

107TH CONGRESS  
1ST SESSION

# S. 819

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.

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## IN THE SENATE OF THE UNITED STATES

MAY 3, 2001

Mr. TORRICELLI (for himself and Ms. SNOWE) 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 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.

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; FINDINGS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Early Detection and Prevention of Osteoporosis and Re-  
4 lated Bone Diseases Act of 2001”.

5 (b) FINDINGS.—Congress makes the following find-  
6 ings:

7 (1) NATURE OF OSTEOPOROSIS.—

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

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

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

20 (D) There is no cure for osteoporosis, but  
21 drug therapy has been shown to reduce new hip  
22 and spine fractures by 50 percent and other  
23 treatments, such as nutrition therapy, have also  
24 proven effective.

25 (2) INCIDENCE OF OSTEOPOROSIS AND RE-  
26 LATED BONE DISEASES.—

1 (A) 28,000,000 Americans have (or are at  
2 risk for) osteoporosis, 80 percent of which are  
3 women.

4 (B) Osteoporosis is responsible for 1.5 mil-  
5 lion bone fractures annually, including more  
6 than 300,000 hip fractures, 700,000 vertebral  
7 fractures and 200,000 fractures of the wrists.

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

11 (D) Between 3,000,000 and 4,000,000  
12 Americans have Paget's disease, osteogenesis  
13 imperfecta, hyperparathyroidism, and other re-  
14 lated metabolic bone diseases.

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

17 (A) The annual cost of osteoporosis in the  
18 United States is \$13,800,000,000 and is ex-  
19 pected to increase precipitously because the pro-  
20 portion of the population comprised of older  
21 persons is expanding and each generation of  
22 older persons tends to have a higher incidence  
23 of osteoporosis than preceding generations.

1 (B) The average cost in the United States  
2 of repairing a hip fracture due to osteoporosis  
3 is \$32,000.

4 (C) Fractures due to osteoporosis fre-  
5 quently result in disability and institutionaliza-  
6 tion of individuals.

7 (D) Because osteoporosis is a progressive  
8 condition causing fractures primarily in aging  
9 individuals, preventing fractures, particularly  
10 for post menopausal women before they become  
11 eligible for medicare, has a significant potential  
12 of reducing osteoporosis-related costs under the  
13 medicare program.

14 (4) USE OF BONE MASS MEASUREMENT.—

15 (A) Bone mass measurement is the only  
16 reliable method of detecting osteoporosis at an  
17 early stage.

18 (B) Low bone mass is as predictive of fu-  
19 ture fractures as is high cholesterol or high  
20 blood pressure of heart disease or stroke.

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

24 (D) Under section 4106 of the Balanced  
25 Budget Act of 1997, Medicare provides cov-

1           erage, effective July 1, 1999, for bone mass  
2           measurement for qualified individuals who are  
3           at risk of developing osteoporosis.

4           (5) RESEARCH ON OSTEOPOROSIS AND RE-  
5           LATED BONE DISEASES.—

6           (A) Technology now exists, and new tech-  
7           nology is developing, that will permit the early  
8           diagnosis and prevention of osteoporosis and re-  
9           lated bone diseases as well as management of  
10          these conditions once they develop.

11          (B) Funding for research on osteoporosis  
12          and related bone diseases is severely con-  
13          strained at key research institutes, including  
14          the National Institute of Arthritis and Musculo-  
15          skeletal and Skin Diseases, the National Insti-  
16          tute on Aging, the National Institute of Dia-  
17          betics and Digestive and Kidney Diseases, the  
18          National Institute of Dental Research, and the  
19          National Institute of Child Health and Human  
20          Development.

