rication may involve using calculations, tem-  
2       plates and component parts. This process re-  
3       quires the use of basic materials and involves  
4       substantial work such as vacuum forming, cut-  
5       ting, bending, molding, sewing, drilling and fin-  
6       ishing prior to fitting on the patient. Custom-  
7       fabricated devices may be furnished only by an  
8       appropriately credentialed (certified or licensed)  
9       practitioner and accredited supplier in Orthotics  
10      or Prosthetics. Such devices and related serv-  
11      ices are represented by the set of L-codes under  
12      the Healthcare Common Procedure Coding Sys-  
13      tem describing this care listed on the date of  
14      enactment of this section in Centers for Medi-  
15      care & Medicaid Services Transmittal 656.

16           “(B) Custom-fitted high orthotics and re-  
17      lated services, which include prefabricated de-  
18      vices that are manufactured with no specific pa-  
19      tient in mind, but that are appropriately sized,  
20      adapted, modified, and configured (with the re-  
21      quired tools and equipment) to a specific pa-  
22      tient in accordance with a prescription, and  
23      which no other patient would be able to use, as  
24      well as all services and supplies that are medi-  
25      cally necessary for the effective use of the

1           orthotic device and instructing the patient in  
2           the use of the device. Custom-fitted high devices  
3           may be furnished only by an appropriately  
4           credentialed (certified or licensed) practitioner  
5           and accredited supplier in Orthotics or Pros-  
6           thetics. Such devices and related services are  
7           represented by the existing set of L-codes under  
8           the Healthcare Common Procedure Coding Sys-  
9           tem describing this care listed on the date of  
10          enactment of this section in Centers for Medi-  
11          care & Medicaid Services Transmittal 656.

12       For purposes of subparagraphs (A) and (B), Centers  
13       for Medicare & Medicaid Services Transmittal 656,  
14       upon modification or reissuance by the Centers for  
15       Medicare & Medicaid Services to reflect new code ad-  
16       ditions and coding changes for prosthetics and cus-  
17       tom orthotics, shall be the version of the Transmittal  
18       used for purposes of such subparagraphs.

19           “(3) FINANCIAL REQUIREMENTS.—The term  
20       ‘financial requirements’ includes deductibles, coin-  
21       surance, co-payments, other cost sharing, and limita-  
22       tions on the total amount that may be paid by a  
23       participant or beneficiary with respect to benefits  
24       under the plan or health insurance coverage and also

1 includes the application of annual and lifetime lim-  
 2 its.

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

8 (2) CLERICAL AMENDMENT.—The table of con-  
 9 tents in section 1 of the Employee Retirement In-  
 10 come Security Act of 1974 is amended by inserting  
 11 after the item relating to section 714 the following:

“Sec. 715. Prosthetics and custom orthotics parity.”.

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

15 **“SEC. 2708. PROSTHETICS AND CUSTOM ORTHOTICS PAR-**  
 16 **ITY.**

17 “(a) IN GENERAL.—In the case of a group health  
 18 plan (or health insurance coverage offered in connection  
 19 with a group health plan) that provides medical and sur-  
 20 gical benefits and also provides benefits for prosthetics or  
 21 custom orthotics (as defined under paragraphs (1) and (2)  
 22 of subsection (e)) (or both)—

23 “(1) such benefits for prosthetics or custom  
 24 orthotics (or both) under the plan (or coverage) shall  
 25 be provided under terms and conditions that are no

1 less favorable than the terms and conditions applica-  
2 ble to substantially all medical and surgical benefits  
3 provided under the plan (or coverage);

4 “(2) such benefits for prosthetics or custom  
5 orthotics (or both) under the plan (or coverage) may  
6 not be subject to separate financial requirements (as  
7 defined in subsection (e)(2)) that are applicable only  
8 with respect to such benefits, and any financial re-  
9 quirements applicable to such benefits shall be no  
10 more restrictive than the financial requirements ap-  
11 plicable to substantially all medical and surgical ben-  
12 efits provided under the plan (or coverage); and

13 “(3) any treatment limitations (as defined in  
14 subsection (e)(3)) applicable to such benefits for  
15 prosthetics or custom orthotics (or both) under the  
16 plan (or coverage) may not be more restrictive than  
17 the treatment limitations applicable to substantially  
18 all medical and surgical benefits provided under the  
19 plan (or coverage).

