

105TH CONGRESS
1ST SESSION

H. R. 1737

To amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide adequate access to services provided by obstetrician-gynecologists.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1997

Mrs. LOWEY (for herself, Mr. LAZIO of New York, and Mr. COMBEST) 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 the Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide adequate access to services provided by obstetrician-gynecologists.

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 “Access to Women’s Health Care Act of 1997”.

1 (b) FINDINGS.—Congress finds the following:

2 (1) Women’s health historically has received lit-
3 tle attention.

4 (2) A majority of women view their obstetri-
5 cian-gynecologist as their primary or sole physician.

6 (3) An obstetrician-gynecologist improves the
7 access to the health care of a woman by providing
8 primary and preventive health care throughout the
9 women’s lifetime, encompassing care of the whole
10 patient in addition to focusing on the processes of
11 the female reproductive system.

12 (4) 60 percent of all office visits to obstetrician-
13 gynecologists are for preventive care.

14 (5) Obstetrician-gynecologists refer their pa-
15 tients to other physicians less frequently than other
16 primary care providers, thus avoiding costly and
17 time-consuming referrals.

18 (6) Obstetrician-gynecologists manage the
19 health of women beyond the reproductive system,
20 and are uniquely qualified on the basis of education
21 and experience to provide basic health care services
22 to women.

23 (7) While more than 20 States have acted to
24 promote residents’ access to obstetrician-gyne-
25 cologists, patients in other States or in Federally-

1 governed health plans are not protected from access
 2 restrictions or limitations.

3 **SEC. 2. ASSURING ACCESS TO OBSTETRICAL AND GYNECO-**
 4 **LOGICAL SERVICES UNDER GROUP HEALTH**
 5 **PLANS AND GROUP AND INDIVIDUAL HEALTH**
 6 **INSURANCE COVERAGE.**

7 (a) GROUP HEALTH PLANS.—

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

13 **“SEC. 2706. STANDARDS RELATING TO ACCESS TO OBSTET-**
 14 **RICAL AND GYNECOLOGICAL SERVICES.**

15 “(a) IN GENERAL.—If a group health plan or health
 16 insurance issuer, in the provision of health insurance cov-
 17 erage in connection with a group health plan, requires or
 18 provides for an enrollee to designate a participating pri-
 19 mary care provider—

20 “(1) the plan or issuer shall permit a female
 21 enrollee to designate an obstetrician-gynecologist
 22 who has agreed to be designated as such, as the en-
 23 rollee’s primary care provider; and

1 “(2) if such an enrollee has not designated such
2 a provider as a primary care provider, the plan or
3 issuer—

4 “(A) may not require prior authorization
5 by the enrollee’s primary care provider or other-
6 wise for coverage of obstetric and gynecologic
7 care provided by a participating obstetrician-
8 gynecologist, or a participating health care pro-
9 fessional practicing in collaboration with the ob-
10 stetrician-gynecologist and in accordance with
11 State law, to the extent such care is otherwise
12 covered, and

13 “(B) shall treat the ordering of other
14 gynecologic care by such a participating physi-
15 cian as the prior authorization of the primary
16 care provider with respect to such care under
17 the coverage.

18 “(b) CONSTRUCTION.—Nothing in subsection
19 (a)(2)(B) shall waive any requirements of coverage relat-
20 ing to medical necessity or appropriateness with respect
21 to coverage of gynecologic care so ordered.

22 “(c) 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; or

9 “(3) penalize or otherwise reduce or limit the
10 reimbursement of a provider because such provider
11 provided care to an individual participant or bene-
12 ficiary in accordance with this section.

13 “(d) NOTICE.—A group health plan under this part
14 shall comply with the notice requirement under section
15 713(d) of the Employee Retirement Income Security Act
16 of 1974 with respect to the requirements of this section
17 as if such section applied to such plan.

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

24 “(f) NON-PREEMPTION OF MORE PROTECTIVE
25 STATE LAW WITH RESPECT TO HEALTH INSURANCE IS-

1 SUERS.—Notwithstanding section 2723(a)(1) but subject
 2 to section 2723(a)(2), this section shall not be construed
 3 to supersede any provision of State law which establishes,
 4 implements, or continues in effect any standard or re-
 5 quirement solely relating to health insurance issuers in
 6 connection with group health insurance coverage that pro-
 7 vides greater protections to enrollees than the protections
 8 provided under this section.”.

9 (B) Section 2723 of such Act (42 U.S.C.
 10 300gg-23) is amended—

11 (i) in subsection (a), by inserting “and sec-
 12 tion 2706(f)” after “Subject to paragraph (2)”,
 13 and

14 (ii) in subsection (c), as amended by sec-
 15 tion 604(b)(2) of Public Law 104–204, by
 16 striking “section 2704” and inserting “sections
 17 2704 and 2706”.

18 (2) ERISA AMENDMENTS.—(A) Subpart B of
 19 part 7 of subtitle B of title I of the Employee Re-
 20 tirement Income Security Act of 1974, as amended
 21 by section 702(a) of Public Law 104–204, is amend-
 22 ed by adding at the end the following new section:

1 **“SEC. 713. STANDARDS RELATING TO ACCESS TO OBSTET-**
2 **RICAL AND GYNECOLOGICAL SERVICES.**

3 “(a) IN GENERAL.—If a group health plan or health
4 insurance issuer, in the provision of health insurance cov-
5 erage in connection with a group health plan, requires or
6 provides for an enrollee to designate a participating pri-
7 mary care provider—

8 “(1) the plan or issuer shall permit a female
9 enrollee to designate an obstetrician-gynecologist
10 who has agreed to be designated as such, as the en-
11 rollee’s primary care provider; and

12 “(2) if such an enrollee has not designated such
13 a provider as a primary care provider, the plan or
14 issuer—

15 “(A) may not require prior authorization
16 by the enrollee’s primary care provider or other-
17 wise for coverage of obstetric and gynecologic
18 care provided by a participating obstetrician-
19 gynecologist, or a participating health care pro-
20 fessional practicing in collaboration with the ob-
21 stetrician-gynecologist and in accordance with
22 State law, to the extent such care is otherwise
23 covered, and

24 “(B) shall treat the ordering of other
25 gynecologic care by such a participating physi-
26 cian as the prior authorization of the primary

1 care provider with respect to such care under
2 the coverage.

