

106TH CONGRESS
1ST SESSION

S. 681

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 SENATE OF THE UNITED STATES

MARCH 23, 1999

Mr. DASCHLE (for himself, Mr. INOUE, Mr. LAUTENBERG, Mr. CLELAND, Mr. JOHNSON, Ms. MIKULSKI, Mr. SARBANES, Mrs. MURRAY, and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 1999”.

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

3 (a) GROUP HEALTH PLANS.—

4 (1) PUBLIC HEALTH SERVICE ACT AMEND-
 5 MENTS.—

6 (A) IN GENERAL.—Subpart 2 of part A of
 7 title XXVII of the Public Health Service Act is
 8 amended by adding at the end the following
 9 new section:

10 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CER-**
 11 **TAIN BREAST CANCER TREATMENT.**

12 “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY
 13 FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-
 14 TION.—

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

18 “(A) except as provided in paragraph
 19 (2)—

20 “(i) restrict benefits for any hospital
 21 length of stay in connection with a mastec-
 22 tomy for the treatment of breast cancer to
 23 less than 48 hours, or

24 “(ii) restrict benefits for any hospital
 25 length of stay in connection with a lymph

1 node dissection for the treatment of breast
2 cancer to less than 24 hours, or

3 “(B) require that a provider obtain author-
4 ization from the plan or the issuer for pre-
5 scribing any length of stay required under sub-
6 paragraph (A) (without regard to paragraph
7 (2)).

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

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

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

23 “(2) provide monetary payments or rebates to
24 women to encourage such women to accept less than

1 the minimum protections available under this sec-
 2 tion;

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

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

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

16 “(c) RULES OF CONSTRUCTION.—

17 “(1) Nothing in this section shall be construed
 18 to require a woman who is a participant or
 19 beneficiary—

20 “(A) to undergo a mastectomy or lymph
 21 node dissection in a hospital; or

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

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 hospital lengths
5 of stay in connection with a mastectomy or lymph
6 node dissection for the treatment of breast cancer.

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

20 “(d) NOTICE.—A group health plan under this part
21 shall comply with the notice requirement under section
22 713(d) of the Employee Retirement Income Security Act
23 of 1974 with respect to the requirements of this section
24 as if such section applied to such plan.

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

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

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

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

22 “(B) Such State law requires, in connec-
 23 tion with such coverage for surgical treatment
 24 of breast cancer, that the hospital length of
 25 stay for such care is left to the decision of (or

1 required to be made by) the attending provider
 2 in consultation with the woman involved.

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

6 (B) CONFORMING AMENDMENT.—Section
 7 2723(c) of the Public Health Service Act (42
 8 U.S.C. 300gg–23(c)) is amended by striking
 9 “section 2704” and inserting “sections 2704
 10 and 2707”.

11 (2) ERISA AMENDMENTS.—

12 (A) IN GENERAL.—Subpart B of part 7 of
 13 subtitle B of title I of the Employee Retirement
 14 Income Security Act of 1974 is amended by
 15 adding at the end the following new section:

16 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CER-**
 17 **TAIN BREAST CANCER TREATMENT.**

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

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

24 “(A) except as provided in paragraph
 25 (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 pre-
 11 scribing any length of stay required under sub-
 12 paragraph (A) (without regard to paragraph
 13 (2)).

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

21 “(b) PROHIBITIONS.—A group health plan, and a
 22 health insurance issuer offering group health insurance
 23 coverage in connection with a group health plan, may
 24 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
25 beneficiary—

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) CONFORMING AMENDMENT.—

18 (i) Section 731(c) of the Employee
 19 Retirement Income Security Act of 1974
 20 (29 U.S.C. 1191(c)), as amended by sec-
 21 tion 603(b)(1) of Public Law 104–204, is
 22 amended by striking “section 711” and in-
 23 serting “sections 711 and 714”.

24 (ii) Section 732(a) of the Employee
 25 Retirement Income Security Act of 1974

1 (29 U.S.C. 1191a(a)), as amended by sec-
 2 tion 603(b)(2) of Public Law 104–204, is
 3 amended by striking “section 711” and in-
 4 serting “sections 711 and 714”.

5 (C) TABLE OF CONTENTS.—The table of
 6 contents in section 1 of the Employee Retire-
 7 ment Income Security Act of 1974 is amended
 8 by inserting after the item relating to section
 9 713 the following new item:

“Sec. 714. Standards relating to benefits for certain breast cancer treatment.”.

10 (b) INDIVIDUAL HEALTH INSURANCE.—

11 (1) IN GENERAL.—Part B of title XXVII of the
 12 Public Health Service Act is amended by inserting
 13 after section 2752 the following new section:

14 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CER-**
 15 **TAIN BREAST CANCER TREATMENT.**

16 “(a) IN GENERAL.—The provisions of section 2707
 17 (other than subsection (d)) shall apply to health insurance
 18 coverage offered by a health insurance issuer in the indi-
 19 vidual market in the same manner as it applies to health
 20 insurance coverage offered by a health insurance issuer
 21 in connection with a group health plan in the small or
 22 large group market.

23 “(b) NOTICE.—A health insurance issuer under this
 24 part shall comply with the notice requirement under sec-
 25 tion 714(d) of the Employee Retirement Income Security

1 Act of 1974 with respect to the requirements referred to
 2 in subsection (a) as if such section applied to such issuer
 3 and such issuer were a group health plan.

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

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

12 “(A) Such State law requires such cov-
 13 erage to provide for at least a 48-hour hospital
 14 length of stay following a mastectomy per-
 15 formed for treatment of breast cancer and at
 16 least a 24-hour hospital length of stay following
 17 a lymph node dissection for treatment of breast
 18 cancer.

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

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

4 (2) CONFORMING AMENDMENT.—Section
 5 2762(b)(2) of the Public Health Service Act (42
 6 U.S.C. 300gg–62(b)(2)), as added by section
 7 605(b)(3)(B) of Public Law 104–204, is amended by
 8 striking “section 2751” and inserting “sections
 9 2751 and 2753”.

10 (c) EFFECTIVE DATES.—

11 (1) GROUP HEALTH INSURANCE.—The amend-
 12 ments made by subsection (a) shall apply with re-
 13 spect to group health plans for plan years beginning
 14 on or after January 1, 2000.

15 (2) INDIVIDUAL HEALTH INSURANCE.—The
 16 amendment made by subsection (b) shall apply with
 17 respect to health insurance coverage offered, sold,
 18 issued, renewed, in effect, or operated in the indi-
 19 vidual market on or after such date.

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