

105TH CONGRESS
1ST SESSION

S. 727

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 SENATE OF THE UNITED STATES

MAY 8, 1997

Mrs. FEINSTEIN (for herself, Ms. MIKULSKI, Mr. WELLSTONE, Mr. JOHNSON, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

1 **SECTION 1. SHORT TITLE; FINDINGS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Mammogram Availability Act of 1997”.

4 (b) **FINDINGS.**—Congress finds the following:

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

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

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

20 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**
21 **RAPHY UNDER GROUP HEALTH PLANS.**

22 (a) **PUBLIC HEALTH SERVICE ACT AMENDMENTS.**—

23 (1) **IN GENERAL.**—Subpart 2 of part A of title
24 XXVII of the Public Health Service Act, as amend-
25 ed by section 703(a) of Public Law 104–204, is

1 amended by adding at the end the following new sec-
 2 tion:

3 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR**
 4 **SCREENING MAMMOGRAPHY.**

5 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
 6 SCREENING MAMMOGRAPHY.—

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

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

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

23 “(B) The term ‘screening mammography’
 24 means a radiologic procedure provided to a
 25 woman for the purpose of early detection of

1 breast cancer and includes a physician’s inter-
2 pretation of the results of the procedure.

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

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

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

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

21 “(4) penalize or otherwise reduce or limit the
22 reimbursement of an attending provider because
23 such provider provided care to an individual partici-
24 pant or beneficiary in accordance with this section;
25 or

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

5 “(c) RULES OF CONSTRUCTION.—

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

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

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

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

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

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

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

21 “(1) IN GENERAL.—The requirements of this
22 section shall not apply with respect to health insur-
23 ance coverage if there is a State law (as defined in
24 section 2723(d)(1)) for a State that regulates such
25 coverage, that requires coverage to be provided for

1 annual screening mammography for women who are
 2 40 years of age or older and that provides at least
 3 the protections described in subsection (b).

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

7 (2) CONFORMING AMENDMENT.—Section
 8 2723(e) of such Act (42 U.S.C. 300gg–23(e)), as
 9 amended by section 604(b)(2) of Public Law 104–
 10 204, is amended by striking “section 2704” and in-
 11 sserting “sections 2704 and 2706”.

12 (b) ERISA AMENDMENTS.—

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

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

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

22 “(1) IN GENERAL.—A group health plan, and a
 23 health insurance issuer offering group health insur-
 24 ance coverage, that provides coverage for diagnostic
 25 mammography for any woman who is 40 years of

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

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

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

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

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

22 “(1) deny coverage described in subsection
23 (a)(1) on the basis that the coverage is not medically
24 necessary or on the basis that the screening mam-

1 mography is not pursuant to a referral, consent, or
2 recommendation by any health care provider;

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

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

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

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

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 to undergo annual screening mammography.

24 “(2) This section shall not apply with respect to
25 any group health plan, or any group health insur-

1 ance coverage offered by a health insurance issuer,
2 which does not provide benefits for diagnostic mam-
3 mography.

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

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

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

1 notice of such requirements under the plan; except that
2 the summary description required to be provided under the
3 last sentence of section 104(b)(1) with respect to such
4 modification shall be provided by not later than 60 days
5 after the first day of the first plan year in which such
6 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) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
14 ANCE COVERAGE IN CERTAIN STATES.—

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

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

1 (2) CONFORMING AMENDMENTS.—

2 (A) Section 731(c) of such Act (29 U.S.C.
3 1191(c)), as amended by section 603(b)(1) of
4 Public Law 104–204, is amended by striking
5 “section 711” and inserting “sections 711 and
6 713”.

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

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

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

15 (c) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 the amendments made by this section shall apply
18 with respect to group health plans (and health insur-
19 ance coverage offered in connection with group
20 health plans) for plan years beginning on or after
21 January 1, 1998.

22 (2) COLLECTIVE BARGAINING AGREEMENTS.—

23 In the case of a group health plan maintained pur-
24 suant to 1 or more collective bargaining agreements
25 between employee representatives and 1 or more em-

1 ployers ratified before the date of enactment of this
2 Act, the amendments made by this section shall not
3 apply to plan years beginning before the later of—

4 (A) the date on which the last collective
5 bargaining agreements relating to the plan ter-
6 minates (determined without regard to any ex-
7 tension thereof agreed to after the date of en-
8 actment of this Act), or

9 (B) January 1, 1998.

10 For purposes of subparagraph (A), any plan amend-
11 ment made pursuant to a collective bargaining
12 agreement relating to the plan which amends the
13 plan solely to conform to any requirement added by
14 this section shall not be treated as a termination of
15 such collective bargaining agreement.

16 **SEC. 3. COVERAGE OF ANNUAL SCREENING MAMMOG-**
17 **RAPHY UNDER INDIVIDUAL HEALTH COV-**
18 **ERAGE.**

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

1 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR**
2 **SCREENING MAMMOGRAPHY.**

3 “(a) IN GENERAL.—The provisions of section 2706
4 (other than subsections (d) and (f)) shall apply to health
5 insurance coverage offered by a health insurance issuer
6 in the individual market in the same manner as it applies
7 to health insurance coverage offered by a health insurance
8 issuer in connection with a group health plan in the small
9 or large group market.

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

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

18 “(1) IN GENERAL.—The requirements of this
19 section shall not apply with respect to health insur-
20 ance coverage if there is a State law (as defined in
21 section 2723(d)(1)) for a State that regulates such
22 coverage, that requires coverage in the individual
23 health insurance market to be provided for annual
24 screening mammography for women who are 40
25 years of age or older and that provides at least the

1 (B) by striking (A) IN GENERAL” and all
2 that follows through “under subparagraph
3 (B)—”,

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

5 (D) by redesignating clauses (i), (ii), and
6 (iv) as subparagraphs (A), (B), and (C), respec-
7 tively, and moving the indentation of such
8 clauses 2 ems to the left; and

9 (2) by striking subparagraph (B).

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

13 **SEC. 5. COVERAGE OF SCREENING MAMMOGRAPHY UNDER**
14 **MEDICAID.**

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

17 (1) by striking “and” at the end of paragraph
18 (24);

19 (2) by redesignating paragraph (25) as para-
20 graph (26); and

21 (3) by inserting after paragraph (24) the fol-
22 lowing new paragraph:

23 “(25) screening mammography (as defined in
24 subsection (t)(1)) that is conducted by a facility that
25 has a certificate (or provisional certificate) issued

1 under section 354 of the Public Health Service Act,
2 to the extent consistent with the frequency permitted
3 under subsection (t)(2); and”.

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

7 “(t) COVERAGE OF SCREENING MAMMOGRAPHY.—

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

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

21 (c) MAKING COVERAGE MANDATORY.—Section
22 1902(a)(10)(A) of such Act (42 U.S.C. 1396a(a)(10)(A))
23 is amended by striking “(17) and (21)” and inserting
24 “(17), (21), and (25)”.

1 (d) CONFORMING AMENDMENTS.—(1) Section
2 1902(a)(10)(C)(iv) of such Act (42 U.S.C.
3 1396a(a)(10)(C)(iv)) is amended—

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

6 (B) by striking “through (21)” and inserting
7 “through (25)”.

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

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

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

1 first day of the first calendar quarter beginning after the
2 close of the first regular session of the State legislature
3 that begins after the date of the enactment of this Act.
4 For purposes of the previous sentence, in the case of a
5 State that has a 2-year legislative session, each year of
6 such session shall be deemed to be a separate regular ses-
7 sion of the State legislature.

○