

105TH CONGRESS
1ST SESSION

H. R. 135

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 a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Ms. DELAURO (for herself, Mr. DINGELL, Mrs. ROUKEMA, Mr. ACKERMAN, Mr. BARRETT of Wisconsin, Mr. BENTSEN, Ms. BROWN of Florida, Mr. BROWN of Ohio, Mrs. CLAYTON, Mr. CLEMENT, Mr. CONYERS, Mr. DEFazio, Ms. ESHOO, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR of California, Mr. FOGLIETTA, Mr. FOX of Pennsylvania, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEJDENSON, Mr. GONZALEZ, Mr. GORDON, Mr. GREEN, Mr. HINCHEY, Mr. KENNEDY of Rhode Island, Mrs. KENNELLY of Connecticut, Mr. KILDEE, Mr. LAFALCE, Mrs. LOWEY, Mr. McDERMOTT, Mrs. MALONEY of New York, Mrs. MEEK of Florida, Mrs. MINK of Hawaii, Mr. MORAN of Virginia, Mrs. MORELLA, Mr. MURTHA, Mr. NADLER, Ms. NORTON, Mr. OBERSTAR, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PAYNE, Ms. PELOSI, Mr. QUINN, Mr. RAHALL, Ms. RIVERS, Mr. SANDERS, Ms. SLAUGHTER, Mr. TOWNS, Ms. VELÁZQUEZ, Mr. ROMERO-BARCELÓ, Mr. KENNEDY of Massachusetts, and Mr. MATSUI) introduced the following bill; which was referred to the Committee on 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 a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

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 “Breast Cancer Patient
 5 Protection Act of 1997”.

6 **SEC. 2. COVERAGE OF MINIMUM HOSPITAL STAY FOR CER-**
 7 **TAIN BREAST CANCER TREATMENT.**

8 (a) GROUP HEALTH PLANS.—

9 (1) PUBLIC HEALTH SERVICE ACT AMEND-
 10 MENTS.—(A) Subpart 2 of part A of title XXVII of
 11 the Public Health Service Act, as amended by sec-
 12 tion 703(a) of Public Law 104–204, is amended by
 13 adding at the end the following new section:

14 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR CER-**
 15 **TAIN BREAST CANCER TREATMENT.**

16 “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY
 17 FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-
 18 TION.—

19 “(1) IN GENERAL.—A group health plan, and a
 20 health insurance issuer offering group health insur-
 21 ance coverage, may not—

22 “(A) except as provided in paragraph

23 (2)—

1 “(i) restrict benefits for any hospital
2 length of stay in connection with a mastec-
3 tomy for the treatment of breast cancer to
4 less than 48 hours, or

5 “(ii) restrict benefits for any hospital
6 length of stay in connection with a lymph
7 node dissection for the treatment of breast
8 cancer to less than 24 hours, or

9 “(B) require that a provider obtain author-
10 ization from the plan or the issuer for prescrib-
11 ing any length of stay required under subpara-
12 graph (A) (without regard to paragraph (2)).

13 “(2) EXCEPTION.—Paragraph (1)(A) shall not
14 apply in connection with any group health plan or
15 health insurance issuer in any case in which the de-
16 cision to discharge the woman involved prior to the
17 expiration of the minimum length of stay otherwise
18 required under paragraph (1)(A) is made by an at-
19 tending provider in consultation with the woman.

20 “(b) PROHIBITIONS.—A group health plan, and a
21 health insurance issuer offering group health insurance
22 coverage in connection with a group health plan, may
23 not—

24 “(1) deny to a woman eligibility, or continued
25 eligibility, to enroll or to renew coverage under the

1 terms of the plan, solely for the purpose of avoiding
2 the requirements of this section;

3 “(2) provide monetary payments or rebates to
4 women to encourage such women to accept less than
5 the minimum protections available under this sec-
6 tion;

7 “(3) penalize or otherwise reduce or limit the
8 reimbursement of an attending provider because
9 such provider provided care to an individual partici-
10 pant or beneficiary in accordance with this section;

11 “(4) provide incentives (monetary or otherwise)
12 to an attending provider to induce such provider to
13 provide care to an individual participant or bene-
14 ficiary in a manner inconsistent with this section; or

15 “(5) subject to subsection (c)(3), restrict bene-
16 fits for any portion of a period within a hospital
17 length of stay required under subsection (a) in a
18 manner which is less favorable than the benefits pro-
19 vided for any preceding portion of such stay.

20 “(c) RULES OF CONSTRUCTION.—

21 “(1) Nothing in this section shall be construed
22 to require a woman who is a participant or bene-
23 ficiary—

24 “(A) to undergo a mastectomy or lymph
25 node dissection in a hospital; or

1 “(B) to stay in the hospital for a fixed pe-
2 riod of time following a mastectomy or lymph
3 node dissection.

