

112TH CONGRESS
1ST SESSION

H. R. 2746

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to require group and individual health insurance coverage and group health plans to provide for coverage of oral anticancer drugs on terms no less favorable than the coverage provided for intravenously administered anticancer medications.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 2011

Mr. HIGGINS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to require group and individual health insurance coverage and group health plans to provide for coverage of oral anticancer drugs on terms no less favorable than the coverage provided for intravenously administered anticancer medications.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Cancer Drug Coverage
3 Parity Act of 2011”.

4 **SEC. 2. PARITY IN COVERAGE FOR ORAL ANTICANCER**
5 **DRUGS.**

6 (a) EMPLOYEE RETIREMENT INCOME SECURITY ACT
7 OF 1974 AMENDMENTS.—(1) Subpart B of part 7 of sub-
8 title B of title I of the Employee Retirement Income Secu-
9 rity Act of 1974 is amended by adding at the end the fol-
10 lowing new section:

11 **“SEC. 716. PARITY IN COVERAGE FOR ORAL ANTICANCER**
12 **DRUGS.**

13 “(a) IN GENERAL.—Subject to subsection (b), a
14 group health plan, and a health insurance issuer providing
15 health insurance coverage in connection with a group
16 health plan, that provides benefits with respect to intra-
17 venously administered or injected anticancer medications
18 shall provide for no less favorable coverage for prescribed,
19 orally administered anticancer medication that is used to
20 kill or slow the growth of cancerous cells and that has
21 been approved by the Food and Drug Administration.

22 “(b) LIMITATION.—Subsection (a) shall only apply to
23 anticancer medication that is prescribed based on a find-
24 ing by the treating physician that the medication—

25 “(1) is medically necessary for the purpose of
26 killing or slowing the growth of cancerous cells in a

1 manner that is in accordance with nationally accept-
2 ed standards of medical practice;

3 “(2) is clinically appropriate in terms of type,
4 frequency, extent site, and duration; and

5 “(3) is not primarily for the convenience of the
6 patient, physician, or other health care provider.

7 “(c) APPLICATION OF COST-SHARING AND RESTRIC-
8 TIONS.—

9 “(1) IN GENERAL.—The coverage of anticancer
10 medication under subsection (a) may be subject to
11 annual deductibles and coinsurance or copayments
12 so long as such deductibles, coinsurance, and copay-
13 ments do not exceed the deductibles, coinsurance,
14 and copayments that are applicable to intravenously
15 administered or injected anticancer medications
16 under the plan or coverage for the same purpose.

17 “(2) RESTRICTION.—A group health plan or
18 health insurance issuer may not, in order to comply
19 with the requirement of subsection (a)—

20 “(A) impose an increase in out-of-pocket
21 costs with respect to anticancer medications; or

22 “(B) reclassify benefits with respect to
23 anticancer medications.

24 “(d) APPLICATION OF NOTICE, PROHIBITIONS,
25 ETC.—The provisions of subsections (b), (c), (d), and

1 (e)(2) of section 713 shall apply with respect to the cov-
2 erage required by subsection (a) in the same manner as
3 they apply with respect to the coverage required under
4 such section, except that January 1, 2012, shall be sub-
5 stituted for the date referred to in subsection (b)(3) of
6 such section.

7 “(e) CONSTRUCTION.—Nothing in this section shall
8 be construed—

9 “(1) to require the use of orally administered
10 anticancer medications as a replacement for other
11 anticancer medications; or

12 “(2) to prohibit a group health plan or health
13 insurance issuer from requiring prior authorization
14 or imposing other appropriate utilization controls in
15 approving coverage for any chemotherapy.”.

16 (2) Section 731(c) of such Act (29 U.S.C. 1191(c))
17 is amended by striking “section 711” and inserting “sec-
18 tions 711 and 716”.

19 (3) Section 732(a) of such Act (29 U.S.C. 1191a(a))
20 is amended by striking “section 711” and inserting “sec-
21 tions 711 and 716”.

22 (4) The table of contents in section 1 of such Act
23 is amended by inserting after the item relating to section
24 714 the following new items:

“Sec. 715. Additional market reforms.

“Sec. 716. Parity in coverage for oral anticancer drugs.”.

