

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

# H. R. 2575

To provide parity under group health plans and group health insurance coverage in the provision of benefits for prosthetic devices and orthotics devices, components and benefits for other medical and surgical services.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2009

Mr. ANDREWS (for himself, Mr. GEORGE MILLER of California, Mr. LINCOLN DIAZ-BALART of Florida, Mr. PLATTS, Mr. SESTAK, and Mr. AL GREEN of Texas) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To provide parity under group health plans and group health insurance coverage in the provision of benefits for prosthetic devices and orthotics devices, 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 “Prosthetic and Custom  
5       Orthotic Parity Act of 2009”.

6       **SEC. 2. FINDINGS; PURPOSE.**

7       (a) FINDINGS.—Congress finds the following:

1           (1) There are more than 1,800,000 people in  
2 the United States living with limb loss.

3           (2) Every year, there are more than 130,000  
4 people in the United States who undergo amputa-  
5 tion.

6           (3) In addition, United States military per-  
7 sonnel serving in Iraq and Afghanistan and around  
8 the world have sustained traumatic injuries resulting  
9 in amputation.

10          (4) The number of amputations in the United  
11 States is projected to increase in the years ahead  
12 due to rising incidence of diabetes and other chronic  
13 illness.

14          (5) Those suffering from limb loss can and  
15 want to regain their lives as productive members of  
16 society.

17          (6) Prosthetic devices enable amputees to con-  
18 tinue working and living productive lives.

19          (7) Insurance companies have begun to limit re-  
20 imbursement of prosthetic equipment costs at unre-  
21 alistic levels or not at all and often restrict coverage  
22 over a person's lifetime, which shifts costs onto the  
23 Medicare and Medicaid programs.

24          (8) Eleven States have addressed this problem  
25 and have enacted prosthetic parity legislation.

1           (9) Prosthetic parity legislation has been intro-  
2           duced and is being actively considered in 30 States.

3           (10) The States in which prosthetic parity laws  
4           have been enacted have found there to be minimal  
5           or no increases in insurance premiums and have re-  
6           duced Medicare and Medicaid costs.

7           (11) Prosthetic parity legislation will not add to  
8           the size of government or to the costs associated  
9           with the Medicare or Medicaid programs.

10          (12) If coverage for prosthetic devices and com-  
11          ponents are offered by a group health insurance pol-  
12          icy, then providing such coverage of prosthetic de-  
13          vices on par with other medical and surgical benefits  
14          will not increase the incidence of amputations or the  
15          number of individuals for which a prosthetic device  
16          would be medically necessary and appropriate.

17          (13) In States where prosthetic parity legisla-  
18          tion has been enacted, amputees are able to return  
19          to a productive life, State funds have been saved,  
20          and the health insurance industry has continued to  
21          prosper.

22          (14) Prosthetic services allow people to return  
23          more quickly to their preexisting work.

24          (15) Spina bifida occurs in 7 out of every  
25          10,000 live births in the United States.

1           (16) For children with spina bifida, access to a  
2           custom orthotic device impacts both their short and  
3           long term mobility, their muscle strength, and over-  
4           all quality of life. As they mature, the orthotic device  
5           allows them to maintain their maximum level of  
6           functionality. This has a profound impact on their  
7           ability to become and remain independent and pro-  
8           ductive members of the community.

9           (17) Cerebral palsy is one of the most common  
10          congenital (existing before birth or at birth) dis-  
11          orders of childhood. About 10,000 babies per year in  
12          the United States will develop cerebral palsy.

13          (18) The purpose of a custom orthotic device  
14          for people with cerebral palsy is to protect, such as  
15          stabilizing a fracture during healing; to prevent de-  
16          formity, such as stretching braces worn while the  
17          person sleeps, to help prevent muscle contractures;  
18          and to improve function. This can help kids with  
19          cerebral palsy achieve maximum potential in growth  
20          and development.

21          (19) If coverage for prosthetic and custom  
22          orthotic devices and related services is offered to in-  
23          dividuals by a group health insurance policy, then  
24          providing such coverage of prosthetic and orthotic  
25          devices on par with other medical and surgical bene-

1 fits will not increase the incidence of amputations or  
2 the number of individuals for which a prosthetic or  
3 custom orthotic device would be medically necessary  
4 and appropriate.

5 (b) PURPOSE.—The purpose of this Act is to require  
6 that each group health plan that provides both coverage  
7 for prosthetic devices and components and medical and  
8 surgical benefits, provide such coverage under terms and  
9 conditions that are no less favorable than the terms and  
10 conditions under which such benefits are provided under  
11 such plan.

