

113TH CONGRESS
1ST SESSION

S. 1879

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 anticancer medications administered by a health care provider.

IN THE SENATE OF THE UNITED STATES

DECEMBER 19, 2013

Mr. FRANKEN (for himself and Mr. KIRK) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 anticancer medications administered by a health care provider.

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 Treatment
3 Parity Act of 2013”.

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
17 anticancer medications administered by a health care pro-
18 vider shall provide for no less favorable coverage for pre-
19 scribed, patient-administered anticancer medications that
20 are used to kill, slow, or prevent the growth of cancerous
21 cells and that have been approved by the Food and Drug
22 Administration.

23 “(b) LIMITATION.—Subsection (a) shall only apply to
24 an anticancer medication that is prescribed based on a
25 finding by the treating physician that the medication—

1 “(1) is medically necessary for the purpose of
2 killing, slowing, or preventing the growth of can-
3 cerous cells; or

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

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

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

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

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

21 “(B) reclassify benefits with respect to
22 anticancer medications; or

23 “(C) apply more restrictive limitations on
24 prescribed orally-administered anticancer medi-

1 cations or intravenously administered or in-
2 jected anticancer medications.

3 “(d) APPLICATION OF NOTICE, PROHIBITIONS,
4 ETC.—The provisions of subsections (b), (c), (d), and
5 (e)(2) of section 713 shall apply with respect to the cov-
6 erage required by subsection (a) in the same manner as
7 they apply with respect to the coverage required under
8 such section, except that January 1, 2015, shall be sub-
9 stituted for the date referred to in subsection (b)(3) of
10 such section.

11 “(e) CONSTRUCTION.—Nothing in this section shall
12 be construed—

13 “(1) to require the use of orally-administered
14 anticancer medications as a replacement for other
15 anticancer medications; or

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

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

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

1 (4) The table of contents in section 1 of such Act
 2 is amended by inserting after the item relating to section
 3 714 the following new items:

“Sec. 715. Additional market reforms.

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

4 (b) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

5 (1) Title XXVII of the Public Health Service Act is
 6 amended by inserting after section 2728 (42 U.S.C.
 7 300gg–28), as redesignated by section 1001(2) of the Pa-
 8 tient Protection and Affordable Care Act (Public Law
 9 111–148), the following new section:

10 **“SEC. 2729. PARITY IN COVERAGE FOR ORAL ANTICANCER**
 11 **DRUGS.**

12 “(a) IN GENERAL.—Subject to subsection (b), a
 13 group health plan, and a health insurance issuer offering
 14 group or individual health insurance coverage, that pro-
 15 vides benefits with respect to anticancer medications ad-
 16 ministered by a health care provider shall provide for no
 17 less favorable coverage for prescribed, patient-adminis-
 18 tered anticancer medications that are used to kill, slow,
 19 or prevent the growth of cancerous cells and that have
 20 been approved by the Food and Drug Administration.

21 “(b) LIMITATION.—Subsection (a) shall only apply to
 22 an anticancer medication that is prescribed based on a
 23 finding by the treating physician that the medication—

1 “(1) is medically necessary for the purpose of
2 killing, slowing, or preventing the growth of can-
3 cerous cells; or

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

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

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

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

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

21 “(B) reclassify benefits with respect to
22 anticancer medications; or

23 “(C) apply more restrictive limitations on
24 prescribed orally-administered anticancer medi-

1 cations or intravenously administered or in-
2 jected anticancer medications.

3 “(d) APPLICATION OF NOTICE, PROHIBITIONS,
4 ETC.—The provisions of subsections (b), (c), (d), and
5 (e)(2) of section 713 of the Employee Retirement and In-
6 come Security Act of 1974 shall apply with respect to the
7 coverage required by subsection (a) in the same manner
8 as they apply with respect to the coverage required under
9 such section, except that January 1, 2015, shall be sub-
10 stituted for the date referred to in subsection (b)(3) of
11 such section.

12 “(e) CONSTRUCTION.—Nothing in this section shall
13 be construed—

14 “(1) to require the use of orally-administered
15 anticancer medications as a replacement for other
16 anticancer medications; or

17 “(2) to prohibit a group health plan or health
18 insurance issuer from requiring prior authorization
19 or imposing other appropriate utilization controls in
20 approving coverage for any chemotherapy.”.