4 “(2) This section shall not apply with respect to
5 any group health plan, or any group health insur-
6 ance coverage offered by a health insurance issuer,
7 which does not provide benefits for hospital lengths
8 of stay in connection with a mastectomy or lymph
9 node dissection for the treatment of breast cancer.

10 “(3) Nothing in this section shall be construed
11 as preventing a group health plan or issuer from im-
12 posing deductibles, coinsurance, or other cost-shar-
13 ing in relation to benefits for hospital lengths of stay
14 in connection with a mastectomy or lymph node dis-
15 section for the treatment of breast cancer under the
16 plan (or under health insurance coverage offered in
17 connection with a group health plan), except that
18 such coinsurance or other cost-sharing for any por-
19 tion of a period within a hospital length of stay re-
20 quired under subsection (a) may not be greater than
21 such coinsurance or cost-sharing for any preceding
22 portion of such stay.

23 “(d) NOTICE.—A group health plan under this part
24 shall comply with the notice requirement under section
25 713(d) of the Employee Retirement Income Security Act

1 of 1974 with respect to the requirements of this section
2 as if such section applied to such plan.

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

9 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
10 ANCE COVERAGE IN CERTAIN STATES.—

11 “(1) IN GENERAL.—The requirements of this
12 section shall not apply with respect to health insur-
13 ance coverage if there is a State law (as defined in
14 section 2723(d)(1)) for a State that regulates such
15 coverage that is described in any of the following
16 subparagraphs:

17 “(A) Such State law requires such cov-
18 erage to provide for at least a 48-hour hospital
19 length of stay following a mastectomy per-
20 formed for treatment of breast cancer and at
21 least a 24-hour hospital length of stay following
22 a lymph node dissection for treatment of breast
23 cancer.

24 “(B) Such State law requires, in connec-
25 tion with such coverage for surgical treatment

1 of breast cancer, that the hospital length of
 2 stay for such care is left to the decision of (or
 3 required to be made by) the attending provider
 4 in consultation with the woman involved.

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

8 (B) Section 2723(c) of such Act (42 U.S.C.
 9 300gg–23(c)), as amended by section 604(b)(2) of
 10 Public Law 104–204, is amended by striking “sec-
 11 tion 2704” and inserting “sections 2704 and 2706”.

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, as amended
 15 by section 702(a) of Public Law 104–204, is amend-
 16 ed by adding at the end the following new section:

17 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR CER-**
 18 **TAIN BREAST CANCER TREATMENT.**

19 “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY
 20 FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-
 21 TION.—

22 “(1) IN GENERAL.—A group health plan, and a
 23 health insurance issuer offering group health insur-
 24 ance coverage, may not—

1 “(A) except as provided in paragraph
2 (2)—

3 “(i) restrict benefits for any hospital
4 length of stay in connection with a mastec-
5 tomy for the treatment of breast cancer to
6 less than 48 hours, or

7 “(ii) restrict benefits for any hospital
8 length of stay in connection with a lymph
9 node dissection for the treatment of breast
10 cancer to less than 24 hours, or

11 “(B) require that a provider obtain author-
12 ization from the plan or the issuer for prescrib-
13 ing any length of stay required under subpara-
14 graph (A) (without regard to paragraph (2)).

15 “(2) EXCEPTION.—Paragraph (1)(A) shall not
16 apply in connection with any group health plan or
17 health insurance issuer in any case in which the de-
18 cision to discharge the woman involved prior to the
19 expiration of the minimum length of stay otherwise
20 required under paragraph (1)(A) is made by an at-
21 tending provider in consultation with the woman.

22 “(b) PROHIBITIONS.—A group health plan, and a
23 health insurance issuer offering group health insurance
24 coverage in connection with a group health plan, may
25 not—

1 “(1) deny to a woman eligibility, or continued
2 eligibility, to enroll or to renew coverage under the
3 terms of the plan, solely for the purpose of avoiding
4 the requirements of this section;

5 “(2) provide monetary payments or rebates to
6 women to encourage such women to accept less than
7 the minimum protections available under this sec-
8 tion;

9 “(3) penalize or otherwise reduce or limit the
10 reimbursement of an attending provider because
11 such provider provided care to an individual partici-
12 pant or beneficiary in accordance with this section;

13 “(4) provide incentives (monetary or otherwise)
14 to an attending provider to induce such provider to
15 provide care to an individual participant or bene-
16 ficiary in a manner inconsistent with this section; or

17 “(5) subject to subsection (c)(3), restrict bene-
18 fits for any portion of a period within a hospital
19 length of stay required under subsection (a) in a
20 manner which is less favorable than the benefits pro-
21 vided for any preceding portion of such stay.

