

106TH CONGRESS
1ST SESSION

H. R. 383

To require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, and coverage for secondary consultations.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

Mrs. KELLY introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees 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 require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, and coverage for secondary consultations.

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 “Women’s Health and
5 Cancer Rights Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the offering and operation of health plans
2 affect commerce among the States;

3 (2) health care providers located in a State
4 serve patients who reside in the State and patients
5 who reside in other States; and

6 (3) in order to provide for uniform treatment of
7 health care providers and patients among the States,
8 it is necessary to cover health plans operating in 1
9 State as well as health plans operating among the
10 several States.

11 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
12 **COME SECURITY ACT OF 1974.**

13 (a) IN GENERAL.—Subpart B of part 7 of subtitle
14 B of title I of the Employee Retirement Income Security
15 Act of 1974 (29 U.S.C. 1185 et seq.), as amended by sec-
16 tion 902(a) of the Women’s Health and Cancer Rights Act
17 of 1998, is amended by inserting after section 713 the
18 following new section:

19 **“SEC. 714. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
20 **STAY FOR MASTECTOMIES AND LYMPH NODE**
21 **DISSECTIONS FOR THE TREATMENT OF**
22 **BREAST CANCER, AND COVERAGE FOR SEC-**
23 **ONDARY CONSULTATIONS.**

24 **“(a) INPATIENT CARE.—**

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer providing health insurance
3 coverage in connection with a group health plan,
4 that provides medical and surgical benefits shall en-
5 sure that inpatient coverage with respect to the
6 treatment of breast cancer is provided for a period
7 of time as is determined by the attending physician,
8 in consultation with the patient, to be medically ap-
9 propriate following—

10 “(A) a mastectomy;

11 “(B) a lumpectomy; or

12 “(C) a lymph node dissection for the treat-
13 ment of breast cancer.

14 “(2) EXCEPTION.—Nothing in this section shall
15 be construed as requiring the provision of inpatient
16 coverage if the attending physician and patient de-
17 termine that a shorter period of hospital stay is
18 medically appropriate.

19 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
20 In implementing the requirements of this section, a group
21 health plan, and a health insurance issuer providing health
22 insurance coverage in connection with a group health plan,
23 may not modify the terms and conditions of coverage
24 based on the determination by a participant or beneficiary

1 to request less than the minimum coverage required under
 2 subsection (a).

3 “(c) NOTICE.—A group health plan, and a health in-
 4 surance issuer providing health insurance coverage in con-
 5 nection with a group health plan shall provide notice to
 6 each participant and beneficiary under such plan regard-
 7 ing the coverage required by this section in accordance
 8 with regulations promulgated by the Secretary. Such no-
 9 tice shall be in writing and prominently positioned in any
 10 literature or correspondence made available or distributed
 11 by the plan or issuer and shall be transmitted—

12 “(1) in the next mailing made by the plan or
 13 issuer to the participant or beneficiary;

14 “(2) as part of any yearly informational packet
 15 sent to the participant or beneficiary; or

16 “(3) not later than January 1, 2000;
 17 whichever is earlier.

18 “(d) SECONDARY CONSULTATIONS.—

19 “(1) IN GENERAL.—A group health plan, and a
 20 health insurance issuer providing health insurance
 21 coverage in connection with a group health plan,
 22 that provides coverage with respect to medical and
 23 surgical services provided in relation to the diagnosis
 24 and treatment of cancer shall ensure that full cov-
 25 erage is provided for secondary consultations by spe-

1 cialists in the appropriate medical fields (including
2 pathology, radiology, and oncology) to confirm or re-
3 fute such diagnosis. Such plan or issuer shall ensure
4 that full coverage is provided for such secondary
5 consultation whether such consultation is based on a
6 positive or negative initial diagnosis. In any case in
7 which the attending physician certifies in writing
8 that services necessary for such a secondary con-
9 sultation are not sufficiently available from special-
10 ists operating under the plan with respect to whose
11 services coverage is otherwise provided under such
12 plan or by such issuer, such plan or issuer shall en-
13 sure that coverage is provided with respect to the
14 services necessary for the secondary consultation
15 with any other specialist selected by the attending
16 physician for such purpose at no additional cost to
17 the individual beyond that which the individual
18 would have paid if the specialist was participating in
19 the network of the plan.