1 (b) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

2 (1) Title XXVII of the Public Health Service Act is
3 amended by inserting after section 2728 (42 U.S.C.
4 300gg–28), as redesignated by section 1001(2) of the Pa-
5 tient Protection and Affordable Care Act (Public Law
6 111–148), the following new section:

7 **“SEC. 2729. PARITY IN COVERAGE FOR ORAL ANTICANCER**
8 **DRUGS.**

9 “(a) IN GENERAL.—Subject to subsection (b), a
10 group health plan, and a health insurance issuer offering
11 group or individual health insurance coverage, that pro-
12 vides benefits with respect to intravenously administered
13 or injected anticancer medications shall provide for no less
14 favorable coverage for prescribed, orally administered
15 anticancer medication that is used to kill or slow the
16 growth of cancerous cells and that has been approved by
17 the Food and Drug Administration.

18 “(b) LIMITATION.—Subsection (a) shall only apply to
19 anticancer medication that is prescribed based on a find-
20 ing by the treating physician that the medication—

21 “(1) is medically necessary for the purpose of
22 killing or slowing the growth of cancerous cells in a
23 manner that is in accordance with nationally accept-
24 ed standards of medical practice;

1 “(2) is clinically appropriate in terms of type,
2 frequency, extent site, and duration; and

3 “(3) is not primarily for the convenience of the
4 patient, physician, or other health care provider.

5 “(c) APPLICATION OF COST-SHARING AND RESTRIC-
6 TIONS.—

7 “(1) IN GENERAL.—The coverage of anticancer
8 medication under subsection (a) may be subject to
9 annual deductibles and coinsurance or copayments
10 so long as such deductibles, coinsurance, and copay-
11 ments do not exceed the deductibles, coinsurance,
12 and copayments that are applicable to intravenously
13 administered or injected anticancer medications
14 under the plan or coverage for the same purpose.

15 “(2) RESTRICTION.—A group health plan or
16 health insurance issuer may not, in order to comply
17 with the requirement of subsection (a)—

18 “(A) impose an increase in out-of-pocket
19 costs with respect to anticancer medications; or

20 “(B) reclassify benefits with respect to
21 anticancer medications.

22 “(d) APPLICATION OF NOTICE, PROHIBITIONS,
23 ETC.—The provisions of subsections (b), (c), (d), and
24 (e)(2) of section 713 of the Employee Retirement and In-
25 come Security Act of 1974 shall apply with respect to the

1 coverage required by subsection (a) in the same manner
2 as they apply with respect to the coverage required under
3 such section, except that January 1, 2012, shall be sub-
4 stituted for the date referred to in subsection (b)(3) of
5 such section.

6 “(e) CONSTRUCTION.—Nothing in this section shall
7 be construed—

8 “(1) to require the use of orally administered
9 anticancer medications as a replacement for other
10 anticancer medications; or

11 “(2) to prohibit a group health plan or health
12 insurance issuer from requiring prior authorization
13 or imposing other appropriate utilization controls in
14 approving coverage for any chemotherapy.”.

15 (2) Section 2724(c) of such Act (42 U.S.C. 300gg–
16 23(c)), as redesignated by section 1001(4) and subsection
17 (c)(14) of the section 1563 (relating to conforming amend-
18 ments) of Public Law 111–148, is amended by striking
19 “section 2704” and inserting “sections 2725 and 2729”.

20 (3) Section 2762(b)(2) of such Act (42 U.S.C.
21 300gg–62(b)(2)) is amended by striking “section 2751”
22 and inserting “sections 2751 and 2729”.

23 (4) For purposes of applying section 2729 of the
24 Public Health Service Act, as inserted by paragraph (1),
25 to individual health insurance coverage before 2014, the

1 provisions of such section shall be treated as also included
2 under part B of title XXVII of the Public Health Service
3 Act.

4 (c) INTERNAL REVENUE CODE AMENDMENTS.—

5 (1) IN GENERAL.—Subchapter B of chapter
6 100 of the Internal Revenue Code of 1986, as
7 amended by subsection (f) of the section 1563 (relat-
8 ing to conforming amendments) of Public Law 111-
9 148, is amended by adding at the end the following
10 new section:

11 **“SEC. 9816. PARITY IN COVERAGE FOR ORAL ANTICANCER**
12 **DRUGS.**

13 “(a) IN GENERAL.—Subject to subsection (b), a
14 group health plan that provides benefits with respect to
15 intravenously administered or injected anticancer medica-
16 tions shall provide for no less favorable coverage for pre-
17 scribed, orally administered anticancer medication that is
18 used to kill or slow the growth of cancerous cells and that
19 has been approved by the Food and Drug Administration.