3 “(b) CONSTRUCTION.—Nothing in subsection
4 (a)(2)(B) shall waive any requirements of coverage relat-
5 ing to medical necessity or appropriateness with respect
6 to coverage of gynecologic care so ordered.

7 “(c) PROHIBITIONS.—A group health plan, and a
8 health insurance issuer offering group health insurance
9 coverage in connection with a group health plan, may
10 not—

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

15 “(2) provide monetary payments or rebates to
16 women to encourage such women to accept less than
17 the minimum protections available under this sec-
18 tion; or

19 “(3) penalize or otherwise reduce or limit the
20 reimbursement of a provider because such provider
21 provided care to an individual participant or bene-
22 ficiary in accordance with this section.

23 “(d) NOTICE.—The imposition of the requirements of
24 this section shall be treated as a material modification in
25 the terms of the plan described in section 102(a)(1), for

1 purposes of assuring notice of such requirements under
2 the plan; except that the summary description required to
3 be provided under the last sentence of section 104(b)(1)
4 with respect to such modification shall be provided by not
5 later than 60 days after the first day of the first plan
6 year in which such requirements apply.

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

13 “(f) NON-PREEMPTION OF MORE PROTECTIVE
14 STATE LAW WITH RESPECT TO HEALTH INSURANCE IS-
15 SUERS.—Notwithstanding section 731(a)(1) but subject to
16 section 731(a)(2), this section shall not be construed to
17 supersede any provision of State law which establishes, im-
18 plements, or continues in effect any standard or require-
19 ment solely relating to health insurance issuers in connec-
20 tion with group health insurance coverage that provides
21 greater protections to enrollees than the protections pro-
22 vided under this section.”.

23 (B) Section 731 of such Act (29 U.S.C. 1191)
24 is amended—

1 (i) in subsection (a), by inserting “and sec-
 2 tion 713(f)” after “subject to paragraph (2)”,
 3 and

4 (ii) in subsection (c), by striking “section
 5 711” and inserting “sections 711 and 713”.

6 (C) Section 732(a) of such Act (29 U.S.C.
 7 1191a(a)), as amended by section 603(b)(2) of Pub-
 8 lic Law 104–204, is amended by striking “section
 9 711” and inserting “sections 711 and 713”.

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

“Sec. 713. Standards relating to access to obstetrical and gynecological serv-
 ices.”.

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

17 **“SEC. 2752. STANDARDS RELATING TO ACCESS TO OBSTET-**
 18 **RICAL AND GYNECOLOGICAL SERVICES.**

19 “(a) IN GENERAL.—The provisions of section 2706
 20 (other than subsection (d)) shall apply to health insurance
 21 coverage offered by a health insurance issuer in the indi-
 22 vidual market in the same manner as it applies to health
 23 insurance coverage offered by a health insurance issuer

1 in connection with a group health plan in the small or
2 large group market.

3 “(b) NOTICE.—A health insurance issuer under this
4 part shall comply with the notice requirement under sec-
5 tion 713(d) of the Employee Retirement Income Security
6 Act of 1974 with respect to the requirements referred to
7 in subsection (a) as if such section applied to such issuer
8 and such issuer were a group health plan.

9 “(c) NON-PREEMPTION OF MORE PROTECTIVE
10 STATE LAW WITH RESPECT TO HEALTH INSURANCE IS-
11 SUERS.—Notwithstanding section 2762(a) but subject to
12 section 2762(b)(1), this section shall not be construed to
13 supersede any provision of State law which establishes, im-
14 plements, or continues in effect any standard or require-
15 ment solely relating to health insurance issuers in connec-
16 tion with group health insurance coverage that provides
17 greater protections to enrollees than the protections pro-
18 vided under this section.”.

19 (2) Section 2762 of such Act (42 U.S.C. 300gg–62)
20 is amended—

21 (A) in subsection (a), by inserting “and section
22 2752(c)” after “Subject to subsection (b)”, and

23 (B) in subsection (b)(2), as added by section
24 605(b)(3)(B) of Public Law 104–204, by striking

1 “section 2751” and inserting “sections 2751 and
2 2752”.

3 (c) EFFECTIVE DATES.—(1) Subject to paragraph
4 (3), the amendments made by subsection (a) shall apply
5 with respect to group health plans for plan years begin-
6 ning on or after January 1, 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.

11 (3) In the case of a group health plan maintained
12 pursuant to 1 or more collective bargaining agreements
13 between employee representatives and 1 or more employ-
14 ers ratified before the date of enactment of this Act, the
15 amendments made by subsection (a) shall not apply to
16 plan years beginning before the later of—

17 (A) the date on which the last collective bar-
18 gaining agreements relating to the plan terminates
19 (determined without regard to any extension thereof
20 agreed to after the date of enactment of this Act),
21 or

22 (B) January 1, 1998.

23 For purposes of subparagraph (A), any plan amendment
24 made pursuant to a collective bargaining agreement relat-
25 ing to the plan which amends the plan solely to conform

1 to any requirement added by subsection (a) shall not be
2 treated as a termination of such collective bargaining
3 agreement.

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