

107TH CONGRESS
1ST SESSION

S. 255

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 SENATE OF THE UNITED STATES

FEBRUARY 6, 2001

Ms. SNOWE (for herself, Mrs. MURRAY, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 2001”.

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.) is amended by add-
16 ing at the end the following:

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

22 “(a) INPATIENT CARE.—

23 “(1) IN GENERAL.—A group health plan, and a
24 health insurance issuer providing health insurance
25 coverage in connection with a group health plan,

1 that provides medical and surgical benefits shall en-
 2 sure that inpatient coverage with respect to the
 3 treatment of breast cancer is provided for a period
 4 of time as is determined by the attending physician,
 5 in consultation with the patient, to be medically ap-
 6 propriate following—

7 “(A) a mastectomy;

8 “(B) a lumpectomy; or

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

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

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

24 “(c) NOTICE.—A group health plan, and a health in-
 25 surance issuer providing health insurance coverage in con-

1 nection with a group health plan shall provide notice to
 2 each participant and beneficiary under such plan regard-
 3 ing the coverage required by this section in accordance
 4 with regulations promulgated by the Secretary. Such no-
 5 tice shall be in writing and prominently positioned in any
 6 literature or correspondence made available or distributed
 7 by the plan or issuer and shall be transmitted—

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

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

12 “(3) not later than January 1, 2002;
 13 whichever is earlier.

14 “(d) SECONDARY CONSULTATIONS.—

15 “(1) IN GENERAL.—A group health plan, and a
 16 health insurance issuer providing health insurance
 17 coverage in connection with a group health plan,
 18 that provides coverage with respect to medical and
 19 surgical services provided in relation to the diagnosis
 20 and treatment of cancer shall ensure that full cov-
 21 erage is provided for secondary consultations by spe-
 22 cialists in the appropriate medical fields (including
 23 pathology, radiology, and oncology) to confirm or re-
 24 fute such diagnosis. Such plan or issuer shall ensure
 25 that full coverage is provided for such secondary

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

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

20 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
21 A group health plan, and a health insurance issuer pro-
22 viding health insurance coverage in connection with a
23 group health plan, may not—

24 “(1) penalize or otherwise reduce or limit the
25 reimbursement of a provider or specialist because

1 the provider or specialist provided care to a partici-
 2 pant or beneficiary in accordance with this section;

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

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

16 (b) CLERICAL AMENDMENT.—The table of contents
 17 in section 1 of the Employee Retirement Income Security
 18 Act of 1974 is amended by inserting after the item relat-
 19 ing to section 713 the following:

“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.”.

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by
 22 this section shall apply with respect to plan years be-
 23 ginning on or after the date of enactment of this
 24 Act.

1 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 2 GAINING AGREEMENTS.—In the case of a group
 3 health plan maintained pursuant to 1 or more collec-
 4 tive bargaining agreements between employee rep-
 5 resentatives and 1 or more employers ratified before
 6 the date of enactment of this Act, the amendments
 7 made by this section shall not apply to plan years
 8 beginning before the later of—

9 (A) the date on which the last collective
 10 bargaining agreements relating to the plan ter-
 11 minates (determined without regard to any ex-
 12 tension thereof agreed to after the date of en-
 13 actment of this Act), or

14 (B) January 1, 2002.

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

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

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

23 (a) IN GENERAL.—Subpart 2 of part A of title
 24 XXVII of the Public Health Service Act (42 U.S.C.

1 300gg–4 et seq.) is amended by adding at the end the
 2 following:

3 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 4 **STAY FOR MASTECTOMIES AND LYMPH NODE**
 5 **DISSECTIONS FOR THE TREATMENT OF**
 6 **BREAST CANCER AND COVERAGE FOR SEC-**
 7 **ONDARY CONSULTATIONS.**

8 “(a) INPATIENT CARE.—

9 “(1) IN GENERAL.—A group health plan, and a
 10 health insurance issuer providing health insurance
 11 coverage in connection with a group health plan,
 12 that provides medical and surgical benefits shall en-
 13 sure that inpatient coverage with respect to the
 14 treatment of breast cancer is provided for a period
 15 of time as is determined by the attending physician,
 16 in consultation with the patient, to be medically ap-
 17 propriate following—

18 “(A) a mastectomy;

19 “(B) a lumpectomy; or

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

22 “(2) EXCEPTION.—Nothing in this section shall
 23 be construed as requiring the provision of inpatient
 24 coverage if the attending physician and patient de-

1 termine that a shorter period of hospital stay is
 2 medically appropriate.

3 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

4 In implementing the requirements of this section, a group
 5 health plan, and a health insurance issuer providing health
 6 insurance coverage in connection with a group health plan,
 7 may not modify the terms and conditions of coverage
 8 based on the determination by a participant or beneficiary
 9 to request less than the minimum coverage required under
 10 subsection (a).

11 “(c) NOTICE.—A group health plan, and a health in-
 12 surance issuer providing health insurance coverage in con-
 13 nection with a group health plan shall provide notice to
 14 each participant and beneficiary under such plan regard-
 15 ing the coverage required by this section in accordance
 16 with regulations promulgated by the Secretary. Such no-
 17 tice shall be in writing and prominently positioned in any
 18 literature or correspondence made available or distributed
 19 by the plan or issuer and shall be transmitted—

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

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

24 “(3) not later than January 1, 2002;

25 whichever is earlier.

