

112TH CONGRESS
1ST SESSION

S. 1045

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, burns, infection, tumor, or disease.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2011

Ms. LANDRIEU (for herself and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, burns, infection, tumor, or disease.

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 “Children’s Access to
3 Reconstructive Evaluation & Surgery (CARES) Act of
4 2011”.

5 **SEC. 2. COVERAGE OF MINOR CHILD’S CONGENITAL OR DE-**
6 **VELOPMENTAL DEFORMITY OR DISORDER.**

7 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

8 (1) Title XXVII of the Public Health Service Act is
9 amended by inserting after section 2728 (42 U.S.C.
10 300gg–28), as redesignated by section 1001(2) of the Pa-
11 tient Protection and Affordable Care Act (Public Law
12 111–148), the following new section:

13 **“SEC. 2729. STANDARDS RELATING TO BENEFITS FOR**
14 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
15 **MENTAL DEFORMITY OR DISORDER.**

16 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
17 GERY.—

18 “(1) IN GENERAL.—A group health plan, and a
19 health insurance issuer offering group or individual
20 health insurance coverage, that provides coverage for
21 surgical benefits shall provide coverage for out-
22 patient and inpatient diagnosis and treatment of a
23 minor child’s congenital or developmental deformity,
24 disease, or injury. A minor child shall include any
25 individual through 21 years of age.

1 “(2) REQUIREMENTS.—Any coverage provided
2 under paragraph (1) shall be subject to pre-author-
3 ization or pre-certification as required by the plan or
4 issuer, and such coverage shall include any surgical
5 treatment which, in the opinion of the treating phy-
6 sician, is medically necessary to approximate a nor-
7 mal appearance.

8 “(3) TREATMENT DEFINED.—

9 “(A) IN GENERAL.—In this section, the
10 term ‘treatment’ includes reconstructive sur-
11 gical procedures (procedures that are generally
12 performed to improve function, but may also be
13 performed to approximate a normal appear-
14 ance) that are performed on abnormal struc-
15 tures of the body caused by congenital defects,
16 developmental abnormalities, trauma, burns, in-
17 fection, tumors, or disease, including—

18 “(i) procedures that do not materially
19 affect the function of the body part being
20 treated; and

21 “(ii) procedures for secondary condi-
22 tions and follow-up treatment.

23 “(B) EXCEPTION.—Such term does not in-
24 clude cosmetic surgery performed to reshape

1 normal structures of the body to improve ap-
2 pearance or self-esteem.

3 “(b) NOTICE.—A group health plan under this part
4 shall comply with the notice requirement under section
5 714(b) of the Employee Retirement Income Security Act
6 of 1974 with respect to the requirements of this section
7 as if such section applied to such plan.”.

8 (2) Section 2724(c) of such Act (42 U.S.C. 300gg–
9 23(c)), as redesignated by section 1001(4) and subsection
10 (c)(14) of the section 1563 (relating to conforming amend-
11 ments) of Public Law 111–148, is amended by striking
12 “section 2704” and inserting “sections 2725 and 2729”.

13 (3) Section 2762(b)(2) of such Act (42 U.S.C.
14 300gg–62(b)(2)) is amended by striking “section 2751”
15 and inserting “sections 2751 and 2729”.

16 (4) For purposes of applying section 2729 of the
17 Public Health Service Act, as inserted by paragraph (1),
18 to individual health insurance coverage before 2014, the
19 provisions of such section shall be treated as also included
20 under part B of title XXVII of the Public Health Service
21 Act.

22 (b) ERISA AMENDMENTS.—(1) Subpart B of part
23 7 of subtitle B of title I of the Employee Retirement In-
24 come Security Act of 1974 is amended by adding at the
25 end the following new section:

1 **“SEC. 716. STANDARDS RELATING TO BENEFITS FOR MINOR**
2 **CHILD’S CONGENITAL OR DEVELOPMENTAL**
3 **DEFORMITY OR DISORDER.**

4 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
5 GERY.—

6 “(1) IN GENERAL.—A group health plan, and a
7 health insurance issuer offering group health insur-
8 ance coverage, that provides coverage for surgical
9 benefits shall provide coverage for outpatient and in-
10 patient diagnosis and treatment of a minor child’s
11 congenital or developmental deformity, disease, or
12 injury. A minor child shall include any individual
13 who has not attained age 22.

14 “(2) REQUIREMENTS.—Any coverage provided
15 under paragraph (1) shall be subject to pre-author-
16 ization or pre-certification as required by the plan or
17 issuer, and such coverage shall include any surgical
18 treatment which, in the opinion of the treating phy-
19 sician, is medically necessary to approximate a nor-
20 mal appearance.

