

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2761

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 annual screening mammography for any class of covered individuals if the coverage or plans include coverage for diagnostic mammography for such class and to amend title XIX of the Social Security Act to provide for coverage of annual screening mammography under the Medicaid Program.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2005

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on 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

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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 annual screening mammography for any class of covered individuals if the coverage or plans include coverage for diagnostic mammography for such class and to amend title XIX of the Social Security Act to provide for coverage of annual screening mammography under the Medicaid Program.

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 “Screening Mammog-

5 raphy Act of 2005”.

6 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**  
7 **RAPHY UNDER GROUP HEALTH PLANS.**

8       (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

9           (1) Subpart 2 of part A of title XXVII of the  
10       Public Health Service Act is amended by adding at  
11       the end the following new section:

12 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR**  
13 **SCREENING MAMMOGRAPHY.**

14       “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL  
15 SCREENING MAMMOGRAPHY.—

16           “(1) IN GENERAL.—A group health plan, and a  
17       health insurance issuer offering group health insur-  
18       ance coverage, that provides coverage for diagnostic  
19       mammography for any class of participants or bene-  
20       ficiaries shall provide coverage for annual screening  
21       mammography for such class under terms and con-  
22       ditions that are not less favorable than the terms  
23       and conditions for coverage of diagnostic mammog-  
24       raphy.

1           “(2) DIAGNOSTIC AND ANNUAL SCREENING  
2 MAMMOGRAPHY DEFINED.—For purposes of this  
3 section—

4           “(A) The term ‘diagnostic mammography’  
5 means a radiologic procedure that is medically  
6 necessary for the purpose of diagnosing breast  
7 cancer and includes a physician’s interpretation  
8 of the results of the procedure.

9           “(B) The term ‘annual screening mam-  
10 mography’ means a radiologic procedure pro-  
11 vided to an individual, not more frequently than  
12 on an annual basis, for the purpose of early de-  
13 tection of breast cancer and includes a physi-  
14 cian’s interpretation of the results of the proce-  
15 dure.

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

20           “(1) deny coverage for annual screening mam-  
21 mography on the basis that the coverage is not  
22 medically necessary or on the basis that the screen-  
23 ing mammography is not pursuant to a referral, con-  
24 sent, or recommendation by any health care pro-  
25 vider;

1           “(2) deny to a participant or beneficiary eligi-  
2           bility, or continued eligibility, to enroll or to renew  
3           coverage under the terms of the plan, solely for the  
4           purpose of avoiding the requirements of this section;

5           “(3) provide monetary payments or rebates to  
6           participants or beneficiaries to encourage them to  
7           accept less than the minimum protections available  
8           under this section;

9           “(4) 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          or

14          “(5) provide incentives (monetary or otherwise)  
15          to an attending provider to induce such provider to  
16          provide care to an individual participant or bene-  
17          ficiary in a manner inconsistent with this section.

18          “(c) RULES OF CONSTRUCTION.—

19                 “(1) Nothing in this section shall be construed  
20                 to require a participant or beneficiary to undergo  
21                 annual screening mammography.

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

1 which does not provide benefits for diagnostic mam-  
2 mography.

3 “(3) Nothing in this section shall be construed  
4 as preventing a group health plan or a health insur-  
5 ance issuer offering group health plan coverage from  
6 imposing deductibles, coinsurance, or other cost-  
7 sharing in relation to benefits for annual screening  
8 mammography under the plan (or under health in-  
9 surance coverage offered in connection with a group  
10 health plan), except that such coinsurance or other  
11 cost-sharing for any portion may not be greater than  
12 such coinsurance or cost-sharing that is otherwise  
13 applicable with respect to benefits for diagnostic  
14 mammography.

15 “(4) Nothing in this section shall be construed  
16 as preventing a group health plan or a health insur-  
17 ance issuer offering group health insurance coverage  
18 from requiring that a participant or beneficiary, be-  
19 fore undergoing an annual screening mammography  
20 more frequently than on an annual basis, consult  
21 with an appropriate health care practitioner or ob-  
22 tain a written authorization from such a practitioner  
23 for submission to the plan or issuer, but nothing in  
24 this section shall be construed as requiring prior au-

1       thorization before undergoing an annual screening  
2       mammography.