12 **SEC. 3. PROSTHETICS AND CUSTOM ORTHOTIC DEVICE**  
13 **PARITY UNDER ERISA.**

14 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
15 B of title I of the Employee Retirement Income Security  
16 Act of 1974 is amended by inserting after section 713 (29  
17 U.S.C. 1185b) the following new section:

18 **“SEC. 715. PROSTHETICS AND CUSTOM ORTHOTIC DEVICE**  
19 **PARITY.**

20 “(a) IN GENERAL.—In the case of a group health  
21 plan (or health insurance coverage offered in connection  
22 with such a plan) that provides both medical and surgical  
23 benefits and benefits for prosthetic devices and compo-  
24 nents and orthotic devices (as defined under subsection  
25 (d)(1))—

1           “(1) such benefits for prosthetic devices and  
2 components and custom orthotic devices and related  
3 services under the plan (or coverage) shall be pro-  
4 vided under terms and conditions that are no less fa-  
5 vorable than the terms and conditions applicable to  
6 substantially all medical and surgical benefits pro-  
7 vided under the plan (or coverage);

8           “(2) such benefits for prosthetic devices and  
9 components and custom orthotic devices and related  
10 services under the plan (or coverage) may not be  
11 subject to separate financial requirements (as de-  
12 fined in subsection (d)(2)) that are applicable only  
13 with respect to such benefits, and any financial re-  
14 quirements applicable to such benefits may be no  
15 more restrictive than the financial requirements ap-  
16 plicable to substantially all medical and surgical ben-  
17 efits provided under the plan (or coverage); and

18           “(3) any treatment limitations (as defined in  
19 subsection (d)(3)) applicable to such benefits for  
20 prosthetic devices and components and custom  
21 orthotic devices and related services under the plan  
22 (or coverage) may not be more restrictive than the  
23 treatment limitations applicable to substantially all  
24 medical and surgical benefits provided under the  
25 plan (or coverage).

1 “(b) IN-NETWORK AND OUT-OF-NETWORK STAND-  
2 ARDS.—

3 “(1) IN GENERAL.—In the case of a group  
4 health plan (or health insurance coverage offered in  
5 connection with such a plan) that provides both  
6 medical and surgical benefits and benefits for pros-  
7 thetic devices and components and custom orthotic  
8 devices and related services, and that provides both  
9 in-network benefits for prosthetic devices and com-  
10 ponents and out-of-network benefits for prosthetic  
11 devices and components, the requirements of this  
12 section shall apply separately with respect to bene-  
13 fits provided under the plan (or coverage) on an in-  
14 network basis and benefits provided under the plan  
15 (or coverage) on an out-of-network basis.

16 “(2) CLARIFICATION.—Nothing in paragraph  
17 (1) shall be construed as requiring that a group  
18 health plan (or health insurance coverage offered in  
19 connection with such a plan) eliminate an out-of-net-  
20 work provider option from such plan (or coverage)  
21 pursuant to the terms of the plan (or coverage).

22 “(c) ADDITIONAL REQUIREMENTS.—

23 “(1) PRIOR AUTHORIZATION.—In the case of a  
24 group health plan (or health insurance coverage of-  
25 fered in connection with such a plan) that requires,

1 as a condition of coverage or payment for prosthetic  
2 devices and custom orthotic devices and related serv-  
3 ices under the plan (or coverage), prior authoriza-  
4 tion, such prior authorization must be required in  
5 the same manner as prior authorization is required  
6 by the plan (or coverage) as a condition of coverage  
7 or payment for all similar benefits provided under  
8 the plan (or coverage).

9 “(2) LIMITATION ON MANDATED BENEFITS.—  
10 Required benefits for prosthetic devices and custom  
11 orthotic devices and related services under this sec-  
12 tion are limited to the most appropriate model that  
13 adequately meets the medical requirements of the  
14 patient, as determined by the treating physician of  
15 the patient.

16 “(3) COVERAGE FOR REPAIR OR REPLACE-  
17 MENT.—Benefits for prosthetic devices and custom  
18 orthotic devices and related services required under  
19 this section shall include coverage for repair or re-  
20 placement of prosthetic devices and components, if  
21 the repair or replacement is determined appropriate  
22 by the treating physician of the patient involved.

23 “(4) ANNUAL OR LIFETIME DOLLAR LIMITA-  
24 TIONS.—A group health plan (or health insurance  
25 coverage offered in connection with such a plan)



1 may not impose any annual or lifetime dollar limita-  
2 tion on benefits for prosthetic devices and custom  
3 orthotic devices and related services unless such lim-  
4 itation applies in the aggregate to all medical and  
5 surgical benefits provided under the plan (or cov-  
6 erage) and benefits for prosthetic devices and com-  
7 ponents.

8 “(d) DEFINITIONS.—For the purposes of this section:

9 “(1) PROSTHETIC DEVICES AND COMPO-  
10 NENTS.—The term ‘prosthetic devices and compo-  
11 nents’ means such devices and components which  
12 may be used to replace, in whole or in part, an arm  
13 or leg, as well as the services required to do so, and  
14 includes external breast prostheses incident to mas-  
15 tectomy resulting from breast cancer.

