

118TH CONGRESS  
1ST SESSION

# S. 2039

To amend the Employee Retirement Income Security Act of 1974 to require a group health plan (or health insurance coverage offered in connection with such a plan) to provide for cost-sharing for oral anticancer drugs on terms no less favorable than the cost-sharing provided for anticancer medications administered by a health care provider.

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## IN THE SENATE OF THE UNITED STATES

JUNE 15, 2023

Ms. SMITH (for herself, Mr. MORAN, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BROWN, Mrs. CAPITO, Mrs. HYDE-SMITH, Ms. KLOBUCHAR, Mr. KING, Mr. MERKLEY, Ms. MURKOWSKI, Mr. MURPHY, Mr. SCOTT of Florida, Mr. WHITEHOUSE, and Mr. WICKER) 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 to require a group health plan (or health insurance coverage offered in connection with such a plan) to provide for cost-sharing for oral anticancer drugs on terms no less favorable than the cost-sharing 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 Drug Parity  
3 Act of 2023”.

4 **SEC. 2. PARITY IN COST-SHARING FOR ORAL ANTICANCER**  
5 **DRUGS.**

6 (a) IN GENERAL.—The Employee Retirement Income  
7 Security Act of 1974 is amended by inserting after section  
8 725 of such Act (29 U.S.C. 1185d) the following new sec-  
9 tion:

10 **“SEC. 726. PARITY IN COST-SHARING FOR ORAL**  
11 **ANTICANCER DRUGS.**

12 “(a) IN GENERAL.—Subject to subsection (b), a  
13 group health plan (or health insurance coverage offered  
14 in connection with such a plan) that provides benefits with  
15 respect to anticancer medications administered by a health  
16 care provider shall provide that any cost-sharing for pre-  
17 scribed, patient-administered anticancer medications that  
18 are used to kill, slow, or prevent the growth of cancerous  
19 cells and that have been approved by the Food and Drug  
20 Administration is no less favorable than the cost-sharing  
21 for anticancer medications that is intravenously adminis-  
22 tered or injected by a health care provider.

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) RESTRICTION ON CERTAIN CHANGES.—A group  
7           health plan (or health insurance coverage offered in con-  
8           nection with such a plan) may not, in order to comply with  
9           the requirement of subsection (a), make changes to bene-  
10          fits or replace existing benefits with new benefits under  
11          the plan (or health insurance coverage) designed to have  
12          the effect of—

13           “(1) imposing an increase in out-of-pocket costs  
14           with respect to anticancer medications;

15           “(2) reclassifying benefits with respect to  
16           anticancer medications in a way that would increase  
17           such costs; or

18           “(3) applying more restrictive limitations on  
19           prescribed orally administered anticancer medica-  
20           tions than on intravenously administered or injected  
21           anticancer medications.

22           “(d) CONSTRUCTION.—Nothing in this section shall  
23          be construed—

1           “(1) to require the use of orally administered  
2 anticancer medications as a replacement for other  
3 anticancer medications;

4           “(2) to prohibit a group health plan (or health  
5 insurance coverage offered in connection with such a  
6 plan) from requiring prior authorization or imposing  
7 other appropriate utilization controls in approving  
8 coverage for any chemotherapy; or

9           “(3) to supersede a State law that provides  
10 greater protections with respect to the coverage with  
11 respect to orally administered anticancer medications  
12 than is provided under this section.

13           “(e) COST-SHARING DEFINED.—In this section, the  
14 term ‘cost-sharing’ includes a deductible, coinsurance, co-  
15 payment, and any maximum limitation on the application  
16 of such a deductible, coinsurance, copayment, and similar  
17 out-of-pocket expenses.”.

18           (b) TECHNICAL CORRECTION; CLERICAL CHANGE.—  
19 The table of contents in section 1 of the Employee Retire-  
20 ment Income Security Act of 1974 (29 U.S.C. 1001 et  
21 seq.) is amended by inserting after the item relating to  
22 section 725 the following new item:

“Sec. 726. Parity in cost-sharing for oral anticancer drugs.”.

23           (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply with respect to plan years begin-  
25 ning on or after January 1, 2024.

1 **SEC. 3. GAO STUDY.**

2 Not later than 2 years after the date of enactment  
3 of this Act, the Comptroller General of the United States  
4 shall—

5 (1) complete a study that assesses the impact  
6 of section 726 of the Employee Retirement Income  
7 Security Act of 1974, as added by section 2(a), on  
8 the out-of-pocket costs associated with oral and pa-  
9 tient-administered anticancer medications furnished  
10 or dispensed to individuals enrolled in a group  
11 health plan to which such section 726 applies, in  
12 comparison to individuals enrolled in group health  
13 plans or health insurance coverage to which section  
14 726 does not apply, including any recommendations  
15 or matters for congressional consideration regarding  
16 actions Federal agencies or Congress can take to re-  
17 duce financial barriers to access to oral and patient-  
18 administered anticancer medications; and

19 (2) submit to Congress a report on the results  
20 of such study, including recommendations or matters  
21 for congressional consideration to improve access to  
22 oral and patient-administered anticancer medications  
23 for individuals enrolled in group health plans and  
24 group or individual health insurance coverage of-  
25 fered by a health insurance issuer.