

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 803

To amend the Employee Retirement Income Security Act of 1974, the 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.

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## IN THE SENATE OF THE UNITED STATES

APRIL 14, 2005

Mr. COLEMAN (for himself and Mrs. CLINTON) 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, the 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 2005” 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  
17 (42 U.S.C. 300gg–4 et seq.) is amended by  
18 adding at the end the following 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 2 or more benefit package op-  
15                  tions under the plan, the requirements of this section shall  
16                  be applied separately with respect to each such option.

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

18                         “(1) TREATMENT LIMITATION.—The term  
19                         ‘treatment limitation’ means, with respect to benefits  
20                         under a group health plan or health insurance cov-  
21                         erage, any day or visit limits imposed on coverage of  
22                         benefits under the plan or coverage during a period  
23                         of time.

24                         “(2) FINANCIAL REQUIREMENT.—The term ‘fi-  
25                         nancial requirement’ means, with respect to benefits

1 under a group health plan or health insurance cov-  
2 erage, any deductible, coinsurance, or cost-sharing  
3 or an annual or lifetime dollar limit imposed with re-  
4 spect to the benefits under the plan or coverage.

5 “(3) MEDICAL OR SURGICAL BENEFITS.—The  
6 term ‘medical or surgical benefits’ means benefits  
7 with respect to medical or surgical services, as de-  
8 fined under the terms of the plan or coverage (as the  
9 case may be), but does not include substance abuse  
10 treatment benefits.

11 “(4) SUBSTANCE ABUSE TREATMENT BENE-  
12 FITS.—The term ‘substance abuse treatment bene-  
13 fits’ means benefits with respect to substance abuse  
14 treatment services.

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

19 “(A) Inpatient treatment, including detoxi-  
20 fication.

21 “(B) Nonhospital residential treatment.

22 “(C) Outpatient treatment, including  
23 screening and assessment, medication manage-  
24 ment, individual, group, and family counseling,  
25 and relapse prevention.

1           “(D) Prevention services, including health  
2           education and individual and group counseling  
3           to encourage the reduction of risk factors for  
4           substance abuse.

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

7           “(f) NOTICE.—A group health plan under this part  
8           shall comply with the notice requirement under section  
9           714(f) of the Employee Retirement Income Security Act  
10          of 1974 with respect to the requirements of this section  
11          as if such section applied to such plan.”.

12           (B) CONFORMING AMENDMENT.—Section  
13           2723(c) of such Act (42 U.S.C. 300gg-23(c)) is  
14           amended by striking “section 2704” and insert-  
15           ing “sections 2704 and 2707”.

16           (2) ERISA AMENDMENTS.—

17           (A) IN GENERAL.—Subpart B of part 7 of  
18           subtitle B of title I of the Employee Retirement  
19           Income Security Act of 1974 (29 U.S.C. 1185  
20           et seq.) is amended by adding at the end the  
21           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  
20 insurance issuer offering group health insurance cov-  
21 erage from negotiating the level and type of reim-  
22 bursement with a provider for care provided in ac-  
23 cordance with this section.

24 “(c) EXEMPTIONS.—

25 “(1) SMALL EMPLOYER EXEMPTION.—

1           “(A) IN GENERAL.—This section shall not  
2           apply to any group health plan (and group  
3           health insurance coverage offered in connection  
4           with a group health plan) for any plan year of  
5           a small employer.

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

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

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

24                 “(ii) EMPLOYERS NOT IN EXISTENCE  
25                 IN PRECEDING YEAR.—In the case of an

1 employer which was not in existence  
2 throughout the preceding calendar year,  
3 the determination of whether such em-  
4 ployer is a small employer shall be based  
5 on the average number of employees that  
6 it is reasonably expected such employer  
7 will employ on business days in the current  
8 calendar year.

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

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

20 “(d) SEPARATE APPLICATION TO EACH OPTION OF-  
21 FERED.—In the case of a group health plan that offers  
22 a participant or beneficiary 2 or more benefit package op-  
23 tions under the plan, the requirements of this section shall  
24 be applied separately with respect to each such option.

25 “(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), for purposes of assuring no-  
20       tice of such requirements under the plan; except that the  
21       summary description required to be provided under section  
22       104(b)(1) with respect to such modification shall be pro-  
23       vided by not later than 60 days after the first day of the  
24       first plan year in which such requirements apply.”.

25              (B) CONFORMING AMENDMENTS.—

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

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

9 (iii) The table of contents in section 1  
 10 of such Act is amended by inserting after  
 11 the item relating to section 713 the fol-  
 12 lowing new item:

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

13 (3) INTERNAL REVENUE CODE AMEND-  
 14 MENTS.—

15 (A) IN GENERAL.—Subchapter B of chap-  
 16 ter 100 of the Internal Revenue Code of 1986  
 17 (relating to other requirements) is amended by  
 18 adding at the end the following new section:

19 **“SEC. 9813. 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 that provides both medical and surgical benefits and

1 substance abuse treatment benefits, the plan shall not im-  
2 pose treatment limitations or financial requirements on  
3 the substance abuse treatment benefits unless similar limi-  
4 tations or requirements are imposed for medical and sur-  
5 gical benefits.

