

108TH CONGRESS  
1ST SESSION

# S. 1730

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

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IN THE SENATE OF THE UNITED STATES

OCTOBER 14, 2003

Ms. SNOWE (for herself, Mrs. MURRAY, Mr. BIDEN, and Mrs. FEINSTEIN) 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 require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, 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 2003”.

6 **SEC. 2. FINDINGS.**

7       Congress finds that—

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-

## 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."

#### STAY FOB MASTECTOMIES LUMPECTOMIES

19 AND LYMPH NODE DISSECTIONS FOR THE  
20 TREATMENT OF BREAST CANCER AND COV-  
21 ERAGE FOR SECONDARY 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 (and in the case of a  
3 lumpectomy, outpatient) coverage and radiation  
4 therapy is provided for breast cancer treatment and  
5 that inpatient coverage with respect to the treatment  
6 of breast cancer is provided for a period of time as  
7 is determined by the attending physician, in con-  
8 sultation with the patient, to be medically appro-  
9 priate following—

10                 “(A) a mastectomy;  
11                 “(B) breast conserving surgery (such as a  
12                 lumpectomy, whether performed on an inpatient  
13                 or outpatient basis) as well as radiation treat-  
14                 ment; or  
15                 “(C) a lymph node dissection for the treat-  
16                 ment of breast cancer.

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

22                 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—  
23     In implementing the requirements of this section, a group  
24     health plan, and a health insurance issuer providing health  
25     insurance coverage in connection with a group health plan,

1 may not modify the terms and conditions of coverage  
2 based on the determination by a participant or beneficiary  
3 to request less than the minimum coverage required under  
4 subsection (a).

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

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

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

18           “(3) not later than January 1, 2004;  
19 whichever is earlier.

20       “(d) SECONDARY CONSULTATIONS.—

21           “(1) IN GENERAL.—A group health plan, and a  
22           health insurance issuer providing health insurance  
23           coverage in connection with a group health plan,  
24           that provides coverage with respect to medical and  
25           surgical services provided in relation to the diagnosis

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

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

1       “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—

2   A group health plan, and a health insurance issuer pro-  
3   viding health insurance coverage in connection with a  
4   group health plan, may not—

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

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

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

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

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

1 (c) EFFECTIVE DATES.—

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, 2004.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the 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) **IN GENERAL.**—Subpart 2 of part A of title  
6       XXVII of the Public Health Service Act (42 U.S.C.  
7       300gg-4 et seq.) is amended by adding at the end the  
8       following:

9       **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**

10                   **STAY FOR MASTECTOMIES, LUMPECTOMIES,**  
11                   **AND LYMPH NODE DISSECTIONS FOR THE**  
12                   **TREATMENT OF BREAST CANCER AND COV-**  
13                   **ERAGE FOR SECONDARY CONSULTATIONS.**

14       “(a) **INPATIENT CARE.**—

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 medical and surgical benefits shall en-  
19       sure that inpatient (and in the case of a  
20       lumpectomy, outpatient) coverage and radiation  
21       therapy is provided for breast cancer treatment and  
22       that inpatient coverage with respect to the treatment  
23       of breast cancer is provided for a period of time as  
24       is determined by the attending physician, in con-

1 sultation with the patient, to be medically appro-  
2 priate following—

3 “(A) a mastectomy;

4 “(B) breast conserving surgery (such as a  
5 lumpectomy, whether performed on an inpatient  
6 or outpatient basis) as well as radiation treat-  
7 ment; or

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

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

15 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

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

23 “(c) NOTICE.—A group health plan, and a health in-  
24 surance issuer providing health insurance coverage in con-  
25 nection with a group health plan shall provide notice to

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

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

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

11           “(3) not later than January 1, 2004;  
12 whichever is earlier.

