

105TH CONGRESS
1ST SESSION

H. R. 617

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 annual screening mammography for women 40 years of age or older if the coverage or plans include coverage for diagnostic mammography.


IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1997

Mr. NADLER (for himself, Mr. LAZIO of New York, Ms. SLAUGHTER, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. YATES, Mr. PALLONE, Mr. ENGEL, Mr. LaFALCE, Mr. MARTINEZ, Mr. HINCHEY, Ms. LOFGREN, Ms. NORTON, Mr. FALEOMAVAEGA, and Ms. CHRISTIAN-GREEN) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, and 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 annual screening mammography for women 40 years of age or older if the coverage or plans include coverage for diagnostic mammography.



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 “Mammogram Availability Act of 1997”.

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

7 (1) Breast cancer is the single leading cause of
8 death for women between the ages of 40 and 49 in
9 the United States

10 (2) An expert panel convened by the National
11 Institutes of Health recommended on January 23,
12 1997, that all women between the ages of 40 and 49
13 should choose for themselves, following consultation
14 with their health care provider, whether to undergo
15 screening mammography.

16 (3) The same panel unanimously recommended
17 that for women between the ages of 40 and 49 who
18 choose to have a screening mammogram, costs of the
19 mammograms should be reimbursed by third-party
20 payers or covered by health maintenance organiza-
21 tions.

22 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**
23 **RAPHY UNDER GROUP HEALTH PLANS.**

24 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

1 (1) Subpart 2 of part A of title XXVII of the
2 Public Health Service Act, as amended by section
3 703(a) of Public Law 104–204, is amended by add-
4 ing at the end the following new section:

5 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR**
6 **SCREENING MAMMOGRAPHY.**

7 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
8 SCREENING MAMMOGRAPHY.—

9 “(1) IN GENERAL.—A group health plan, and a
10 health insurance issuer offering group health insur-
11 ance coverage, that provides coverage for diagnostic
12 mammography for any woman who is 40 years of
13 age or older shall provide coverage for annual
14 screening mammography for such a woman under
15 terms and conditions that are not less favorable than
16 the terms and conditions for coverage of diagnostic
17 mammography.

18 “(2) DIAGNOSTIC AND SCREENING MAMMOG-
19 RAPHY DEFINED.—For purposes of this section—

20 “(A) The term ‘diagnostic mammography’
21 means a radiologic procedure that is medically
22 necessary for the purpose of diagnosing breast
23 cancer and includes a physician’s interpretation
24 of the results of the procedure.

1 “(B) The term ‘screening mammography’
2 means a radiologic procedure provided to a
3 woman for the purpose of early detection of
4 breast cancer and includes a physician’s inter-
5 pretation of the results of the procedure.

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

10 “(1) deny coverage for annual screening mam-
11 mography on the basis that the coverage is not
12 medically necessary or on the basis that the screen-
13 ing mammography is not pursuant to a referral, con-
14 sent, or recommendation by any health care pro-
15 vider;

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

20 “(3) provide monetary payments or rebates to
21 women to encourage such women to accept less than
22 the minimum protections available under this sec-
23 tion;

24 “(4) penalize or otherwise reduce or limit the
25 reimbursement of an attending provider because

1 such provider provided care to an individual partici-
2 pant or beneficiary in accordance with this section;
3 or

4 “(5) provide incentives (monetary or otherwise)
5 to an attending provider to induce such provider to
6 provide care to an individual participant or bene-
7 ficiary in a manner inconsistent with this section.

8 “(c) RULES OF CONSTRUCTION.—

9 “(1) Nothing in this section shall be construed
10 to require a woman who is a participant or bene-
11 ficiary to undergo annual screening mammography.

12 “(2) This section shall not apply with respect to
13 any group health plan, or any group health insur-
14 ance coverage offered by a health insurance issuer,
15 which does not provide benefits for diagnostic mam-
16 mography.

17 “(3) Nothing in this section shall be construed
18 as preventing a group health plan or issuer from im-
19 posing deductibles, coinsurance, or other cost-shar-
20 ing in relation to benefits for screening mammog-
21 raphy under the plan (or under health insurance
22 coverage offered in connection with a group health
23 plan), except that such coinsurance or other cost-
24 sharing for any portion may not be greater than
25 such coinsurance or cost-sharing that is otherwise

1 applicable with respect to benefits for diagnostic
2 mammography.

