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, infection, tumor, or disease.

IN THE SENATE OF THE UNITED STATES
MAY 1, 2003

Mr. FITZGERALD (for himself, Mr. KENNEDY, and Ms. SNOWE) 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, infection, tumor, or disease.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.
This Act may be cited as the “Treatment of Children’s Deformities Act of 2003”.

SEC. 2. COVERAGE OF MINOR CHILD’S CONGENITAL OR DEVELOPMENTAL DEFORMITY OR DISORDER.

(a) Group Health Plans.—

(1) Public Health Service Act Amendments.—

(A) In general.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:

“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR MINOR CHILD’S CONGENITAL OR DEVELOPMENTAL DEFORMITY OR DISORDER.

“(a) Requirements for Reconstructive Surgery.—

“(1) In general.—A group health plan, and a health insurance issuer offering group health insurance coverage, that provides coverage for surgical benefits shall provide coverage for outpatient and inpatient diagnosis and treatment of a minor child’s congenital or developmental deformity, disease, or injury. A minor child shall include any individual through 21 years of age.
“(2) REQUIREMENTS.—Any coverage provided under paragraph (1) shall be subject to pre-authorization or pre-certification as required by the plan or issuer, and such coverage shall include any surgical treatment which, in the opinion of the treating physician, is medically necessary to approximate a normal appearance.

“(3) TREATMENT DEFINED.—

“(A) IN GENERAL.—In this section, the term ‘treatment’ includes reconstructive surgical procedures (procedures that are generally performed to improve function, but may also be performed to approximate a normal appearance) that are performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—

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

“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape
normal structures of the body to improve appearance or self-esteem.

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

(B) CONFORMING AMENDMENT.—Section 2723(c) of the Public Health Service Act (42 U.S.C. 300gg–23(c)) is amended by striking “section 2704” and inserting “sections 2704 and 2707”.

(2) ERISA AMENDMENTS.—

(A) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:

“SEC. 714. STANDARDS RELATING TO BENEFITS FOR MINOR CHILD’S CONGENITAL OR DEVELOPMENTAL DEFORMITY OR DISORDER.

“(a) REQUIREMENTS FOR RECONSTRUCTIVE SURGERY.—

“(1) IN GENERAL.—A group health plan, and a health insurance issuer offering group health insur-

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ance coverage, that provides coverage for surgical benefits shall provide coverage for outpatient and in-patient diagnosis and treatment of a minor child’s congenital or developmental deformity, disease, or injury. A minor child shall include any individual through 21 years of age.

“(2) REQUIREMENTS.—Any coverage provided under paragraph (1) shall be subject to pre-authoriz-ation or pre-certification as required by the plan or issuer, and such coverage shall include any surgical treatment which, in the opinion of the treating phys-ician, is medically necessary to approximate a nor-

mal appearance.

“(3) TREATMENT DEFINED.—

“(A) IN GENERAL.—In this section, the term ‘treatment’ includes reconstructive sur-gical procedures (procedures that are generally performed to improve function, but may also be performed to approximate a normal appear-
ance) that are performed on abnormal struc-
tures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—
“(i) procedures that do not materially affect the function of the body part being treated; and

“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.

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

(B) CONFORMING AMENDMENTS.—

(i) Section 731(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191(c)) is amended by striking “section 711” and inserting “sections 711 and 714”.

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(ii) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191(a)) is amended by striking “section 711” and inserting “sections 711 and 714”.

(iii) The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 713 the following:

“Sec. 714. Standards relating to benefits for minor child’s congenital or developmental deformity or disorder.”.

(3) INTERNAL REVENUE CODE AMENDMENTS.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended—

(A) in the table of sections, by inserting after the item relating to section 9812 the following:

“Sec. 9813. Standards relating to benefits for minor child’s congenital or developmental deformity or disorder.”;

and

(B) by inserting after section 9812 the following:
“SEC. 9813. STANDARDS RELATING TO BENEFITS FOR MINOR CHILD’S CONGENITAL OR DEVELOPMENTAL DEFORMITY OR DISORDER.

“(a) Requirements for Reconstructive Surgery.—

“(1) In general.—A group health plan, and a health insurance issuer offering group health insurance coverage, that provides coverage for surgical benefits shall provide coverage for outpatient and inpatient diagnosis and treatment of a minor child’s congenital or developmental deformity, disease, or injury. A minor child shall include any individual through 21 years of age.

“(2) Requirements.—Any coverage provided under paragraph (1) shall be subject to pre-authorization or pre-certification as required by the plan or issuer, and such coverage shall include any surgical treatment which, in the opinion of the treating physician, is medically necessary to approximate a normal appearance.

“(3) Treatment defined.—

“(A) In general.—In this section, the term ‘treatment’ includes reconstructive surgical procedures (procedures that are generally performed to improve function, but may also be performed to approximate a normal appear—
ance) that are performed on abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including—

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

“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.”.

(b) INDIVIDUAL HEALTH INSURANCE.—

(1) IN GENERAL.—Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2752 the following:

“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR MINOR CHILD’S CONGENITAL OR DEVELOPMENTAL DEFORMITY OR DISORDER.

“(a) Requirements for Reconstructive Surgery.—

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

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

“(3) TREATMENT DEFINED.—

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

“(i) procedures that do not materially
affect the function of the body part being
treated; and
“(ii) procedures for secondary conditions and follow-up treatment.

“(B) EXCEPTION.—Such term does not include cosmetic surgery performed to reshape normal structures of the body to improve appearance or self-esteem.

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

(2) CONFORMING AMENDMENT.—Section 2762(b)(2) of the Public Health Service Act (42 U.S.C. 300gg–62(b)(2)) is amended by striking “section 2751” and inserting “sections 2751 and 2753”.

(c) EFFECTIVE DATES.—

(1) GROUP HEALTH COVERAGE.—The amendments made by subsection (a) shall apply with respect to group health plans for plan years beginning on or after January 1, 2004.

(2) INDIVIDUAL HEALTH COVERAGE.—The amendment made by subsection (b) shall apply with respect to health insurance coverage offered, sold,
issued, renewed, in effect, or operated in the individual market on or after such date.

(d) COORDINATED REGULATIONS.—Section 104(1) of Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 300gg–92 note) is amended by striking “this subtitle (and the amendments made by this subtitle and section 401)” and inserting “the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, the provisions of parts A and C of title XXVII of the Public Health Service Act, and chapter 100 of the Internal Revenue Code of 1986”.

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