

107TH CONGRESS
1ST SESSION

H. R. 1683

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2001

Mrs. MALONEY of New York (for herself, Mrs. MORELLA, Mr. PASCRELL, Mrs. KELLY, Mr. FROST, Mr. RANGEL, Ms. PELOSI, Mr. LANGEVIN, Mrs. THURMAN, Mr. McNULTY, Ms. JACKSON-LEE of Texas, and Mr. TIERNEY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care.

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Osteoporosis Early Detection and Prevention Act of
6 2001”.

7 (b) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) NATURE OF OSTEOPOROSIS.—

10 (A) Osteoporosis is a disease characterized
11 by low bone mass and structural deterioration
12 of bone tissue leading to bone fragility and in-
13 creased susceptibility to fractures of the hip,
14 spine, and wrist.

15 (B) Osteoporosis has no symptoms and
16 typically remains undiagnosed until a fracture
17 occurs.

18 (C) Once a fracture occurs, the condition
19 has usually advanced to the stage where the
20 likelihood is high that another fracture will
21 occur.

22 (D) There is no cure for osteoporosis, but
23 drug therapy has been shown to reduce new hip
24 and spine fractures by 50 percent and other

1 treatments, such as nutrition therapy, have also
2 proven effective.

3 (2) INCIDENCE OF OSTEOPOROSIS.—

4 Osteoporosis is a common condition:

5 (A) Of the 28 million Americans who have
6 (or are at risk for) osteoporosis, 80 percent are
7 women.

8 (B) Annually there are 1.5 million bone
9 fractures attributable to osteoporosis.

10 (C) Half of all women, and one-eighth of
11 all men, age 50 or older will have a bone frac-
12 ture due to osteoporosis.

13 (3) IMPACT OF OSTEOPOROSIS.—The cost of
14 treating osteoporosis is significant:

15 (A) The annual cost of osteoporosis in the
16 United States is \$13.8 billion.

17 (B) The average cost in the United States
18 of repairing a hip fracture due to osteoporosis
19 is \$32,000, while the average cost of an
20 osteoporosis screening test is \$250.

21 (C) Fractures due to osteoporosis fre-
22 quently result in disability and institutionaliza-
23 tion of individuals.

24 (D) Because osteoporosis is a progressive
25 condition causing fractures primarily in aging

individuals, preventing fractures particularly in post menopausal women before they become eligible for medicare, has a significant potential of reducing osteoporosis-related costs under the medicare program.

(4) USE OF BONE MASS MEASUREMENT.—

(A) Bone mass measurement is a non-invasive, painless, and reliable way to diagnose osteoporosis before costly fractures occur.

(B) Low bone mass is as predictive of future fractures as is high cholesterol or high blood pressure of heart disease or stroke.

(C) Bone mass measurement is the only reliable method of detecting osteoporosis at an early stage.

(D) Under section 4106 of the Balanced Budget Act of 1997, medicare provides coverage, effective July 1, 1998, for bone mass measurement for qualified individuals who are at risk of developing osteoporosis.

SEC. 2. REQUIRING COVERAGE OF BONE MASS MEASUREMENT UNDER HEALTH PLANS.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—(A) Subpart 2 of part A of title XXVII of

1 the Public Health Service Act is amended by adding
2 at the end the following new section:

3 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR BONE**
4 **MASS MEASUREMENT.**

5 “(a) REQUIREMENTS FOR COVERAGE OF BONE MASS
6 MEASUREMENT.—A group health plan, and a health in-
7 surance issuer offering group health insurance coverage,
8 shall include (consistent with this section) coverage for
9 bone mass measurement for beneficiaries and participants
10 who are qualified individuals.

11 “(b) DEFINITIONS RELATING TO COVERAGE.—In
12 this section:

13 “(1) BONE MASS MEASUREMENT.—The term
14 ‘bone mass measurement’ means a radiologic or
15 radioisotopic procedure or other procedure approved
16 by the Food and Drug Administration performed on
17 an individual for the purpose of identifying bone
18 mass or detecting bone loss or determining bone
19 quality, and includes a physician’s interpretation of
20 the results of the procedure. Nothing in this para-
21 graph shall be construed as requiring a bone mass
22 measurement to be conducted in a particular type of
23 facility or to prevent such a measurement from
24 being conducted through the use of mobile facilities
25 that are otherwise qualified.

1 “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-
2 fied individual’ means an individual who—

3 “(A) is an estrogen-deficient woman at
4 clinical risk for osteoporosis;

5 “(B) has vertebral abnormalities;

6 “(C) is receiving chemotherapy or long-
7 term glucocorticoid (steroid) therapy;

8 “(D) has primary hyperparathyroidism,
9 hyperthyroidism, or excess thyroid replacement;
10 or

11 “(E) is being monitored to assess the re-
12 sponse to or efficacy of approved osteoporosis
13 drug therapy.