20 “(b) IN NETWORK AND OUT-OF-NETWORK STAND-  
21 ARDS.—

22 “(1) IN GENERAL.—In the case of a group  
23 health plan (or health insurance coverage offered in  
24 connection with a group health plan) that provides  
25 medical and surgical benefits and also provides bene-

1 fits for prosthetics or custom orthotics (or both),  
2 and that provides both in-network and out-of-net-  
3 work benefits for prosthetics or custom orthotics (or  
4 both), the requirements of this section shall apply  
5 separately with respect to benefits under the plan  
6 (or coverage) on an in-network basis and benefits  
7 provided under the plan (or coverage) on an out-of-  
8 network basis.

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

16 “(c) PATIENT ACCESS.—A group health plan (or  
17 health insurance coverage offered in connection with a  
18 group health plan) described in subsection (a) that does  
19 not provide coverage for benefits outside of a network shall  
20 ensure that such provider network is adequate to ensure  
21 enrollee access to prosthetic and custom orthotic devices  
22 and related services provided by appropriately credentialed  
23 practitioners and accredited suppliers of prosthetics and  
24 custom orthotics.

25 “(d) ADDITIONAL REQUIREMENTS.—

1           “(1) PRIOR AUTHORIZATION.—In the case of a  
2           group health plan (or health insurance coverage of-  
3           fered in connection with a group health plan) that  
4           requires, as a condition of coverage or payment for  
5           prosthetics or custom orthotics (or both) under the  
6           plan (or coverage), prior authorization, such prior  
7           authorization must be required in the same manner  
8           as prior authorization is required by the plan (or  
9           coverage) as a condition of coverage or payment for  
10          all similar medical and surgical benefits provided  
11          under the plan (or coverage).

12          “(2) LIMITATION ON MANDATED BENEFITS.—  
13          Coverage for required benefits for prosthetics and  
14          custom orthotics under this section may be limited  
15          to coverage of the most appropriate device or compo-  
16          nent model that adequately meets the medical re-  
17          quirements of the patient, as determined by the  
18          treating physician of the patient involved.

19          “(3) COVERAGE FOR REPAIR OR REPLACE-  
20          MENT.—Benefits for prosthetics and custom  
21          orthotics required under this section shall include  
22          coverage for the repair or replacement of prosthetics  
23          and custom orthotics, if the repair or replacement is  
24          due to normal wear and tear, irreparable damage, a  
25          change in the condition of the patient as determined

1 by the treating physician, or otherwise determined  
 2 appropriate by the treating physician of the patient  
 3 involved.

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

14 “(e) DEFINITIONS.—In this section:

15 “(1) PROSTHETICS.—The term ‘prosthetics’  
 16 means those devices and components that may be  
 17 used to replace, in whole or in part, an arm or leg,  
 18 as well as the services required to do so and includes  
 19 external breast prostheses incident to mastectomy  
 20 resulting from breast cancer.

21 “(2) CUSTOM ORTHOTICS.—The term ‘custom  
 22 orthotics’ means the following:

23 “(A) Custom-fabricated orthotics and re-  
 24 lated services, which include custom-fabricated  
 25 devices that are individually made for a specific