20 “(b) LIMITATION.—Subsection (a) shall only apply to
21 anticancer medication that is prescribed based on a find-
22 ing by the treating physician that the medication—

23 “(1) is medically necessary for the purpose of
24 killing or slowing the growth of cancerous cells in a

1 manner that is in accordance with nationally accept-
2 ed standards of medical practice;

3 “(2) is clinically appropriate in terms of type,
4 frequency, extent site, and duration; and

5 “(3) is not primarily for the convenience of the
6 patient, physician, or other health care provider.

7 “(c) APPLICATION OF COST-SHARING AND RESTRIC-
8 TIONS.—

9 “(1) IN GENERAL.—The coverage of anticancer
10 medication under subsection (a) may be subject to
11 annual deductibles and coinsurance or copayments
12 so long as such deductibles, coinsurance, and copay-
13 ments do not exceed the deductibles, coinsurance,
14 and copayments that are applicable to intravenously
15 administered or injected anticancer medications
16 under the plan for the same purpose.

17 “(2) RESTRICTION.—A group health plan may
18 not, in order to comply with the requirement of sub-
19 section (a)—

20 “(A) impose an increase in out-of-pocket
21 costs with respect to anticancer medications; or

22 “(B) reclassify benefits with respect to
23 anticancer medications.

24 “(d) APPLICATION OF NOTICE, PROHIBITIONS,
25 ETC.—The provisions of subsections (b), (c), (d), and

1 (e)(2) of section 713 of the Employee Retirement and In-
2 come Security Act of 1974 shall apply with respect to the
3 coverage required by subsection (a) in the same manner
4 as they apply with respect to the coverage required under
5 such section, except that January 1, 2012, shall be sub-
6 stituted for the date referred to in subsection (b)(3) of
7 such section.

8 “(e) CONSTRUCTION.—Nothing in this section shall
9 be construed—

10 “(1) to require the use of orally administered
11 anticancer medications as a replacement for other
12 anticancer medications; or

13 “(2) to prohibit a group health plan or health
14 insurance issuer from requiring prior authorization
15 or imposing other appropriate utilization controls in
16 approving coverage for any chemotherapy.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions for such subchapter is amended by adding at
19 the end the following new items:

“Sec. 9815. Additional market reforms.

“Sec. 9816. Parity in coverage for oral anticancer drugs.”.

20 (d) CLARIFYING AMENDMENT REGARDING APPLICA-
21 TION TO GRANDFATHERED PLANS.—Section
22 1251(a)(4)(A) of the Patient Protection and Affordable
23 Care Act (Public Law 111–148; 42 U.S.C.
24 18011(a)(4)(A)), as added by section 2301(a) of Public

1 Law 111–152, is amended by adding at the end the fol-
2 lowing new clause:

3 “(v) Section 2729 (relating to stand-
4 ards relating to benefits for minor child’s
5 congenital or developmental deformity or
6 disorder), as added by section 2(b) of the
7 Cancer Drug Coverage Parity Act of
8 2011.”.

9 (e) EFFECTIVE DATE.—The amendments made by
10 this section shall apply with respect to group health plans
11 for plan years beginning on or after January 1, 2012, and
12 with respect to health insurance coverage offered, sold,
13 issued, renewed, in effect, or operated in the individual
14 market on or after such date.

15 (f) STUDY.—Not later than 2 years after the date
16 of the enactment of this Act—

17 (1) the Medicare Payment Advisory Commis-
18 sion shall complete a study that assesses how closing
19 the Medicare part D donut hole under the amend-
20 ments made by section 3301 of the Patient Protec-
21 tion and Affordable Care Act (Public Law 111–148),
22 as amended by section 1101 of the Health Care and
23 Education Reconciliation Act of 2010 (Public Law
24 111–152), affects Medicare coverage for orally ad-

- 1 ministered anticancer medications, with a particular
- 2 focus on cost and accessibility; and
- 3 (2) submit a report to Congress on the results
- 4 of such study.

