

108TH CONGRESS  
1ST SESSION

# S. 1684

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.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 29), 2003

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

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## 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 2003”.

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

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

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

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

16 **“(A) except as provided in paragraph**  
 17 **(2)—**

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

22 **“(ii) restrict benefits for any hospital**  
 23 **length of stay in connection with a lymph**  
 24 **node dissection for the treatment of breast**  
 25 **cancer to less than 24 hours, or**

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

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

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

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

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

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

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

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

14           “(c) RULES OF CONSTRUCTION.—

15           “(1) Nothing in this section shall be construed  
16 to require a woman who is a participant or bene-  
17 ficiary—

18                   “(A) to undergo a mastectomy or lymph  
19 node dissection in a hospital; or

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

23           “(2) This section shall not apply with respect to  
24 any group health plan, or any group health insur-  
25 ance coverage offered by a health insurance issuer,

1 which does not provide benefits for hospital lengths  
2 of stay in connection with a mastectomy or lymph  
3 node dissection for the treatment of breast cancer.

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 hospital lengths of stay  
8 in connection with a mastectomy or lymph node dis-  
9 section for the treatment of breast cancer under the  
10 plan (or under health insurance coverage offered in  
11 connection with a group health plan), except that  
12 such coinsurance or other cost-sharing for any por-  
13 tion of a period within a hospital length of stay re-  
14 quired under subsection (a) may not be greater than  
15 such coinsurance or cost-sharing for any preceding  
16 portion of such stay.

17 “(d) NOTICE.—A group health plan under this part  
18 shall comply with the notice requirement under section  
19 713(d) of the Employee Retirement Income Security Act  
20 of 1974 with respect to the requirements of this section  
21 as if such section applied to such plan.

22 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
23 Nothing in this section shall be construed to prevent a  
24 group health plan or a health insurance issuer offering  
25 group health insurance coverage from negotiating the level

1 and type of reimbursement with a provider for care pro-  
2 vided in accordance with this section.

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

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

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

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

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

4           (B) Section 2723(c) of such Act (42 U.S.C.  
5 300gg-23(c)) is amended by striking “section 2704”  
6 and inserting “sections 2704 and 2707”.

7           (2) ERISA AMENDMENTS.—(A) Subpart B of  
8 part 7 of subtitle B of title I of the Employee Re-  
9 tirement Income Security Act of 1974 is amended by  
10 adding at the end the following new section:

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

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

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

19           “(A) except as provided in paragraph

20           (2)—

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

1                   “(ii) restrict benefits for any hospital  
2                   length of stay in connection with a lymph  
3                   node dissection for the treatment of breast  
4                   cancer to less than 24 hours, or

5                   “(B) require that a provider obtain author-  
6                   ization from the plan or the issuer for pre-  
7                   scribing any length of stay required under sub-  
8                   paragraph (A) (without regard to paragraph  
9                   (2)).

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

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

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

1           “(2) provide monetary payments or rebates to  
2 women to encourage such women to accept less than  
3 the minimum protections available under this sec-  
4 tion;

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

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

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

18           “(c) RULES OF CONSTRUCTION.—

19           “(1) Nothing in this section shall be construed  
20 to require a woman who is a participant or bene-  
21 ficiary—

22                   “(A) to undergo a mastectomy or lymph  
23 node dissection in a hospital; or

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

4           “(2) This section shall not apply with respect to  
5           any group health plan, or any group health insur-  
6           ance coverage offered by a health insurance issuer,  
7           which does not provide benefits for hospital lengths  
8           of stay in connection with a mastectomy or lymph  
9           node dissection for the treatment of breast cancer.

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

23          “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
24          imposition of the requirements of this section shall be  
25          treated as a material modification in the terms of the plan

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

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

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

16           “(1) IN GENERAL.—The requirements of this  
17 section shall not apply with respect to health insur-  
18 ance coverage if there is a State law (as defined in  
19 section 731(d)(1)) for a State that regulates such  
20 coverage that is described in any of the following  
21 subparagraphs:

22           “(A) Such State law requires such cov-  
23 erage to provide for at least a 48-hour hospital  
24 length of stay following a mastectomy per-  
25 formed for treatment of breast cancer and at

1           least a 24-hour hospital length of stay following  
 2           a lymph node dissection for treatment of breast  
 3           cancer.

4           “(B) Such State law requires, in connec-  
 5           tion with such coverage for surgical treatment  
 6           of breast cancer, that the hospital length of  
 7           stay for such care is left to the decision of (or  
 8           required to be made by) the attending provider  
 9           in consultation with the woman involved.

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

13          (B) Section 731(e) of such Act (29 U.S.C.  
 14          1191(e)) is amended by striking “section 711” and  
 15          inserting “sections 711 and 714”.

16          (C) Section 732(a) of such Act (29 U.S.C.  
 17          1191a(a)) is amended by striking “section 711” and  
 18          inserting “sections 711 and 714”.

19          (D) The table of contents in section 1 of such  
 20          Act is amended by inserting after the item relating  
 21          to section 713 the following new item:

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

22          (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
 23          of title XXVII of the Public Health Service Act is amend-  
 24          ed by inserting after section 2752 the following new sec-  
 25          tion:

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

3 “(a) IN GENERAL.—The provisions of section 2707  
4 (other than subsection (d)) shall apply to health insurance  
5 coverage offered by a health insurance issuer in the indi-  
6 vidual market in the same manner as it applies to health  
7 insurance coverage offered by a health insurance issuer  
8 in connection with a group health plan in the small or  
9 large group market.

10 “(b) NOTICE.—A health insurance issuer under this  
11 part shall comply with the notice requirement under sec-  
12 tion 714(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 is described in any of the following  
23 subparagraphs:

24 “(A) Such State law requires such cov-  
25 erage to provide for at least a 48-hour hospital  
26 length of stay following a mastectomy per-

1           formed for treatment of breast cancer and at  
2           least a 24-hour hospital length of stay following  
3           a lymph node dissection for treatment of breast  
4           cancer.

5           “(B) Such State law requires, in connec-  
6           tion with such coverage for surgical treatment  
7           of breast cancer, that the hospital length of  
8           stay for such care is left to the decision of (or  
9           required to be made by) the attending provider  
10          in consultation with the woman involved.

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

14          (2) Section 2762(b)(2) of such Act (42 U.S.C.  
15          300gg-62(b)(2)) is amended by striking “section 2751”  
16          and inserting “sections 2751 and 2753”.

17          (c) EFFECTIVE DATES.—(1) The amendments made  
18          by subsection (a) shall apply with respect to group health  
19          plans for plan years beginning on or after January 1,  
20          2004.

21          (2) The amendments made by subsection (b) shall  
22          apply with respect to health insurance coverage offered,  
23          sold, issued, renewed, in effect, or operated in the indi-  
24          vidual market on or after such date.

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