21          (C) Further research is needed to improve  
22          medical knowledge concerning—

23               (i) cellular mechanisms related to the  
24               processes of bone resorption and bone for-

1 mation, and the effect of different agents  
2 on bone remodeling;

3 (ii) risk factors for osteoporosis, in-  
4 cluding newly discovered risk factors, risk  
5 factors related to groups not ordinarily  
6 studied (such as men and minorities), risk  
7 factors related to genes that help to control  
8 skeletal metabolism, and risk factors relat-  
9 ing to the relationship of aging processes  
10 to the development of osteoporosis;

11 (iii) bone mass measurement tech-  
12 nology, including more widespread and  
13 cost-effective techniques for making more  
14 precise measurements and for interpreting  
15 measurements;

16 (iv) calcium (including bioavailability,  
17 intake requirements, and the role of cal-  
18 cium in building heavier and denser skele-  
19 tons), and vitamin D and its role as an es-  
20 sential vitamin in adults;

21 (v) prevention and treatment, includ-  
22 ing the efficacy of current therapies, alter-  
23 native drug therapies for prevention and  
24 treatment, and the role of exercise; and

25 (vi) rehabilitation.

1 (D) Further educational efforts are needed  
 2 to increase public and professional knowledge of  
 3 the causes of, methods for avoiding, and treat-  
 4 ment of osteoporosis.

5 **SEC. 2. REQUIRING COVERAGE OF BONE MASS MEASURE-**  
 6 **MENT UNDER HEALTH PLANS.**

7 (a) GROUP HEALTH PLANS.—

8 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
 9 MENTS.—

10 (A) IN GENERAL.—Subpart 2 of part A of  
 11 title XXVII of the Public Health Service Act  
 12 (42 U.S.C. 300gg-4) is amended by adding at  
 13 the end the following:

14 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR BONE**  
 15 **MASS MEASUREMENT.**

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

22 “(b) DEFINITIONS RELATING TO COVERAGE.—In  
 23 this section:

24 “(1) BONE MASS MEASUREMENT.—The term  
 25 ‘bone mass measurement’ means a radiologic or

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

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

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

16                   “(B) has vertebral abnormalities;

17                   “(C) is receiving chemotherapy or long-  
 18                  term glucocorticoid (steroid) therapy;

19                   “(D) has primary hyperparathyroidism,  
 20                  hyperthyroidism, or excess thyroid replacement;

21                   “(E) is being monitored to assess the re-  
 22                  sponse to or efficacy of approved osteoporosis  
 23                  drug therapy;

24                   “(F) is a man with a low trauma fracture;

25                  or

1 “(G) the Secretary determines is eligible.

2 “(c) LIMITATION ON FREQUENCY REQUIRED.—Tak-  
3 ing into account the standards established under section  
4 1861(rr)(3) of the Social Security Act, the Secretary shall  
5 establish standards regarding the frequency with which a  
6 qualified individual shall be eligible to be provided benefits  
7 for bone mass measurement under this section. The Sec-  
8 retary may vary such standards based on the clinical and  
9 risk-related characteristics of qualified individuals.

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.—A group health plan under this part  
 2 shall comply with the notice requirement under section  
 3 714(g) of the Employee Retirement Income Security Act  
 4 of 1974 with respect to the requirements of this section  
 5 as if such section applied to such plan.

6       “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—  
 7 Nothing in this section shall be construed to prevent a  
 8 group health plan or a health insurance issuer offering  
 9 group health insurance coverage from negotiating the level  
 10 and type of reimbursement with a provider for care pro-  
 11 vided in accordance with this section.

12       “(i) PREEMPTION.—

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

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

21               (B) CONFORMING AMENDMENT.—Section  
 22 2723(c) of the Public Health Service Act (42  
 23 U.S.C. 300gg–23(c)) is amended by striking  
 24 “section 2704” and inserting “sections 2704  
 25 and 2707”.

