

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.

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## 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

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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 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.

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