22 “(c) RULES OF CONSTRUCTION.—

23 “(1) Nothing in this section shall be construed
24 to require a woman who is a participant or bene-
25 ficiary—

1 “(A) to undergo a mastectomy or lymph
2 node dissection in a hospital; or

3 “(B) to stay in the hospital for a fixed pe-
4 riod of time following a mastectomy or lymph
5 node dissection.

6 “(2) This section shall not apply with respect to
7 any group health plan, or any group health insur-
8 ance coverage offered by a health insurance issuer,
9 which does not provide benefits for hospital lengths
10 of stay in connection with a mastectomy or lymph
11 node dissection for the treatment of breast cancer.

12 “(3) Nothing in this section shall be construed
13 as preventing a group health plan or issuer from im-
14 posing deductibles, coinsurance, or other cost-shar-
15 ing in relation to benefits for hospital lengths of stay
16 in connection with a mastectomy or lymph node dis-
17 section for the treatment of breast cancer under the
18 plan (or under health insurance coverage offered in
19 connection with a group health plan), except that
20 such coinsurance or other cost-sharing for any por-
21 tion of a period within a hospital length of stay re-
22 quired under subsection (a) may not be greater than
23 such coinsurance or cost-sharing for any preceding
24 portion of such stay.

1 “(d) 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 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
12 Nothing in this section shall be construed to prevent a
13 group health plan or a health insurance issuer offering
14 group health insurance coverage from negotiating the level
15 and type of reimbursement with a provider for care pro-
16 vided in accordance with this section.

17 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
18 ANCE COVERAGE IN CERTAIN STATES.—

19 “(1) IN GENERAL.—The requirements of this
20 section shall not apply with respect to health insur-
21 ance coverage if there is a State law (as defined in
22 section 731(d)(1)) for a State that regulates such
23 coverage that is described in any of the following
24 subparagraphs:

1 “(A) Such State law requires such cov-
2 erage to provide for at least a 48-hour hospital
3 length of stay following a mastectomy per-
4 formed for treatment of breast cancer and at
5 least a 24-hour hospital length of stay following
6 a lymph node dissection for treatment of breast
7 cancer.

8 “(B) Such State law requires, in connec-
9 tion with such coverage for surgical treatment
10 of breast cancer, that the hospital length of
11 stay for such care is left to the decision of (or
12 required to be made by) the attending provider
13 in consultation with the woman involved.

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

17 (B) Section 731(c) of such Act (29 U.S.C.
18 1191(c)), as amended by section 603(b)(1) of Public
19 Law 104–204, is amended by striking “section 711”
20 and inserting “sections 711 and 713”.

21 (C) Section 732(a) of such Act (29 U.S.C.
22 1191a(a)), as amended by section 603(b)(2) of Pub-
23 lic Law 104–204, is amended by striking “section
24 711” and inserting “sections 711 and 713”.

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. 713. Standards relating to benefits for certain breast cancer treatment.”.

4 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B
 5 of title XXVII of the Public Health Service Act, as amend-
 6 ed by section 605(a) of Public Law 104–204, is amended
 7 by inserting after section 2751 the following new section:

8 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CER-**
 9 **TAIN BREAST CANCER TREATMENT.**

10 “(a) IN GENERAL.—The provisions of section 2706
 11 (other than subsection (d)) 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 713(d) 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; EXCEPTION FOR HEALTH INSUR-
 24 ANCE COVERAGE IN CERTAIN STATES.—

1 “(1) IN GENERAL.—The requirements of this
2 section shall not apply with respect to health insur-
3 ance coverage if there is a State law (as defined in
4 section 2723(d)(1)) for a State that regulates such
5 coverage that is described in any of the following
6 subparagraphs:

7 “(A) Such State law requires such cov-
8 erage to provide for at least a 48-hour hospital
9 length of stay following a mastectomy per-
10 formed for treatment of breast cancer and at
11 least a 24-hour hospital length of stay following
12 a lymph node dissection for treatment of breast
13 cancer.

14 “(B) Such State law requires, in connec-
15 tion with such coverage for surgical treatment
16 of breast cancer, that the hospital length of
17 stay for such care is left to the decision of (or
18 required to be made by) the attending provider
19 in consultation with the woman involved.

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

23 (2) Section 2762(b)(2) of such Act (42 U.S.C.
24 300gg-62(b)(2)), as added by section 605(b)(3)(B) of

1 Public Law 104–204, is amended by striking “section
2 2751” and inserting “sections 2751 and 2752”.

3 (c) EFFECTIVE DATES.—(1) The amendments made
4 by subsection (a) shall apply with respect to group health
5 plans for plan years beginning on or after January 1,
6 1998.

7 (2) The amendment made by subsection (b) shall
8 apply with respect to health insurance coverage offered,
9 sold, issued, renewed, in effect, or operated in the individ-
10 ual market on or after such date.

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