3       “(d) NOTICE.—A group health plan under this part  
4 shall comply with the notice requirement under section  
5 714(d) of the Employee Retirement Income Security Act  
6 of 1974 with respect to the requirements of this section  
7 as if such section applied to such plan.

8       “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
9 Nothing in this section shall be construed as preventing  
10 a 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 for any class of participants or bene-  
19 ficiaries if there is a State law (as defined in section  
20 2723(d)(1)) for a State that regulates such cov-  
21 erage, that requires coverage to be provided for an-  
22 nual screening mammography for such class, and  
23 that provides at least the protections described in  
24 subsection (b).

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

4           (2) 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           (b) ERISA AMENDMENTS.—

8           (1) Subpart B of part 7 of subtitle B of title  
9 I of the Employee Retirement Income Security Act  
10 of 1974 is amended by adding at the end the fol-  
11 lowing new section:

12 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR**  
13 **SCREENING MAMMOGRAPHY.**

14           “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL  
15 SCREENING MAMMOGRAPHY.—

16           “(1) IN GENERAL.—A group health plan, and a  
17 health insurance issuer offering group health insur-  
18 ance coverage, that provides coverage for diagnostic  
19 mammography for any class of participants or bene-  
20 ficiaries shall provide coverage for annual screening  
21 mammography for such class under terms and con-  
22 ditions that are not less favorable than the terms  
23 and conditions for coverage of diagnostic mammo-  
24 graphy.

1           “(2) DIAGNOSTIC AND ANNUAL SCREENING  
2 MAMMOGRAPHY DEFINED.—For purposes of this  
3 section—

4           “(A) The term ‘diagnostic mammography’  
5 means a radiologic procedure that is medically  
6 necessary for the purpose of diagnosing breast  
7 cancer and includes a physician’s interpretation  
8 of the results of the procedure.

9           “(B) The term ‘annual screening mam-  
10 mography’ means a radiologic procedure pro-  
11 vided to an individual, not more frequently than  
12 on an annual basis, for the purpose of early de-  
13 tection of breast cancer and includes a physi-  
14 cian’s interpretation of the results of the proce-  
15 dure.

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

20           “(1) deny coverage described in subsection  
21 (a)(1) on the basis that the coverage is not medically  
22 necessary or on the basis that the annual screening  
23 mammography is not pursuant to a referral, con-  
24 sent, or recommendation by any health care pro-  
25 vider;

1           “(2) deny to a participant or beneficiary eligi-  
2           bility, or continued eligibility, to enroll or to renew  
3           coverage under the terms of the plan, solely for the  
4           purpose of avoiding the requirements of this section;

5           “(3) provide monetary payments or rebates to  
6           participants or beneficiaries to encourage them to  
7           accept less than the minimum protections available  
8           under this section;

9           “(4) 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          or

14          “(5) provide incentives (monetary or otherwise)  
15          to an attending provider to induce such provider to  
16          provide care to an individual participant or bene-  
17          ficiary in a manner inconsistent with this section.

18          “(c) RULES OF CONSTRUCTION.—

19                 “(1) Nothing in this section shall be construed  
20                 to require a participant or beneficiary to undergo  
21                 annual screening mammography.

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

1 which does not provide benefits for diagnostic mam-  
2 mography.

3 “(3) Nothing in this section shall be construed  
4 as preventing a group health plan or a health insur-  
5 ance issuer offering group health insurance coverage  
6 from imposing deductibles, coinsurance, or other  
7 cost-sharing in relation to benefits for annual  
8 screening mammography under the plan (or under  
9 health insurance coverage offered in connection with  
10 a group health plan), except that such coinsurance  
11 or other cost-sharing for any portion may not be  
12 greater than such coinsurance or cost-sharing that is  
13 otherwise applicable with respect to benefits for di-  
14 agnostic mammography.