20 “(2) EXCEPTION.—Nothing in paragraph (1)
21 shall be construed as requiring the provision of sec-
22 ondary consultations where the patient determines
23 not to seek such a consultation.

24 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
25 A group health plan, and a health insurance issuer provid-

1 ing health insurance coverage in connection with a group
 2 health plan, may not—

3 “(1) penalize or otherwise reduce or limit the
 4 reimbursement of a provider or specialist because
 5 the provider or specialist provided care to a partici-
 6 pant or beneficiary in accordance with this section;

7 “(2) provide financial or other incentives to a
 8 physician or specialist to induce the physician or
 9 specialist to keep the length of inpatient stays of pa-
 10 tients following a mastectomy, lumpectomy, or a
 11 lymph node dissection for the treatment of breast
 12 cancer below certain limits or to limit referrals for
 13 secondary consultations; or

14 “(3) provide financial or other incentives to a
 15 physician or specialist to induce the physician or
 16 specialist to refrain from referring a participant or
 17 beneficiary for a secondary consultation that would
 18 otherwise be covered by the plan or coverage in-
 19 volved under subsection (d).”.

20 (b) CLERICAL AMENDMENT.—The table of contents
 21 in section 1 of the Employee Retirement Income Security
 22 Act of 1974 (29 U.S.C. 1001 note), as amended by section
 23 902(b) of the Women’s Health and Cancer Rights Act of
 24 1998, is amended by inserting after the item relating to
 25 section 713 the following new item:

“Sec. 714. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer, and coverage for secondary consultations.

1 (c) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply with respect to plan years be-
4 ginning on or after the date of enactment of this
5 Act.

6 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
7 ING AGREEMENTS.—In the case of a group health
8 plan maintained pursuant to 1 or more collective
9 bargaining agreements between employee representa-
10 tives and 1 or more employers ratified before the
11 date of enactment of this Act, the amendments made
12 by this section shall not apply to plan years begin-
13 ning before the later of—

14 (A) the date on which the last collective
15 bargaining agreements relating to the plan ter-
16 minates (determined without regard to any ex-
17 tension thereof agreed to after the date of en-
18 actment of this Act), or

19 (B) January 1, 2000.

20 For purposes of subparagraph (A), any plan amend-
21 ment made pursuant to a collective bargaining
22 agreement relating to the plan which amends the
23 plan solely to conform to any requirement added by

1 this section shall not be treated as a termination of
2 such collective bargaining agreement.

3 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

4 **ACT RELATING TO THE GROUP MARKET.**

5 (a) GROUP MARKET.—Subpart 2 of part A of title
6 XXVII of the Public Health Service Act (42 U.S.C.
7 300gg–4 et seq.), as amended by section 903(a) of the
8 Women’s Health and Cancer Rights Act of 1998, is
9 amended by inserting after section 2706 the following new
10 section:

11 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
12 **STAY FOR MASTECTOMIES AND LYMPH NODE**
13 **DISSECTIONS FOR THE TREATMENT OF**
14 **BREAST CANCER, AND COVERAGE FOR SEC-**
15 **ONDARY CONSULTATIONS.**

16 “(a) INPATIENT CARE.—

17 “(1) IN GENERAL.—A group health plan, and a
18 health insurance issuer providing health insurance
19 coverage in connection with a group health plan,
20 that provides medical and surgical benefits shall en-
21 sure that inpatient coverage with respect to the
22 treatment of breast cancer is provided for a period
23 of time as is determined by the attending physician,
24 in consultation with the patient, to be medically ap-
25 propriate following—

1 “(A) a mastectomy;

2 “(B) a lumpectomy; or

3 “(C) a lymph node dissection for the treat-
4 ment of breast cancer.