14 “(c) LIMITATION ON FREQUENCY REQUIRED.—
15 Taking into account the standards established under
16 section 1861(rr)(3) of the Social Security Act, the
17 Secretary shall establish standards regarding the
18 frequency with which a qualified individual shall be
19 eligible to be provided benefits for bone mass meas-
20 urement under this section. The Secretary may vary
21 such standards based on the clinical and risk-related
22 characteristics of qualified individuals.

23 “(d) RESTRICTIONS ON COST-SHARING.—

24 “(1) IN GENERAL.—Subject to paragraph (2),
25 nothing in this section shall be construed as pre-

1 venting a group health plan or issuer from imposing
2 deductibles, coinsurance, or other cost-sharing in re-
3 lation to bone mass measurement under the plan (or
4 health insurance coverage offered in connection with
5 a plan).

6 “(2) LIMITATION.—Deductibles, coinsurance,
7 and other cost-sharing or other limitations for bone
8 mass measurement may not be imposed under para-
9 graph (1) to the extent they exceed the deductibles,
10 coinsurance, and limitations that are applied to simi-
11 lar services under the group health plan or health
12 insurance coverage.

13 “(e) PROHIBITIONS.—A group health plan, and a
14 health insurance issuer offering group health insurance
15 coverage in connection with a group health plan, may
16 not—

17 “(1) deny to an individual eligibility, or contin-
18 ued eligibility, to enroll or to renew coverage under
19 the terms of the plan, solely for the purpose of
20 avoiding the requirements of this section;

21 “(2) provide incentives (monetary or otherwise)
22 to individuals to encourage such individuals not to
23 be provided bone mass measurements to which they
24 are entitled under this section or to providers to in-

1 duce such providers not to provide such measure-
2 ments to qualified individuals;

3 “(3) prohibit a provider from discussing with a
4 patient osteoporosis preventive techniques or medical
5 treatment options relating to this section; or

6 “(4) penalize or otherwise reduce or limit the
7 reimbursement of a provider because such provider
8 provided bone mass measurements to a qualified in-
9 dividual in accordance with this section.

10 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion shall be construed to require an individual who is a
12 participant or beneficiary to undergo bone mass measure-
13 ment.

14 “(g) NOTICE.—A group health plan under this part
15 shall comply with the notice requirement under section
16 714(g) of the Employee Retirement Income Security Act
17 of 1974 with respect to the requirements of this section
18 as if such section applied to such plan.

19 “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—
20 Nothing in this section shall be construed to prevent a
21 group health plan or a health insurance issuer offering
22 group health insurance coverage from negotiating the level
23 and type of reimbursement with a provider for care pro-
24 vided in accordance with this section.

25 “(i) PREEMPTION.—

1 “(1) IN GENERAL.—The provisions of this sec-
 2 tion do not preempt State law relating to health in-
 3 surance coverage to the extent such State law pro-
 4 vides greater benefits with respect to osteoporosis
 5 detection or prevention.

6 “(2) CONSTRUCTION.—Section 2723(a)(1) shall
 7 not be construed as superseding a State law de-
 8 scribed in paragraph (1).”.

9 (B) Section 2723(c) of such Act (42 U.S.C.
 10 300gg-23(c)) is amended by striking “section 2704”
 11 and inserting “sections 2704 and 2707”.

12 (2) ERISA AMENDMENTS.—(A) Subpart B of
 13 part 7 of subtitle B of title I of the Employee Re-
 14 tirement Income Security Act of 1974 is amended by
 15 adding at the end the following new section:

16 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR BONE**
 17 **MASS MEASUREMENT.**

18 “(a) REQUIREMENTS FOR COVERAGE OF BONE MASS
 19 MEASUREMENT.—A group health plan, and a health in-
 20 surance issuer offering group health insurance coverage,
 21 shall include (consistent with this section) coverage for
 22 bone mass measurement for beneficiaries and participants
 23 who are qualified individuals.

24 “(b) DEFINITIONS RELATING TO COVERAGE.—In
 25 this section:

1 “(1) BONE MASS MEASUREMENT.—The term
2 ‘bone mass measurement’ means a radiologic or
3 radioisotopic procedure or other procedure approved
4 by the Food and Drug Administration performed on
5 an individual for the purpose of identifying bone
6 mass or detecting bone loss or determining bone
7 quality, and includes a physician’s interpretation of
8 the results of the procedure. Nothing in this para-
9 graph shall be construed as requiring a bone mass
10 measurement to be conducted in a particular type of
11 facility or to prevent such a measurement from
12 being conducted through the use of mobile facilities
13 that are otherwise qualified.