15 “(4) Nothing in this section shall be construed  
16 as preventing a group health plan or a health insur-  
17 ance issuer offering group health insurance coverage  
18 from requiring that a participant or beneficiary, be-  
19 fore undergoing an annual screening mammography  
20 more frequently than on an annual basis, consult  
21 with an appropriate health care practitioner or ob-  
22 tain a written authorization from such a practitioner  
23 for submission to the plan or issuer, but nothing in  
24 this section shall be construed as requiring prior au-

1       thorization before undergoing an annual screening  
2       mammography.

3       “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
4       imposition of the requirements of this section shall be  
5       treated as a material modification in the terms of the plan  
6       described in section 102(a)(1), for purposes of assuring  
7       notice of such requirements under the plan; except that  
8       the summary description required to be provided under the  
9       last sentence of section 104(b)(1) with respect to such  
10      modification shall be provided by not later than 60 days  
11      after the first day of the first plan year in which such  
12      requirements apply.

13      “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
14      Nothing in this section shall be construed as preventing  
15      a group health plan or a health insurance issuer offering  
16      group health insurance coverage from negotiating the level  
17      and type of reimbursement with a provider for care pro-  
18      vided in accordance with this section.

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

21              “(1) IN GENERAL.—The requirements of this  
22      section shall not apply with respect to health insur-  
23      ance coverage for any class of participants or bene-  
24      ficiaries if there is a State law (as defined in section  
25      731(d)(1)) for a State that regulates such coverage,

1 that requires coverage to be provided for annual  
2 screening mammography for such class, and that  
3 provides at least the protections described in sub-  
4 section (b).

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

8 (2) Section 731(c) of such Act (29 U.S.C.  
9 1191(c)) is amended by striking “section 711” and  
10 inserting “sections 711 and 714”.

11 (3) Section 732(a) of such Act (29 U.S.C.  
12 1191a(a)) is amended by striking “section 711” and  
13 inserting “sections 711 and 714”.

14 (4) The table of contents in section 1 of such  
15 Act is amended by inserting after the item relating  
16 to section 713 the following new item:

“714. Standards relating to benefits for screening mammography.”.

17 (c) EFFECTIVE DATES.—(1) Subject to paragraph  
18 (2), the amendments made by this section shall apply with  
19 respect to group health plans (and health insurance cov-  
20 erage offered in connection with group health plans) for  
21 plan years beginning on or after January 1, 2006.

22 (2) In the case of a group health plan maintained  
23 pursuant to 1 or more collective bargaining agreements  
24 between employee representatives and 1 or more employ-  
25 ers ratified before the date of enactment of this Act, the

1 amendments made by this section shall not apply to plan  
2 years beginning before the later of—

3 (A) the date on which the last collective bar-  
4 gaining agreements relating to the plan terminate  
5 (determined without regard to any extension thereof  
6 agreed to after the date of enactment of this Act),  
7 or

8 (B) January 1, 2006.

9 For purposes of subparagraph (A), any plan amendment  
10 made pursuant to a collective bargaining agreement relat-  
11 ing to the plan which amends the plan solely to conform  
12 to any requirement added by this section shall not be  
13 treated as a termination of such collective bargaining  
14 agreement.

15 **SEC. 3. COVERAGE OF ANNUAL SCREENING MAMMOG-**  
16 **RAPHY UNDER INDIVIDUAL HEALTH COV-**  
17 **ERAGE.**

18 (a) IN GENERAL.—Part B of title XXVII of the Pub-  
19 lic Health Service Act is amended by inserting after sec-  
20 tion 2752 the following new section:

21 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR**  
22 **SCREENING MAMMOGRAPHY.**

23 “(a) IN GENERAL.—The provisions of section 2707  
24 (other than subsections (d) and (f)) shall apply to health  
25 insurance coverage offered by a health insurance issuer

1 in the individual market in the same manner as it applies  
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) NOTICE.—A health insurance issuer under this  
6 part shall comply with the notice requirement under sec-  
7 tion 714(d) of the Employee Retirement Income Security  
8 Act of 1974 with respect to the requirements referred to  
9 in subsection (a) as if such section applied to such issuer  
10 and such issuer were a group health plan.