1 “(d) SECONDARY CONSULTATIONS.—

2 “(1) IN GENERAL.—A group health plan, and a
3 health insurance issuer providing health insurance
4 coverage in connection with a group health plan that
5 provides coverage with respect to medical and sur-
6 gical services provided in relation to the diagnosis
7 and treatment of cancer shall ensure that full cov-
8 erage is provided for secondary consultations by spe-
9 cialists in the appropriate medical fields (including
10 pathology, radiology, and oncology) to confirm or re-
11 fute such diagnosis. Such plan or issuer shall ensure
12 that full coverage is provided for such secondary
13 consultation whether such consultation is based on
14 a positive or negative initial diagnosis. In any case
15 in which the attending physician certifies in writing
16 that services necessary for such a secondary con-
17 sultation are not sufficiently available from special-
18 ists operating under the plan with respect to whose
19 services coverage is otherwise provided under such
20 plan or by such issuer, such plan or issuer shall en-
21 sure that coverage is provided with respect to the
22 services necessary for the secondary consultation
23 with any other specialist selected by the attending
24 physician for such purpose at no additional cost to
25 the individual beyond that which the individual

1 would have paid if the specialist was participating
2 in the network of the plan.

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

7 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
8 A group health plan, and a health insurance issuer pro-
9 viding health insurance coverage in connection with a
10 group health plan, may not—

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

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

22 “(3) provide financial or other incentives to a
23 physician or specialist to induce the physician or
24 specialist to refrain from referring a participant or
25 beneficiary for a secondary consultation that would

1 otherwise be covered by the plan or coverage in-
2 volved under subsection (d).”.

3 (b) EFFECTIVE DATES.—

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

8 (2) SPECIAL RULE FOR COLLECTIVE BAR-
9 GAINING AGREEMENTS.—In the case of a group
10 health plan maintained pursuant to 1 or more collec-
11 tive bargaining agreements between employee rep-
12 resentatives and 1 or more employers ratified before
13 the date of enactment of this Act, the amendments
14 made by this section shall not apply to plan years
15 beginning before the later of—

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

21 (B) January 1, 2002.

22 For purposes of subparagraph (A), any plan amend-
23 ment made pursuant to a collective bargaining
24 agreement relating to the plan which amends the
25 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. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
4 **RELATING TO THE INDIVIDUAL MARKET.**

5 (a) IN GENERAL.—The first subpart 3 of part B of
6 title XXVII of the Public Health Service Act (42 U.S.C.
7 300gg–11 et seq.) is amended—

8 (1) by adding after section 2752 the following:

9 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
10 **STAY FOR MASTECTOMIES AND LYMPH NODE**
11 **DISSECTIONS FOR THE TREATMENT OF**
12 **BREAST CANCER AND SECONDARY CON-**
13 **SULTATIONS.**

14 “The provisions of section 2707 shall apply to health
15 insurance coverage offered by a health insurance issuer
16 in the individual market in the same manner as they apply
17 to health insurance coverage offered by a health insurance
18 issuer in connection with a group health plan in the small
19 or large group market.”; and

20 (2) by redesignating such subpart 3 as subpart
21 2.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply with respect to health insurance
24 coverage offered, sold, issued, renewed, in effect, or oper-

1 ated in the individual market on or after the date of enact-
 2 ment of this Act.

3 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 4 **OF 1986.**

5 (a) IN GENERAL.—Subchapter B of chapter 100 of
 6 the Internal Revenue Code of 1986 is amended—

7 (1) in the table of sections, by inserting after
 8 the item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for
 mastectomies and lymph node dissections for the
 treatment of breast cancer and coverage for sec-
 ondary consultations.”; and

9 (2) by inserting after section 9812 the fol-
 10 lowing:

11 **“SEC. 9813. 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 that
 18 provides medical and surgical benefits shall ensure
 19 that inpatient coverage with respect to the treatment
 20 of breast cancer is provided for a period of time as
 21 is determined by the attending physician, in con-
 22 sultation with the patient, to be medically appro-
 23 priate 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 may not modify the terms and conditions of
13 coverage based on the determination by a participant or
14 beneficiary to request less than the minimum coverage re-
15 quired under subsection (a).

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

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

1 “(2) as part of any yearly informational packet
2 sent to the participant or beneficiary; or
3 “(3) not later than January 1, 2002;
4 whichever is earlier.

5 “(d) SECONDARY CONSULTATIONS.—

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

1 physician for such purpose at no additional cost to
 2 the individual beyond that which the individual
 3 would have paid if the specialist was participating in
 4 the network of the plan.

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

9 “(e) PROHIBITION ON PENALTIES.—A group health
 10 plan may not—

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

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

22 “(3) provide financial or other incentives to a
 23 physician or specialist to induce the physician or
 24 specialist to refrain from referring a participant or
 25 beneficiary for a secondary consultation that would

1 otherwise be covered by the plan involved under sub-
 2 section (d).”.

3 (b) CLERICAL AMENDMENT.—The table of contents
 4 for chapter 100 of such Code is amended by inserting after
 5 the item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies and
 lymph node dissections for the treatment of breast cancer and
 coverage for secondary consultations.”.

6 (c) EFFECTIVE DATES.—

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

11 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 12 GAINING AGREEMENTS.—In the case of a group
 13 health plan maintained pursuant to 1 or more collec-
 14 tive bargaining agreements between employee rep-
 15 resentatives and 1 or more employers ratified before
 16 the date of enactment of this Act, the amendments
 17 made by this section shall not apply to plan years
 18 beginning before the later of—

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

24 (B) January 1, 2002.

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.

○