5 “(2) EXCEPTION.—Nothing in this section shall
6 be construed as requiring the provision of inpatient
7 coverage if the attending physician and patient de-
8 termine that a shorter period of hospital stay is
9 medically appropriate.

10 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
11 In implementing the requirements of this section, a group
12 health plan, and a health insurance issuer providing health
13 insurance coverage in connection with a group health plan,
14 may not modify the terms and conditions of coverage
15 based on the determination by a participant or beneficiary
16 to request less than the minimum coverage required under
17 subsection (a).

18 “(c) NOTICE.—A group health plan, and a health in-
19 surance issuer providing health insurance coverage in con-
20 nection with a group health plan shall provide notice to
21 each participant and beneficiary under such plan regard-
22 ing the coverage required by this section in accordance
23 with regulations promulgated by the Secretary. Such no-
24 tice shall be in writing and prominently positioned in any

1 literature or correspondence made available or distributed
2 by the plan or issuer and shall be transmitted—

3 “(1) in the next mailing made by the plan or
4 issuer to the participant or beneficiary;

5 “(2) as part of any yearly informational packet
6 sent to the participant or beneficiary; or

7 “(3) not later than January 1, 2000;

8 whichever is earlier.

9 “(d) SECONDARY CONSULTATIONS.—

10 “(1) IN GENERAL.—A group health plan, and a
11 health insurance issuer providing health insurance
12 coverage in connection with a group health plan that
13 provides coverage with respect to medical and sur-
14 gical services provided in relation to the diagnosis
15 and treatment of cancer shall ensure that full cov-
16 erage is provided for secondary consultations by spe-
17 cialists in the appropriate medical fields (including
18 pathology, radiology, and oncology) to confirm or re-
19 fute such diagnosis. Such plan or issuer shall ensure
20 that full coverage is provided for such secondary
21 consultation whether such consultation is based on a
22 positive or negative initial diagnosis. In any case in
23 which the attending physician certifies in writing
24 that services necessary for such a secondary con-
25 sultation are not sufficiently available from special-

1 ists operating under the plan with respect to whose
2 services coverage is otherwise provided under such
3 plan or by such issuer, such plan or issuer shall en-
4 sure that coverage is provided with respect to the
5 services necessary for the secondary consultation
6 with any other specialist selected by the attending
7 physician for such purpose at no additional cost to
8 the individual beyond that which the individual
9 would have paid if the specialist was participating in
10 the network of the plan.

11 “(2) EXCEPTION.—Nothing in paragraph (1)
12 shall be construed as requiring the provision of sec-
13 ondary consultations where the patient determines
14 not to seek such a consultation.

15 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
16 A group health plan, and a health insurance issuer provid-
17 ing health insurance coverage in connection with a group
18 health plan, may not—

19 “(1) penalize or otherwise reduce or limit the
20 reimbursement of a provider or specialist because
21 the provider or specialist provided care to a partici-
22 pant or beneficiary in accordance with this section;

23 “(2) provide financial or other incentives to a
24 physician or specialist to induce the physician or
25 specialist to keep the length of inpatient stays of pa-

1 tients following a mastectomy, lumpectomy, or a
2 lymph node dissection for the treatment of breast
3 cancer below certain limits or to limit referrals for
4 secondary consultations; or

5 “(3) provide financial or other incentives to a
6 physician or specialist to induce the physician or
7 specialist to refrain from referring a participant or
8 beneficiary for a secondary consultation that would
9 otherwise be covered by the plan or coverage in-
10 volved under subsection (d).”.

11 (b) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply to group health plans for
14 plan years beginning on or after the date of enact-
15 ment of this Act.

16 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
17 ING AGREEMENTS.—In the case of a group health
18 plan maintained pursuant to 1 or more collective
19 bargaining agreements between employee representa-
20 tives and 1 or more employers ratified before the
21 date of enactment of this Act, the amendments made
22 by this section shall not apply to plan years begin-
23 ning before the later of—

24 (A) the date on which the last collective
25 bargaining agreements relating to the plan ter-

1 minates (determined without regard to any ex-
 2 tension thereof agreed to after the date of en-
 3 actment of this Act), or

4 (B) January 1, 2000.