3 “(4) Women between the ages of 40 and 49
4 should (but are not required to) consult with appro-
5 priate health care practitioners before undergoing
6 screening mammography, but nothing in this section
7 shall be construed as requiring the approval of such
8 a practitioner before undergoing an annual screening
9 mammography.

10 “(d) NOTICE.—A group health plan under this part
11 shall comply with the notice requirement under section
12 713(d) of the Employee Retirement Income Security Act
13 of 1974 with respect to the requirements of this section
14 as if such section applied to such plan.

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

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

23 “(1) IN GENERAL.—The requirements of this
24 section shall not apply with respect to health insur-
25 ance coverage if there is a State law (as defined in

1 section 2723(d)(1)) for a State that regulates such
 2 coverage, that requires coverage to be provided for
 3 annual screening mammography for women who are
 4 40 years of age or older and that provides at least
 5 the protections described in subsection (b).

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

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

13 (b) ERISA AMENDMENTS.—

14 (1) Subpart B of part 7 of subtitle B of title
 15 I of the Employee Retirement Income Security Act
 16 of 1974, as amended by section 702(a) of Public
 17 Law 104–204, is amended by adding at the end the
 18 following new section:

19 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR**
 20 **SCREENING MAMMOGRAPHY.**

21 **“(a) REQUIREMENTS FOR COVERAGE OF ANNUAL**
 22 **SCREENING MAMMOGRAPHY.—**

23 **“(1) IN GENERAL.—**A group health plan, and a
 24 health insurance issuer offering group health insur-
 25 ance coverage, that provides coverage for diagnostic

1 mammography for any woman who is 40 years of
2 age or older shall provide coverage for annual
3 screening mammography for such a woman under
4 terms and conditions that are not less favorable than
5 the terms and conditions for coverage of diagnostic
6 mammography.

7 “(2) DIAGNOSTIC AND SCREENING MAMMOG-
8 RAPHY DEFINED.—For purposes of this section—

9 “(A) The term ‘diagnostic mammography’
10 means a radiologic procedure that is medically
11 necessary for the purpose of diagnosing breast
12 cancer and includes a physician’s interpretation
13 of the results of the procedure.

14 “(B) The term ‘screening mammography’
15 means a radiologic procedure provided to a
16 woman for the purpose of early detection of
17 breast cancer and includes a physician’s inter-
18 pretation of the results of the procedure.

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

23 “(1) deny coverage described in subsection
24 (a)(1) on the basis that the coverage is not medically

1 necessary or on the basis that the screening mam-
2 mography is not pursuant to a referral, consent, or
3 recommendation by any health care provider;

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

8 “(3) provide monetary payments or rebates to
9 women to encourage such women to accept less than
10 the minimum protections available under this sec-
11 tion;

12 “(4) penalize or otherwise reduce or limit the
13 reimbursement of an attending provider because
14 such provider provided care to an individual partici-
15 pant or beneficiary in accordance with this section;
16 or

17 “(5) provide incentives (monetary or otherwise)
18 to an attending provider to induce such provider to
19 provide care to an individual participant or bene-
20 ficiary in a manner inconsistent with this section.

21 “(c) RULES OF CONSTRUCTION.—

22 “(1) Nothing in this section shall be construed
23 to require a woman who is a participant or bene-
24 ficiary to undergo annual screening mammography.

1 “(2) This section shall not apply with respect to
2 any group health plan, or any group health insur-
3 ance coverage offered by a health insurance issuer,
4 which does not provide benefits for diagnostic mam-
5 mography.

6 “(3) Nothing in this section shall be construed
7 as preventing a group health plan or issuer from im-
8 posing deductibles, coinsurance, or other cost-shar-
9 ing in relation to benefits for screening mammog-
10 raphy under the plan (or under health insurance
11 coverage offered in connection with a group health
12 plan), except that such coinsurance or other cost-
13 sharing for any portion may not be greater than
14 such coinsurance or cost-sharing that is otherwise
15 applicable with respect to benefits for diagnostic
16 mammography.