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

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

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

14 “(c) EXEMPTIONS.—

15 “(1) SMALL EMPLOYER EXEMPTION.—

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

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

1 year and who employs at least 2 employees on  
2 the first day of the plan year.

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

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

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

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

1           “(2) INCREASED COST EXEMPTION.—This sec-  
2           tion shall not apply with respect to a group health  
3           plan if the application of this section to such plan  
4           results in an increase in the cost under the plan of  
5           at least 1 percent.

6           “(d) SEPARATE APPLICATION TO EACH OPTION OF-  
7           FERED.—In the case of a group health plan that offers  
8           a participant or beneficiary 2 or more benefit package op-  
9           tions under the plan, the requirements of this section shall  
10          be applied separately with respect to each such option.

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

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

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

23           “(3) MEDICAL OR SURGICAL BENEFITS.—The  
24           term ‘medical or surgical benefits’ means benefits  
25           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.”.

24            (B) CONFORMING AMENDMENTS.—

1 (i) Section 4980D(d)(1) of such Code  
 2 is amended by striking “section 9811” and  
 3 inserting “sections 9811 and 9813”.

4 (ii) The table of sections of sub-  
 5 chapter B of chapter 100 of such Code is  
 6 amended by adding at the end the fol-  
 7 lowing new item:

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

8 (b) INDIVIDUAL HEALTH INSURANCE.—

9 (1) AMENDMENT TO THE PUBLIC HEALTH  
 10 SERVICE ACT.—Part B of title XXVII of the Public  
 11 Health Service Act (42 U.S.C. 300gg–41 et seq.) is  
 12 amended by inserting after section 2752 the fol-  
 13 lowing new section:

14 **“SEC. 2753. PARITY IN THE APPLICATION OF TREATMENT**  
 15 **LIMITATIONS AND FINANCIAL REQUIRE-**  
 16 **MENTS TO SUBSTANCE ABUSE BENEFITS.**

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

1       “(b) NOTICE.—A health insurance issuer under this  
2 part shall comply with the notice requirement under sec-  
3 tion 714(f) of the Employee Retirement Income Security  
4 Act of 1974 with respect to the requirements referred to  
5 in subsection (a) as if such section applied to such issuer  
6 and such issuer were a group health plan.”.

7           (2) CONFORMING AMENDMENT.—Section  
8 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2))  
9 is amended by striking “section 2751” and inserting  
10 “sections 2751 and 2753”.

11       (c) EFFECTIVE DATES.—

12           (1) GROUP HEALTH PLANS.—Subject to para-  
13 graph (3), the amendments made by subsection (a)  
14 apply with respect to group health plans for plan  
15 years beginning on or after January 1, 2006.

16           (2) INDIVIDUAL HEALTH INSURANCE.—The  
17 amendments made by subsection (b) apply with re-  
18 spect to health insurance coverage offered, sold,  
19 issued, renewed, in effect, or operated in the indi-  
20 vidual market on or after January 1, 2006.

21           (3) SPECIAL RULE.—In the case of a group  
22 health plan maintained pursuant to 1 or more collec-  
23 tive bargaining agreements between employee rep-  
24 resentatives and 1 or more employers ratified before  
25 the date of enactment of this Act, the amendments

1 made by subsection (a) shall not apply to plan years  
2 beginning before the later of—

3 (A) the date on which the last collective  
4 bargaining agreements relating to the plan ter-  
5 minates (determined without regard to any ex-  
6 tension thereof agreed to after the date of en-  
7 actment of this Act), or

8 (B) January 1, 2006.

9 For purposes of subparagraph (A), any plan amend-  
10 ment made pursuant to a collective bargaining  
11 agreement relating to the plan which amends the  
12 plan solely to conform to any requirement added by  
13 subsection (a) shall not be treated as a termination  
14 of such collective bargaining agreement.

15 (d) COORDINATED REGULATIONS.—Section 104(1)  
16 of the Health Insurance Portability and Accountability  
17 Act of 1996 is amended by striking “this subtitle (and  
18 the amendments made by this subtitle and section 401)”  
19 and inserting “the provisions of part 7 of subtitle B of  
20 title I of the Employee Retirement Income Security Act  
21 of 1974, and the provisions of parts A and C of title  
22 XXVII of the Public Health Service Act, and chapter 100  
23 of the Internal Revenue Code of 1986”.

24 (e) PREEMPTION.—Nothing in the amendments made  
25 by this section shall be construed to preempt any provision

1 of State law that provides protections to individuals that  
2 are greater than the protections provided under such  
3 amendments.

○