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

11 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 12 **RELATING TO THE INDIVIDUAL MARKET.**

13 (a) IN GENERAL.—Subpart 3 of part B of title
 14 XXVII of the Public Health Service Act (42 U.S.C.
 15 300gg–51 et seq.), as amended by section 903(b) of the
 16 Women’s Health and Cancer Rights Act of 1998, is
 17 amended by inserting after section 2752 the following new
 18 section:

19 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 20 **STAY FOR MASTECTOMIES AND LYMPH NODE**
 21 **DISSECTIONS FOR THE TREATMENT OF**
 22 **BREAST CANCER AND SECONDARY CON-**
 23 **SULTATIONS.**

24 “The provisions of section 2707 shall apply to health
 25 insurance coverage offered by a health insurance issuer

1 in the individual market in the same manner as they apply
 2 to health insurance coverage offered by a health insurance
 3 issuer in connection with a group health plan in the small
 4 or large group market.”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply with respect to health insurance
 7 coverage offered, sold, issued, renewed, in effect, or oper-
 8 ated in the individual market on or after the date of enact-
 9 ment of this Act.

10 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 11 **OF 1986.**

12 (a) IN GENERAL.—Chapter 100 of the Internal Reve-
 13 nue Code of 1986 (relating to group health plan port-
 14 ability, access, and renewability requirements) is amended
 15 by inserting after section 9803 the following new section:

16 **“SEC. 9804. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 17 **STAY FOR MASTECTOMIES AND LYMPH NODE**
 18 **DISSECTIONS FOR THE TREATMENT OF**
 19 **BREAST CANCER, AND COVERAGE FOR SEC-**
 20 **ONDARY CONSULTATIONS.**

21 “(a) INPATIENT CARE.—

22 “(1) IN GENERAL.—A group health plan that
 23 provides medical and surgical benefits shall ensure
 24 that inpatient coverage with respect to the treatment
 25 of breast cancer is provided for a period of time as

1 is determined by the attending physician, in con-
2 sultation with the patient, to be medically appro-
3 priate following—

4 “(A) a mastectomy;

5 “(B) a lumpectomy; or

6 “(C) a lymph node dissection for the treat-
7 ment of breast cancer.

8 “(2) EXCEPTION.—Nothing in this section shall
9 be construed as requiring the provision of inpatient
10 coverage if the attending physician and patient de-
11 termine that a shorter period of hospital stay is
12 medically appropriate.

13 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
14 In implementing the requirements of this section, a group
15 health plan may not modify the terms and conditions of
16 coverage based on the determination by a participant or
17 beneficiary to request less than the minimum coverage re-
18 quired under subsection (a).

19 “(c) NOTICE.—A group health plan shall provide no-
20 tice to each participant and beneficiary under such plan
21 regarding the coverage required by this section in accord-
22 ance with regulations promulgated by the Secretary. Such
23 notice shall be in writing and prominently positioned in
24 any literature or correspondence made available or distrib-
25 uted by the plan and shall be transmitted—

1 “(1) in the next mailing made by the plan to
2 the participant or beneficiary;

3 “(2) as part of any yearly informational packet
4 sent to the participant or beneficiary; or

5 “(3) not later than January 1, 2000;
6 whichever is earlier.