21 “(3) TREATMENT DEFINED.—

22 “(A) IN GENERAL.—For purposes of this
23 section, the term ‘treatment’ includes recon-
24 structive surgical procedures (procedures that
25 are generally performed to improve function,
26 but may also be performed to approximate a

1 normal appearance) that are performed on ab-
2 normal structures of the body caused by con-
3 genital defects, developmental abnormalities,
4 trauma, burns, infection, tumors, or disease, in-
5 cluding—

6 “(i) procedures that do not materially
7 affect the function of the body part being
8 treated; and

9 “(ii) procedures for secondary condi-
10 tions and follow-up treatment.

11 “(B) EXCEPTION.—Such term does not in-
12 clude cosmetic surgery performed to reshape
13 normal structures of the body to improve ap-
14 pearance or self-esteem.

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

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

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

7 (4) The table of contents in section 1 of such Act
 8 is amended by inserting after the item relating to section
 9 714 the following new items:

“Sec. 715. Additional market reforms.

“Sec. 716. Standards relating to benefits for minor child’s congenital or devel-
 opmental deformity or disorder.”.

10 (c) INTERNAL REVENUE CODE AMENDMENTS.—

11 (1) IN GENERAL.—Subchapter B of chapter
 12 100 of the Internal Revenue Code of 1986, as
 13 amended by subsection (f) of the section 1563 (relat-
 14 ing to conforming amendments) of Public Law 111–
 15 148, is amended by adding at the end the following
 16 new section:

17 **“SEC. 9816. STANDARDS RELATING TO BENEFITS FOR**
 18 **MINOR CHILD’S CONGENITAL OR DEVELOP-**
 19 **MENTAL DEFORMITY OR DISORDER.**

20 “(a) REQUIREMENTS FOR RECONSTRUCTIVE SUR-
 21 GERY.—

22 “(1) IN GENERAL.—A group health plan, and a
 23 health insurance issuer offering group health insur-
 24 ance coverage, that provides coverage for surgical

1 benefits shall provide coverage for outpatient and in-
2 patient diagnosis and treatment of a minor child's
3 congenital or developmental deformity, disease, or
4 injury. A minor child shall include any individual
5 who has not attained age 22.

6 “(2) REQUIREMENTS.—Any coverage provided
7 under paragraph (1) shall be subject to pre-author-
8 ization or pre-certification as required by the plan or
9 issuer, and such coverage shall include any surgical
10 treatment which, in the opinion of the treating phy-
11 sician, is medically necessary to approximate a nor-
12 mal appearance.

13 “(3) TREATMENT DEFINED.—

14 “(A) IN GENERAL.—For purposes of this
15 section, the term ‘treatment’ includes recon-
16 structive surgical procedures (procedures that
17 are generally performed to improve function,
18 but may also be performed to approximate a
19 normal appearance) that are performed on ab-
20 normal structures of the body caused by con-
21 genital defects, developmental abnormalities,
22 trauma, burns, infection, tumors, or disease, in-
23 cluding—

1 “(i) procedures that do not materially
2 affect the function of the body part being
3 treated; and

4 “(ii) procedures for secondary condi-
5 tions and follow-up treatment.

6 “(B) EXCEPTION.—Such term does not in-
7 clude cosmetic surgery performed to reshape
8 normal structures of the body to improve ap-
9 pearance or self-esteem.”.

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

“Sec. 9815. Additional market reforms.

“Sec. 9816. Standards relating to benefits for minor child’s congenital or devel-
opmental deformity or disorder.”.

13 (d) CLARIFYING AMENDMENT REGARDING APPLICA-
14 TION TO GRANDFATHERED PLANS.—Section
15 1251(a)(4)(A) of the Patient Protection and Affordable
16 Care Act (Public Law 111–148; 42 U.S.C.
17 18011(a)(4)(A)), as added by section 2301(a) of Public
18 Law 111–152, is amended by adding at the end the fol-
19 lowing new clause:

20 “(v) Section 2729 (relating to stand-
21 ards relating to benefits for minor child’s
22 congenital or developmental deformity or
23 disorder), as added by section 2(a) of the

1 Children’s Access to Reconstructive Eval-
2 uation & Surgery (CARES) Act of 2011.”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to group health plans
5 for plan years beginning on or after January 1, 2012, and
6 with respect to health insurance coverage offered, sold,
7 issued, renewed, in effect, or operated in the individual
8 market on or after such date.

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

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