16 “(2) CUSTOM ORTHOTIC DEVICES AND RE-  
17 LATED SERVICES.—The term ‘custom orthotic de-  
18 vices and related services’ means the following:

19 “(A) Custom-fabricated orthotics and re-  
20 lated services, which include custom-fabricated  
21 devices that are individually made for a specific  
22 patient, as well as all services and supplies  
23 medically necessary for the effective use of the  
24 orthotic device, including formulating its design,  
25 fabrication, material and component selection,

1 measurements, fittings, and static and dynamic  
2 alignments, and instructing the patient in the  
3 use of the device. No other patient would be  
4 able to use this item. A custom fabricated item  
5 is a device which is fabricated based on clini-  
6 cally derived and rectified castings, tracings,  
7 measurements, and/or other images (such as x-  
8 rays) of the body part. The fabrication may in-  
9 volve using calculations, templates and compo-  
10 nents. This process requires the use of basic  
11 materials including, but not limited to plastic,  
12 metal, leather or cloth in the form of uncut or  
13 unshaped sheets, bars, or other basic forms and  
14 involves substantial work such as vacuum form-  
15 ing, cutting, bending, molding, sewing, drilling  
16 and finishing prior to fitting on the patient.  
17 Custom-fabricated devices may be furnished  
18 only by an appropriately credentialed (certified  
19 or licensed) practitioner or accredited supplier  
20 in orthotics and/or prosthetics. These devices  
21 and services are represented by the existing set  
22 of L-codes describing this care currently listed  
23 in Centers for Medicare and Medicaid Services  
24 Transmittal 656.

1           “(B) Custom-fitted high orthotics and re-  
2           lated services, which include prefabricated de-  
3           vices that are manufactured with no specific pa-  
4           tient in mind, but that are appropriately sized,  
5           adapted, modified, and configured (with the re-  
6           quired tools and equipment) to a specific pa-  
7           tient in accordance with a prescription, and  
8           which no other patient would be able to use, as  
9           well as all services and supplies medically nec-  
10          essary for the effective use of the orthotic de-  
11          vice, including formulating its design, fabrica-  
12          tion, material and component selection, meas-  
13          urements, fittings, and static and dynamic  
14          alignments, and instructing the patient in the  
15          use of the device. Custom-fitted high devices  
16          may be furnished only by an appropriately  
17          credentialed (certified or licensed) practitioner  
18          or accredited supplier in orthotics and/or pros-  
19          thetics. These devices and services are rep-  
20          resented by the existing set of L-codes describ-  
21          ing this care currently listed in Centers for  
22          Medicare and Medicaid Services Transmittal  
23          656.

24           “(3) FINANCIAL REQUIREMENTS.—The term  
25          ‘financial requirements’ includes deductibles, coin-

1       surance, co-payments, other cost sharing, and limita-  
2       tions on the total amount that may be paid by a  
3       participant or beneficiary with respect to benefits  
4       under the plan or health insurance coverage and also  
5       includes the application of annual and lifetime lim-  
6       its.

7               “(4) TREATMENT LIMITATIONS.—The term  
8       ‘treatment limitations’ includes limits on the fre-  
9       quency of treatment, number of visits, days of cov-  
10      erage, or other similar limits on the scope or dura-  
11      tion of treatment.”.

12       (b) CLERICAL AMENDMENT.—The table of contents  
13      in section 1 of such Act is amended by inserting after the  
14      item relating to section 713 the following new item:

      “Sec. 715. Prosthetics and custom orthotic device parity.”.

15       (c) EFFECTIVE DATE.—The amendments made by  
16      this section shall apply with respect to group health plans  
17      (and health insurance coverage offered in connection with  
18      group health plans) for plan years beginning on or after  
19      the date of the enactment of this Act.

20      **SEC. 4. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.**

21       (a) ASSISTANCE TO PLAN PARTICIPANTS AND BENE-  
22      FICIARIES.—The Secretary of Labor shall provide for as-  
23      sistance to participants and beneficiaries under such plans  
24      with any questions or problems regarding compliance with  
25      the requirements of this section.

1 (b) AUDITS.—The Secretary of Labor shall provide  
2 for the conduct of random audits of group health plans  
3 (and health insurance coverage offered in connection with  
4 such plans) to ensure that such plans are in compliance  
5 with section 715 of the Employee Retirement Income Se-  
6 curity Act of 1974, as added by section 3.

7 (c) GAO STUDY.—

8 (1) STUDY.—The Comptroller General of the  
9 United States shall conduct a study that evaluates  
10 the effect of the implementation of the amendments  
11 made by this Act on the cost of health insurance  
12 coverage, on access to health insurance coverage (in-  
13 cluding the availability of in-network providers), on  
14 the quality of health care, on benefits and coverage  
15 for prosthetic devices and components, on any addi-  
16 tional cost or savings to group health plans, on State  
17 prosthetic devices and components benefit mandate  
18 laws, on the business community and the Federal  
19 Government, and on other issues as determined ap-  
20 propriate by the Comptroller General.

21 (2) REPORT.—Not later than 2 years after the  
22 date of the enactment of this Act, the Comptroller  
23 General of the United States shall prepare and sub-  
24 mit to the appropriate committees of Congress a re-

1 port containing the results of the study conducted  
2 under paragraph (1).

3 (d) REGULATIONS.—Not later than 1 year after the  
4 date of the enactment of this Act, the Secretary of Labor  
5 shall promulgate final regulations to carry out this Act  
6 and the amendments made by this Act.

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