7 “(d) SECONDARY CONSULTATIONS.—

8 “(1) IN GENERAL.—A group health plan that
9 provides coverage with respect to medical and sur-
10 gical services provided in relation to the diagnosis
11 and treatment of cancer shall ensure that full cov-
12 erage is provided for secondary consultations by spe-
13 cialists in the appropriate medical fields (including
14 pathology, radiology, and oncology) to confirm or re-
15 fute such diagnosis. Such plan or issuer shall ensure
16 that full coverage is provided for such secondary
17 consultation whether such consultation is based on a
18 positive or negative initial diagnosis. In any case in
19 which the attending physician certifies in writing
20 that services necessary for such a secondary con-
21 sultation are not sufficiently available from special-
22 ists operating under the plan with respect to whose
23 services coverage is otherwise provided under such
24 plan or by such issuer, such plan or issuer shall en-
25 sure that coverage is provided with respect to the

1 services necessary for the secondary consultation
2 with any other specialist selected by the attending
3 physician for such purpose at no additional cost to
4 the individual beyond that which the individual
5 would have paid if the specialist was participating
6 in the network of the plan.

7 “(2) EXCEPTION.—Nothing in paragraph (1)
8 shall be construed as requiring the provision of sec-
9 ondary consultations where the patient determines
10 not to seek such a consultation.

11 “(e) PROHIBITION ON PENALTIES.—A group health
12 plan may not—

13 “(1) penalize or otherwise reduce or limit the
14 reimbursement of a provider or specialist because
15 the provider or specialist provided care to a partici-
16 pant or beneficiary in accordance with this section;

17 “(2) provide financial or other incentives to a
18 physician or specialist to induce the physician or
19 specialist to keep the length of inpatient stays of pa-
20 tients following a mastectomy, lumpectomy, or a
21 lymph node dissection for the treatment of breast
22 cancer below certain limits or to limit referrals for
23 secondary consultations; or

24 “(3) provide financial or other incentives to a
25 physician or specialist to induce the physician or

1 specialist to refrain from referring a participant or
 2 beneficiary for a secondary consultation that would
 3 otherwise be covered by the plan involved under sub-
 4 section (d).”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) The heading for subtitle K of such Code is
 7 amended to read as follows:

8 **“Subtitle K—Group Health Plan**
 9 **Portability, Access, Renewabil-**
 10 **ity, and Other Requirements”.**

11 (2) The heading for chapter 100 of such Code
 12 is amended to read as follows:

13 **“CHAPTER 100—GROUP HEALTH PLAN PORT-**
 14 **ABILITY, ACCESS, RENEWABILITY, AND**
 15 **OTHER REQUIREMENTS”.**

16 (3) Section 4980D(a) of such Code is amended
 17 by striking “and renewability” and inserting “renew-
 18 ability, and other”.

19 (c) CLERICAL AMENDMENTS.—

20 (1) The table of contents for chapter 100 of
 21 such Code is amended by inserting after the item re-
 22 lating to section 9803 the following new item:

“Sec. 9804. Required coverage for minimum hospital stay for mastectomies and
 lymph node dissections for the treatment of breast cancer, and
 coverage for secondary consultations.

23 (2) The item relating to subtitle K in the table
 24 of subtitles for such Code is amended by striking

1 “and renewability” and inserting “renewability, and
2 other”.

3 (3) The item relating to chapter 100 in the
4 table of chapters for subtitle K of such Code is
5 amended by striking “and renewability” and insert-
6 ing “renewability, and other”.

7 (d) EFFECTIVE DATES.—

8 (1) IN GENERAL.—The amendments made by
9 this section shall apply with respect to plan years be-
10 ginning on or after the date of enactment of this
11 Act.

12 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
13 ING AGREEMENTS.—In the case of a group health
14 plan maintained pursuant to 1 or more collective
15 bargaining agreements between employee representa-
16 tives and 1 or more employers ratified before the
17 date of enactment of this Act, the amendments made
18 by this section shall not apply to plan years begin-
19 ning before the later of—

20 (A) the date on which the last collective
21 bargaining agreements relating to the plan ter-
22 minates (determined without regard to any ex-
23 tension thereof agreed to after the date of en-
24 actment of this Act), or

25 (B) January 1, 2000.

1 For purposes of subparagraph (A), any plan amend-
2 ment made pursuant to a collective bargaining
3 agreement relating to the plan which amends the
4 plan solely to conform to any requirement added by
5 this section shall not be treated as a termination of
6 such collective bargaining agreement.

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