13           “(d) SECONDARY CONSULTATIONS.—

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

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

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

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

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

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

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

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

16 (b) EFFECTIVE DATES.—

17 (1) IN GENERAL.—The amendments made by this section shall apply to group health plans for plan years beginning on or after the date of enactment of this Act.

21 (2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before

1 the date of enactment of this Act, the amendments  
2 made by this section shall not apply to plan years  
3 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, 2004.

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. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**

17 **RELATING TO THE INDIVIDUAL MARKET.**

18 (a) **IN GENERAL.**—The first subpart 3 of part B of  
19 title XXVII of the Public Health Service Act (42 U.S.C.  
20 300gg-11 et seq.) is amended—

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

1   **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**  
2                   **STAY FOR MASTECTOMIES, LUMPECTOMIES,**  
3                   **AND LYMPH NODE DISSECTIONS FOR THE**  
4                   **TREATMENT OF BREAST CANCER AND SEC-**  
5                   **ONDARY CONSULTATIONS.**

6        “The provisions of section 2707 shall apply to health  
7 insurance coverage offered by a health insurance issuer  
8 in the individual market in the same manner as they apply  
9 to health insurance coverage offered by a health insurance  
10 issuer in connection with a group health plan in the small  
11 or large group market.”; and

12                   (2) by redesignating such subpart 3 as subpart  
13                   2.

14                   (b) **EFFECTIVE DATE.**—The amendment made by  
15 this section shall apply with respect to health insurance  
16 coverage offered, sold, issued, renewed, in effect, or oper-  
17 ated in the individual market on or after the date of enact-  
18 ment of this Act.

19   **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
20                   **OF 1986.**

21                   (a) **IN GENERAL.**—Subchapter B of chapter 100 of  
22 the Internal Revenue Code of 1986 is amended—

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

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

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

3                   **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**  
4                   **STAY FOR MASTECTOMIES, LUMPECTOMIES,**  
5                   **AND LYMPH NODE DISSECTIONS FOR THE**  
6                   **TREATMENT OF BREAST CANCER AND COV-**  
7                   **ERAGE FOR SECONDARY CONSULTATIONS.**

8                   “(a) INPATIENT CARE.—

9                   “(1) IN GENERAL.—A group health plan that  
10                   provides medical and surgical benefits shall ensure  
11                   that inpatient (and in the case of a lumpectomy,  
12                   outpatient) coverage and radiation therapy is pro-  
13                   vided for breast cancer treatment and that inpatient  
14                   coverage with respect to the treatment of breast can-  
15                   cer is provided for a period of time as is determined  
16                   by the attending physician, in consultation with the  
17                   patient, to be medically appropriate following—

18                   “(A) a mastectomy;

19                   “(B) breast conserving surgery (such as a  
20                   lumpectomy, whether performed on an inpatient  
21                   or outpatient basis) as well as radiation treat-  
22                   ment; or

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

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

8               “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

9       In implementing the requirements of this section, a group  
10      health plan may not modify the terms and conditions of  
11      coverage based on the determination by a participant or  
12      beneficiary to request less than the minimum coverage re-  
13      quired under subsection (a).

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

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

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

25               “(3) not later than January 1, 2004;

1 whichever is earlier.

2       “(d) SECONDARY CONSULTATIONS.—

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

1       would have paid if the specialist was participating in  
2       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.—A group health  
8       plan may not—

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

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

20               “(3) provide financial or other incentives to a  
21       physician or specialist to induce the physician or  
22       specialist to refrain from referring a participant or  
23       beneficiary for a secondary consultation that would  
24       otherwise be covered by the plan involved under sub-  
25       section (d).”.

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

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

4       (c) EFFECTIVE DATES.—

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

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

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

22               (B) January 1, 2004.

23       For purposes of subparagraph (A), any plan amend-  
24 ment made pursuant to a collective bargaining

1 agreement relating to the plan which amends the  
2 plan solely to conform to any requirement added by  
3 this section shall not be treated as a termination of  
4 such collective bargaining agreement.

○