17 “(4) Women between the ages of 40 and 49
18 should (but are not required to) consult with appro-
19 priate health care practitioners before undergoing
20 screening mammography, but nothing in this section
21 shall be construed as requiring the approval of such
22 a practitioner before undergoing an annual screening
23 mammography.

24 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
25 imposition of the requirements of this section shall be

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

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

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

17 “(1) IN GENERAL.—The requirements of this
18 section shall not apply with respect to health insur-
19 ance coverage if there is a State law (as defined in
20 section 731(d)(1)) for a State that regulates such
21 coverage, that requires coverage to be provided for
22 annual screening mammography for women who are
23 40 years of age or older, and that provides at least
24 the protections described in subsection (b).

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

4 (2) Section 731(c) of such Act (29 U.S.C.
5 1191(c)), as amended by section 603(b)(1) of Public
6 Law 104–204, is amended by striking “section 711”
7 and inserting “sections 711 and 713”.

8 (3) Section 732(a) of such Act (29 U.S.C.
9 1191a(a)), as amended by section 603(b)(2) of Pub-
10 lic Law 104–204, is amended by striking “section
11 711” and inserting “sections 711 and 713”.

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

“Sec. 713. Standards relating to benefits for screening mammography.”.

15 (c) EFFECTIVE DATES.—(1) Subject to paragraph
16 (2), the amendments made by this section shall apply with
17 respect to group health plans (and health insurance cov-
18 erage offered in connection with group health plans) for
19 plan years beginning on or after January 1, 1998.

20 (2) In the case of a group health plan maintained
21 pursuant to 1 or more collective bargaining agreements
22 between employee representatives and 1 or more employ-
23 ers ratified before the date of enactment of this Act, the
24 amendments made by this section shall not apply to plan
25 years beginning before the later of—

1 (A) the date on which the last collective bar-
 2 gaining agreements relating to the plan terminates
 3 (determined without regard to any extension thereof
 4 agreed to after the date of enactment of this Act),
 5 or

6 (B) January 1, 1998.

7 For purposes of subparagraph (A), any plan amendment
 8 made pursuant to a collective bargaining agreement relat-
 9 ing to the plan which amends the plan solely to conform
 10 to any requirement added by this section shall not be
 11 treated as a termination of such collective bargaining
 12 agreement.

13 **SEC. 3. COVERAGE OF ANNUAL SCREENING MAMMOG-**
 14 **RAPHY UNDER INDIVIDUAL HEALTH COV-**
 15 **ERAGE.**

16 (a) IN GENERAL.—Part B of title XXVII of the Pub-
 17 lic Health Service Act, as amended by section 605(a) of
 18 Public Law 104–204, is amended by inserting after sec-
 19 tion 2751 the following new section:

20 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR**
 21 **SCREENING MAMMOGRAPHY.**

22 “(a) IN GENERAL.—The provisions of section 2706
 23 (other than subsections (d) and (f)) shall apply to health
 24 insurance coverage offered by a health insurance issuer
 25 in the individual market in the same manner as it applies

1 to health insurance coverage offered by a health insurance
2 issuer in connection with a group health plan in the small
3 or large group market.

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

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

12 “(1) IN GENERAL.—The requirements of this
13 section shall not apply with respect to health insur-
14 ance coverage if there is a State law (as defined in
15 section 2723(d)(1)) for a State that regulates such
16 coverage, that requires coverage in the individual
17 health insurance market to be provided for annual
18 screening mammography for women who are 40
19 years of age or older and that provides at least the
20 protections described in section 2706(b) (as applied
21 under subsection (a)).

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

1 (b) CONFORMING AMENDMENT.—Section 2763(b)(2)
 2 of such Act (42 U.S.C. 300gg–63(b)(2)), as added by sec-
 3 tion 605(b)(3)(B) of Public Law 104–204, is amended by
 4 striking “section 2751” and inserting “sections 2751 and
 5 2752”.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply with respect to health insurance
 8 coverage offered, sold, issued, or renewed in the individual
 9 market on or after such January 1, 1998.