14 “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-
15 fied individual’ means an individual who—

16 “(A) is an estrogen-deficient woman at
17 clinical risk for osteoporosis;

18 “(B) has vertebral abnormalities;

19 “(C) is receiving chemotherapy or long-
20 term glucocorticoid (steroid) therapy;

21 “(D) has primary hyperparathyroidism,
22 hyperthyroidism, or excess thyroid replacement;
23 or

1 “(E) is being monitored to assess the re-
2 sponse to or efficacy of approved osteoporosis
3 drug therapy.

4 “(c) LIMITATION ON FREQUENCY REQUIRED.—
5 The standards established under section 2707(c) of
6 the Public Health Service Act shall apply to benefits
7 provided under this section in the same manner as
8 they apply to benefits provided under section 2707
9 of such Act.

10 “(d) RESTRICTIONS ON COST-SHARING.—

11 “(1) IN GENERAL.—Subject to paragraph (2),
12 nothing in this section shall be construed as pre-
13 venting a group health plan or issuer from imposing
14 deductibles, coinsurance, or other cost-sharing in re-
15 lation to bone mass measurement under the plan (or
16 health insurance coverage offered in connection with
17 a plan).

18 “(2) LIMITATION.—Deductibles, coinsurance,
19 and other cost-sharing or other limitations for bone
20 mass measurement may not be imposed under para-
21 graph (1) to the extent they exceed the deductibles,
22 coinsurance, and limitations that are applied to simi-
23 lar services under the group health plan or health
24 insurance coverage.

1 “(e) PROHIBITIONS.—A group health plan, and a
2 health insurance issuer offering group health insurance
3 coverage in connection with a group health plan, may
4 not—

5 “(1) deny to an individual eligibility, or contin-
6 ued eligibility, to enroll or to renew coverage under
7 the terms of the plan, solely for the purpose of
8 avoiding the requirements of this section;

9 “(2) provide incentives (monetary or otherwise)
10 to individuals to encourage such individuals not to
11 be provided bone mass measurements to which they
12 are entitled under this section or to providers to in-
13 duce such providers not to provide such measure-
14 ments to qualified individuals;

15 “(3) prohibit a provider from discussing with a
16 patient osteoporosis preventive techniques or medical
17 treatment options relating to this section; or

18 “(4) penalize or otherwise reduce or limit the
19 reimbursement of a provider because such provider
20 provided bone mass measurements to a qualified in-
21 dividual in accordance with this section.

22 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion shall be construed to require an individual who is a
24 participant or beneficiary to undergo bone mass measure-
25 ment.

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

11 “(h) PREEMPTION.—

12 “(1) IN GENERAL.—The provisions of this sec-
13 tion do not preempt State law relating to health in-
14 surance coverage to the extent such State law pro-
15 vides greater benefits with respect to osteoporosis
16 detection or prevention.

17 “(2) CONSTRUCTION.—Section 731(a)(1) shall
18 not be construed as superseding a State law de-
19 scribed in paragraph (1).”.

20 (B) Section 731(c) of such Act (29 U.S.C.
21 1191(c)) is amended by striking “section 711” and
22 inserting “sections 711 and 714”.

23 (C) Section 732(a) of such Act (29 U.S.C.
24 1191a(a)) is amended by striking “section 711” and
25 inserting “sections 711 and 714”.

1 (D) The table of contents in section 1 of such
 2 Act is amended by inserting after the item relating
 3 to section 712 the following new item:

“Sec. 714. Standards relating to benefits for bone mass measurement.”.

4 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
 5 of title XXVII of the Public Health Service Act is amend-
 6 ed by inserting after section 2752 the following new sec-
 7 tion:

8 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR BONE**
 9 **MASS MEASUREMENT.**

10 “(a) IN GENERAL.—The provisions of section 2707
 11 (other than subsection (g)) shall apply to health insurance
 12 coverage offered by a health insurance issuer in the indi-
 13 vidual market in the same manner as it applies to health
 14 insurance coverage offered by a health insurance issuer
 15 in connection with a group health plan in the small or
 16 large group market.

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

23 “(c) PREEMPTION.—

24 “(1) IN GENERAL.—The provisions of this sec-
 25 tion do not preempt State law relating to health in-

1 insurance coverage to the extent such State law pro-
2 vides greater benefits with respect to osteoporosis
3 detection or prevention.

4 “(2) CONSTRUCTION.—Section 2762(a) shall
5 not be construed as superseding a State law de-
6 scribed in paragraph (1).”.

7 (2) Section 2762(b)(2) of such Act (42 U.S.C.
8 300gg-62(b)(2)) is amended by striking “section 2751”
9 and inserting “sections 2751 and 2753”.

10 (c) EFFECTIVE DATES.—(1) The amendments made
11 by subsection (a) shall apply with respect to group health
12 plans for plan years beginning on or after January 1,
13 2002.

14 (2) The amendments made by subsection (b) shall
15 apply with respect to health insurance coverage offered,
16 sold, issued, renewed, in effect, or operated in the indi-
17 vidual market on or after such date.

○