1 (2) ERISA AMENDMENTS.—

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

7 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR BONE**  
 8 **MASS MEASUREMENT.**

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

15 “(b) DEFINITIONS RELATING TO COVERAGE.—In  
 16 this section:

17 “(1) BONE MASS MEASUREMENT.—The term  
 18 ‘bone mass measurement’ means a radiologic or  
 19 radioisotopic procedure or other procedure approved  
 20 by the Food and Drug Administration performed on  
 21 an individual for the purpose of identifying bone  
 22 mass or detecting bone loss or determining bone  
 23 quality, and includes a physician’s interpretation of  
 24 the results of the procedure. Nothing in this para-  
 25 graph shall be construed as requiring a bone mass

1 measurement to be conducted in a particular type  
 2 of facility or to prevent such a measurement from  
 3 being conducted through the use of mobile facilities  
 4 that are otherwise qualified.

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

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

9 “(B) has vertebral abnormalities;

10 “(C) is receiving chemotherapy or long-  
 11 term glucocorticoid (steroid) therapy;

12 “(D) has primary hyperparathyroidism,  
 13 hyperthyroidism, or excess thyroid replacement;

14 “(E) is being monitored to assess the re-  
 15 sponse to or efficacy of approved osteoporosis  
 16 drug therapy;

17 “(F) is a man with a low trauma fracture;

18 or

19 “(G) the Secretary determines is eligible.

20 “(c) LIMITATION ON FREQUENCY REQUIRED.—The  
 21 standards established under section 2707(c) of the Public  
 22 Health Service Act shall apply to benefits provided under  
 23 this section in the same manner as they apply to benefits  
 24 provided under section 2707 of such Act.

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

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

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

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

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

23                 “(2) provide incentives (monetary or otherwise)  
24                 to individuals to encourage such individuals not to  
25                 be provided bone mass measurements to which they

1 are entitled under this section or to providers to in-  
2 duce such providers not to provide such measure-  
3 ments to qualified individuals;

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

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

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

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

25 “(h) 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 731(a)(1) shall  
 7           not be construed as superseding a State law de-  
 8           scribed in paragraph (1).”.

9           (B) CONFORMING AMENDMENTS.—

10           (i) Section 731(c) of the Employee  
 11           Retirement Income Security Act of 1974  
 12           (29 U.S.C. 1191(c)), as amended by sec-  
 13           tion 603(b)(1) of Public Law 104–204, is  
 14           amended by striking “section 711” and in-  
 15           serting “sections 711 and 714”.

16           (ii) Section 732(a) of the Employee  
 17           Retirement Income Security Act of 1974  
 18           (29 U.S.C. 1191a(a)), as amended by sec-  
 19           tion 603(b)(2) of Public Law 104–204, is  
 20           amended by striking “section 711” and in-  
 21           serting “sections 711 and 714”.

22           (iii) The table of contents in section 1  
 23           of the Employee Retirement Income Secu-  
 24           rity Act of 1974 is amended by inserting  
 25           after the item relating to section 713 the

1 following new item:

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

2 (b) INDIVIDUAL HEALTH INSURANCE.—

3 (1) IN GENERAL.—Part B of title XXVII of the  
4 Public Health Service Act is amended by inserting  
5 after section 2752 (42 U.S.C. 300gg–52) the fol-  
6 lowing new section:

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

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

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

22 “(c) PREEMPTION.—

23 “(1) IN GENERAL.—The provisions of this sec-  
24 tion do not preempt State law relating to health in-  
25 surance coverage to the extent such State law pro-

1       vides greater benefits with respect to osteoporosis  
2       detection or prevention.

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

6               (2) CONFORMING AMENDMENTS.—Section  
7       2762(b)(2) of the Public Health Service Act (42  
8       U.S.C. 300gg–62(b)(2)) is amended by striking  
9       “section 2751” and inserting “sections 2751 and  
10      2753”.

11      (c) EFFECTIVE DATES.—

12              (1) GROUP HEALTH PLANS.—The amendments  
13      made by subsection (a) shall apply with respect to  
14      group health plans for plan years beginning on or  
15      after October 1, 2001.

16              (2) INDIVIDUAL MARKET.—The amendments  
17      made by subsection (b) shall apply with respect to  
18      health insurance coverage offered, sold, issued, re-  
19      newed, in effect, or operated in the individual mar-  
20      ket on or after October 1, 2001.

○