10 **SEC. 4. ANNUAL SCREENING MAMMOGRAPHY UNDER MEDI-**
 11 **CARE PROGRAM.**

12 (a) PROVIDING ANNUAL SCREENING MAMMOGRAPHY
 13 FOR WOMEN OVER AGE 39.—Paragraph (2) of section
 14 1834(c) of the Social Security Act (42 U.S.C. 1395m(c))
 15 is amended—

16 (1) in subparagraph (A)—

17 (A) in clause (iv), by striking “over 49
 18 years of age, but under 65 years of age” and
 19 inserting “over 39 years of age”,

20 (B) by striking (A) IN GENERAL” and all
 21 that follows through “under subparagraph
 22 (B)—”,

23 (C) by striking clauses (iii) and (v), and

1 (D) by redesignating clauses (i), (ii), and
2 (iv) as subparagraphs (A), (B), and (C), respec-
3 tively, and moving the indentation of such
4 clauses 2 ems to the left; and
5 (2) by striking subparagraph (B).

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall apply to screening mammography per-
8 formed on or after January 1, 1998.

9 **SEC. 5. COVERAGE OF SCREENING MAMMOGRAPHY UNDER**
10 **MEDICAID.**

11 (a) IN GENERAL.—Section 1905(a) of the Social Se-
12 curity Act (42 U.S.C. 1396d(a)) is amended—

13 (1) by striking “and” at the end of paragraph
14 (24);

15 (2) by redesignating paragraph (25) as para-
16 graph (26); and

17 (3) by inserting after paragraph (24) the fol-
18 lowing new paragraph:

19 “(25) screening mammography (as defined in
20 subsection (t)(1)) that is conducted by a facility that
21 has a certificate (or provisional certificate) issued
22 under section 354 of the Public Health Service Act,
23 to the extent consistent with the frequency permitted
24 under subsection (t)(2); and”.

1 (b) FREQUENCY OF COVERAGE.—Section 1905 of
 2 such Act (42 U.S.C. 1396d) is amended by adding at the
 3 end the following new subsection:

4 “(t) COVERAGE OF SCREENING MAMMOGRAPHY.—

5 “(1) DEFINITION.—The term ‘screening mam-
 6 mography’ means a radiologic procedure provided to
 7 a woman for the purpose of early detection of breast
 8 cancer and includes a physician’s interpretation of
 9 the results of the procedure.

10 “(2) FREQUENCY COVERED.—Medical assist-
 11 ance shall be made available under this title with re-
 12 spect to screening mammography that is performed
 13 consistent with the frequency at which payment may
 14 be made for such screening mammography under the
 15 medicare program under section 1834(c)(2) (which
 16 includes payment for annual screening mammog-
 17 raphy for women over 39 years of age).”.

18 (c) MAKING COVERAGE MANDATORY.—Section
 19 1902(a)(10)(A) of such Act (42 U.S.C. 1396a(a)(10)(A))
 20 is amended by striking “(17) and (21)” and inserting
 21 “(17), (21), and (25)”.

22 (d) CONFORMING AMENDMENTS.—(1) Section
 23 1902(a)(10)(C)(iv) of such Act (42 U.S.C.
 24 1396a(a)(10)(C)(iv)) is amended—

1 (A) by striking “(5) and (17)” and inserting
2 “(5), (17), and (25)”; and

3 (B) by striking “through (21)” and inserting
4 “through (25)”.

5 (2) Section 1902(j) (42 U.S.C. 1396a(j)) of such Act
6 is amended by striking “through (22)” and inserting
7 “through (26)”.

8 (e) EFFECTIVE DATE.—(1) Except as provided in
9 paragraph (2), the amendments made by this section shall
10 apply to screening mammography performed on or after
11 January 1, 1998, without regard to whether or not final
12 regulations to carry out such amendments have been pro-
13 mulgated by such date.

14 (2) In the case of a State plan for medical assistance
15 under title XIX of the Social Security Act which the Sec-
16 retary of Health and Human Services determines requires
17 State legislation (other than legislation appropriating
18 funds) in order for the plan to meet the additional require-
19 ment imposed by the amendments made by this section,
20 the State plan shall not be regarded as failing to comply
21 with the requirements of such title solely on the basis of
22 its failure to meet this additional requirement before the
23 first day of the first calendar quarter beginning after the
24 close of the first regular session of the State legislature
25 that begins after the date of the enactment of this Act.

1 For purposes of the previous sentence, in the case of a
2 State that has a 2-year legislative session, each year of
3 such session shall be deemed to be a separate regular ses-
4 sion of the State legislature.

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