21 (2) Section 2724(c) of such Act (42 U.S.C. 300gg-
22 23(c)), as redesignated by section 1001(4) and subsection
23 (c)(14) of section 1563 (relating to conforming amend-
24 ments) of Public Law 111-148, is amended by striking
25 “section 2704” and inserting “sections 2725 and 2729”.

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

4 (4) For purposes of applying section 2729 of the
5 Public Health Service Act, as inserted by paragraph (1),
6 to individual health insurance coverage before 2014, the
7 provisions of such section shall be treated as also included
8 under part B of title XXVII of the Public Health Service
9 Act.

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 section 1563 (relating
14 to conforming amendments) of Public Law 111-148,
15 is amended by adding at the end the following new
16 section:

17 **“SEC. 9816. PARITY IN COVERAGE FOR ORAL ANTICANCER**
18 **DRUGS.**

19 “(a) IN GENERAL.—Subject to subsection (b), a
20 group health plan that provides benefits with respect to
21 anticancer medications administered by a health care pro-
22 vider shall provide for no less favorable coverage for pre-
23 scribed, patient-administered anticancer medications that
24 are used to kill, slow, or prevent the growth of cancerous

1 cells and that have been approved by the Food and Drug
2 Administration.

3 “(b) LIMITATION.—Subsection (a) shall only apply to
4 an anticancer medication that is prescribed based on a
5 finding by the treating physician that the medication—

6 “(1) is medically necessary for the purpose of
7 killing, slowing, or preventing the growth of can-
8 cerous cells; or

9 “(2) is clinically appropriate in terms of type,
10 frequency, extent site, and duration.

11 “(c) APPLICATION OF COST-SHARING AND RESTRIC-
12 TIONS.—

13 “(1) IN GENERAL.—The coverage of anticancer
14 medication under subsection (a) may be subject to
15 annual deductibles and coinsurance or copayments
16 so long as such deductibles, coinsurance, and copay-
17 ments do not exceed the deductibles, coinsurance,
18 and copayments that are applicable to anticancer
19 medications administered by a health care provider
20 under the plan for the same purpose.

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

24 “(A) impose an increase in out-of-pocket
25 costs with respect to anticancer medications;

1 “(B) reclassify benefits with respect to
2 anticancer medications; or

3 “(C) apply more restrictive limitations on
4 prescribed orally-administered anticancer medi-
5 cations or intravenously administered or in-
6 jected anticancer medications.

7 “(d) APPLICATION OF NOTICE, PROHIBITIONS,
8 ETC.—The provisions of subsections (b), (c), (d), and
9 (e)(2) of section 713 of the Employee Retirement and In-
10 come Security Act of 1974 shall apply with respect to the
11 coverage required by subsection (a) in the same manner
12 as they apply with respect to the coverage required under
13 such section, except that January 1, 2015, shall be sub-
14 stituted for the date referred to in subsection (b)(3) of
15 such section.

16 “(e) CONSTRUCTION.—Nothing in this section shall
17 be construed—

18 “(1) to require the use of orally-administered
19 anticancer medications as a replacement for other
20 anticancer medications; or

21 “(2) to prohibit a group health plan or health
22 insurance issuer from requiring prior authorization
23 or imposing other appropriate utilization controls in
24 approving coverage for any chemotherapy.”.

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

“Sec. 9815. Additional market reforms.

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

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to group and indi-
6 vidual health plans for plan years beginning on or after
7 January 1, 2015.

8 (e) STUDY.—Not later than 2 years after the date
9 of the enactment of this Act—

10 (1) the Medicare Payment Advisory Commis-
11 sion shall complete a study that assesses how closing
12 the Medicare part D donut hole under the amend-
13 ments made by section 3301 of the Patient Protec-
14 tion and Affordable Care Act (Public Law 111–148),
15 as amended by section 1101 of the Health Care and
16 Education Reconciliation Act of 2010 (Public Law
17 111–152), affects Medicare coverage for orally ad-
18 ministered anticancer medications, with a particular
19 focus on cost and accessibility; and

20 (2) submit a report to Congress on the results
21 of such study.

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