1 patient, as well as all services and supplies that  
2 are medically necessary for the effective use of  
3 the orthotic device and instructing the patient  
4 in the use of the device. No other patient would  
5 be able to use this particular orthosis. A cus-  
6 tom-fabricated orthosis is a device which is fab-  
7 ricated based on clinically derived and rectified  
8 castings, tracings, measurements, or other im-  
9 ages (such as x-rays) of the body part. The fab-  
10 rication may involve using calculations, tem-  
11 plates and component parts. This process re-  
12 quires the use of basic materials and involves  
13 substantial work such as vacuum forming, cut-  
14 ting, bending, molding, sewing, drilling and fin-  
15 ishing prior to fitting on the patient. Custom-  
16 fabricated devices may be furnished only by an  
17 appropriately credentialed (certified or licensed)  
18 practitioner and accredited supplier in Orthotics  
19 or Prosthetics. Such devices and related serv-  
20 ices are represented by the set of L-codes under  
21 the Healthcare Common Procedure Coding Sys-  
22 tem describing this care listed on the date of  
23 enactment of this section in Centers for Medi-  
24 care & Medicaid Services Transmittal 656.

1           “(B) Custom-fitted high orthotics and re-  
2           lated services, which include prefabricated de-  
3           vices that are manufactured with no specific pa-  
4           tient in mind, but that are appropriately sized,  
5           adapted, modified, and configured (with the re-  
6           quired tools and equipment) to a specific pa-  
7           tient in accordance with a prescription, and  
8           which no other patient would be able to use, as  
9           well as all services and supplies that are medi-  
10          cally necessary for the effective use of the  
11          orthotic device and instructing the patient in  
12          the use of the device. Custom-fitted high devices  
13          may be furnished only by an appropriately  
14          credentialed (certified or licensed) practitioner  
15          and accredited supplier in Orthotics or Pros-  
16          thetics. Such devices and related services are  
17          represented by the existing set of L-codes under  
18          the Healthcare Common Procedure Coding Sys-  
19          tem describing this care listed on the date of  
20          enactment of this section in Centers for Medi-  
21          care & Medicaid Services Transmittal 656.

22          For purposes of subparagraphs (A) and (B), Centers  
23          for Medicare & Medicaid Services Transmittal 656,  
24          upon modification or reissuance by the Centers for  
25          Medicare & Medicaid Services to reflect new code ad-

1       ditions and coding changes for prosthetics and cus-  
 2       tom orthotics, shall be the version of the Transmittal  
 3       used for purposes of such subparagraphs.

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

12          “(4) TREATMENT LIMITATIONS.—The term  
 13       ‘treatment limitations’ includes limits on the fre-  
 14       quency of treatment, number of visits, days of cov-  
 15       erage, or other similar limits on the scope or dura-  
 16       tion of treatment.”.

17       (c) EFFECTIVE DATE.—The amendments made by  
 18       this section shall apply with respect to group health plans  
 19       (and health insurance coverage offered in connection with  
 20       group health plans) for plan years beginning on or after  
 21       the date of the enactment of this Act.

22   **SEC. 4. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

23       (a) ASSISTANCE TO ENROLLEES.—The Secretary of  
 24       Labor, in consultation with the Secretary of Health and  
 25       Human Services, shall provide assistance to enrollees

1 under plans or coverage to which the amendment made  
2 by section 3 apply with any questions or problems with  
3 respect to compliance with the requirements of such  
4 amendment.

5 (b) AUDITS.—The Secretary of Labor, in consulta-  
6 tion with the Secretary of Health and Human Services,  
7 shall provide for the conduct of random audits of group  
8 health plans (and health insurance coverage offered in  
9 connection with such plans) to ensure that such plans (or  
10 coverage) are in compliance with the amendments made  
11 by section (3).

12 (c) GAO STUDY.—

13 (1) STUDY.—The Comptroller General of the  
14 United States shall conduct a study that evaluates  
15 the effect of the implementation of the amendments  
16 made by this Act on the cost of the health insurance  
17 coverage, on access to health insurance coverage (in-  
18 cluding the availability of in-network providers), on  
19 the quality of health care, on benefits and coverage  
20 for prosthetics and custom orthotics on any addi-  
21 tional cost or savings to group health plans, on State  
22 prosthetics and custom orthotics benefit laws, on the  
23 business community and the Federal Government,  
24 and on other issues as determined appropriate by  
25 the Comptroller General.

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

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

○