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

13 “(1) IN GENERAL.—The requirements of this  
14 section shall not apply with respect to health insur-  
15 ance coverage for any class of individuals if there is  
16 a State law (as defined in section 2723(d)(1)) for a  
17 State that regulates such coverage, that requires  
18 coverage in the individual health insurance market  
19 to be provided for annual screening mammography  
20 for such class and that provides at least the protec-  
21 tions described in section 2707(b) (as applied under  
22 subsection (a)).

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

1 (b) CONFORMING AMENDMENT.—Section 2762(b)(2)  
2 of such Act (42 U.S.C. 300gg–62(b)(2)) is amended by  
3 striking “section 2751” and inserting “sections 2751 and  
4 2753”.

5 (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply with respect to health insurance  
7 coverage offered, sold, issued, or renewed in the individual  
8 market on or after such January 1, 2006.

9 **SEC. 4. COVERAGE OF ANNUAL SCREENING MAMMOG-**  
10 **RAPHY UNDER MEDICAID.**

11 (a) IN GENERAL.—Section 1905(a) of the Social Se-  
12 curity Act (42 U.S.C. 1396d(a)) is amended—

13 (1) by striking “and” at the end of paragraph  
14 (27);

15 (2) by redesignating paragraph (28) as para-  
16 graph (29); and

17 (3) by inserting after paragraph (27) the fol-  
18 lowing new paragraph:

19 “(28) annual screening mammography (as de-  
20 fined in subsection (x)) that is conducted by a facil-  
21 ity that has a certificate (or provisional certificate)  
22 issued under section 354 of the Public Health Serv-  
23 ice Act; and”.

24 (b) ANNUAL SCREENING MAMMOGRAPHY DE-  
25 FINED.—Section 1905 of such Act (42 U.S.C. 1396d) is

1 amended by adding at the end the following new sub-  
2 section:

3 “(y) The term ‘annual screening mammography’  
4 means a radiologic procedure provided to a woman, not  
5 more frequently than on an annual basis, for the purpose  
6 of early detection of breast cancer and includes a physi-  
7 cian’s interpretation of the results of the procedure.”.

8 (c) MAKING COVERAGE MANDATORY.—Section  
9 1902(a)(10)(A) of such Act (42 U.S.C. 1396a(a)(10)(A))  
10 is amended by striking “(17) and (21)” and inserting  
11 “(17), (21), and (27)”.

12 (d) CONFORMING AMENDMENTS.—Section  
13 1902(a)(10)(C)(iv) of such Act (42 U.S.C.  
14 1396a(a)(10)(C)(iv)) is amended—

15 (1) by striking “and (17)” and inserting “,  
16 (17), and (27)”, and

17 (2) by striking “through (24)” and inserting  
18 “through (28)”; and

19 (e) EFFECTIVE DATE.—(1) Except as provided in  
20 paragraph (2), the amendments made by this section shall  
21 apply to screening mammography performed on or after  
22 January 1, 2006, without regard to whether or not final  
23 regulations to carry out such amendments have been pro-  
24 mulgated by such date.

1           (2) In the case of a State plan for medical assistance  
2 under title XIX of the Social Security Act which the Sec-  
3 retary of Health and Human Services determines requires  
4 State legislation (other than legislation appropriating  
5 funds) in order for the plan to meet the additional require-  
6 ment imposed by the amendments made by this section,  
7 the State plan shall not be regarded as failing to comply  
8 with the requirements of such title solely on the basis of  
9 its failure to meet this additional requirement before the  
10 first day of the first calendar quarter beginning after the  
11 close of the first regular session of the State legislature  
12 that begins after the date of the enactment of this Act.  
13 For purposes of the previous sentence, in the case of a  
14 State that has a 2-year legislative session, each year of  
15 such session shall be deemed to be a separate regular ses-  
16 sion of the State legislature.

○