

109TH CONGRESS
1ST SESSION

S. 910

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.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2005

Ms. SNOWE (for herself, Ms. LANDRIEU, Mrs. FEINSTEIN, Mrs. BOXER, Mrs. MURRAY, Mr. CORZINE, Mr. DURBIN and Mr. COCHRAN) 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, 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 “Breast Cancer Patient
5 Protection Act of 2005”.

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, 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.
5 Such plan or coverage may not—

6 “(A) except as provided for in paragraph
7 (2)—

8 “(i) restrict benefits for any hospital
9 length of stay in connection with a mastec-
10 tomy or breast conserving surgery (such as
11 a lumpectomy) for the treatment of breast
12 cancer to less than 48 hours; or

13 “(ii) restrict benefits for any hospital
14 length of stay in connection with a lymph
15 node dissection for the treatment of breast
16 cancer to less than 24 hours; or

17 “(B) require that a provider obtain author-
18 ization from the plan or the issuer for pre-
19 scribing any length of stay required under sub-
20 paragraph (A) (without regard to paragraph
21 (2)).

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 terminate that either a shorter period of hospital stay,
2 or outpatient treatment, is 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; or

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

25 “(d) SECONDARY CONSULTATIONS.—

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer providing health insurance
3 coverage in connection with a group health plan,
4 that provides coverage with respect to medical and
5 surgical 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 con-
12 sultation 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 that
15 services necessary for such a secondary consultation
16 are not sufficiently available from specialists oper-
17 ating under the plan with respect to whose services
18 coverage is otherwise provided under such plan or by
19 such issuer, such plan or issuer shall ensure that cov-
20 erage is provided with respect to the services nec-
21 essary for the secondary consultation with any other
22 specialist selected by the attending physician for such
23 purpose at no additional cost to the individual beyond
24 that which the individual would have paid if the spe-
25 cialist was participating in the network of the plan.

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

5 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
 6 A group health plan, and a health insurance issuer pro-
 7 viding health insurance coverage in connection with a
 8 group health 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;

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 or coverage in-
 25 volved under subsection (d); or

“(4) deny to a woman eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan or coverage solely for the purpose of avoiding the requirements of this section.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating 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.”.

9 (c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning on or after the date that is 90 days after the date of enactment of this Act.

(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 the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this

1 Act). For purposes of this paragraph, any plan
 2 amendment 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.

7 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 8 **ACT RELATING TO THE GROUP MARKET.**

9 (a) IN GENERAL.—Subpart 2 of part A of title
 10 XXVII of the Public Health Service Act (42 U.S.C.
 11 300gg–4 et seq.) is amended by adding at the end the
 12 following:

13 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 14 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 15 **AND LYMPH NODE DISSECTIONS FOR THE**
 16 **TREATMENT OF BREAST CANCER AND COV-**
 17 **ERAGE FOR SECONDARY CONSULTATIONS.**

18 **“(a) INPATIENT CARE.—**

19 **“(1) IN GENERAL.—**A group health plan, and a
 20 health insurance issuer providing health insurance
 21 coverage in connection with a group health plan,
 22 that provides medical and surgical benefits shall en-
 23 sure that inpatient (and in the case of a
 24 lumpectomy, outpatient) coverage and radiation

1 therapy is provided for breast cancer treatment.

2 Such plan or coverage may not—

3 “(A) except as provided for in paragraph

4 (2)—

5 “(i) restrict benefits for any hospital

6 length of stay in connection with a mastec-

7 tomy or breast conserving surgery (such as

8 a lumpectomy) for the treatment of breast

9 cancer to less than 48 hours; or

10 “(ii) restrict benefits for any hospital

11 length of stay in connection with a lymph

12 node dissection for the treatment of breast

13 cancer to less than 24 hours; or

14 “(B) require that a provider obtain author-

15 ization from the plan or the issuer for pre-

16 scribing any length of stay required under sub-

17 paragraph (A) (without regard to paragraph

18 (2)).

19 “(2) EXCEPTION.—Nothing in this section shall

20 be construed as requiring the provision of inpatient

21 coverage if the attending physician and patient de-

22 termine that either a shorter period of hospital stay,

23 or outpatient treatment, is medically appropriate.

24 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

25 In implementing the requirements of this section, a group

1 health plan, and a health insurance issuer providing health
 2 insurance coverage in connection with a group health plan,
 3 may not modify the terms and conditions of coverage
 4 based on the determination by a participant or beneficiary
 5 to request less than the minimum coverage required under
 6 subsection (a).

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

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

18 “(2) as part of any yearly informational packet
 19 sent to the participant or beneficiary;
 20 whichever is earlier.

21 “(d) SECONDARY CONSULTATIONS.—

22 “(1) IN GENERAL.—A group health plan, and a
 23 health insurance issuer providing health insurance
 24 coverage in connection with a group health plan that
 25 provides coverage with respect to medical and sur-

1 gical services provided in relation to the diagnosis and
2 treatment of cancer shall ensure that full coverage
3 is provided for secondary consultations by specialists
4 in the appropriate medical fields (including pathol-
5 ogy, radiology, and oncology) to confirm or refute
6 such diagnosis. Such plan or issuer shall ensure that
7 full coverage is provided for such secondary consulta-
8 tion whether such consultation is based on a positive
9 or negative initial diagnosis. In any case in which the
10 attending physician certifies in writing that services
11 necessary for such a secondary consultation are not
12 sufficiently available from specialists operating under
13 the plan with respect to whose services coverage is
14 otherwise provided under such plan or by such issuer,
15 such plan or issuer shall ensure that coverage is pro-
16 vided with respect to the services necessary for the
17 secondary consultation with any other specialist se-
18 lected by the attending physician for such purpose at
19 no additional cost to the individual beyond that which
20 the individual would have paid if the specialist was
21 participating 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;

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); or

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

1 (b) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply to group health plans for
4 plan years beginning on or after 90 days after the
5 date of enactment of this Act.

6 (2) SPECIAL RULE FOR COLLECTIVE BAR-
7 GAINING AGREEMENTS.—In the case of a group
8 health plan maintained pursuant to 1 or more collec-
9 tive bargaining agreements between employee rep-
10 resentatives and 1 or more employers ratified before
11 the date of enactment of this Act, the amendments
12 made by this section shall not apply to plan years
13 beginning before the date on which the last collective
14 bargaining agreements relating to the plan termi-
15 nates (determined without regard to any extension
16 thereof agreed to after the date of enactment of this
17 Act). For purposes of this paragraph, any plan
18 amendment made pursuant to a collective bargaining
19 agreement relating to the plan which amends the
20 plan solely to conform to any requirement added by
21 this section shall not be treated as a termination of
22 such collective bargaining agreement.

1 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 2 **RELATING TO THE INDIVIDUAL MARKET.**

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

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

7 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 8 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 9 **AND LYMPH NODE DISSECTIONS FOR THE**
 10 **TREATMENT OF BREAST CANCER AND SEC-**
 11 **ONDARY CONSULTATIONS.**

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

18 (2) by redesignating such subpart 3 as subpart
 19 2.

20 (b) EFFECTIVE DATE.—The amendment made by
 21 this section shall apply with respect to health insurance
 22 coverage offered, sold, issued, renewed, in effect, or oper-
 23 ated in the individual market on or after the date of enact-
 24 ment of this Act.

1 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 2 **OF 1986.**

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

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

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

7 and

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

10 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 11 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
 12 **AND LYMPH NODE DISSECTIONS FOR THE**
 13 **TREATMENT OF BREAST CANCER AND COV-**
 14 **ERAGE FOR SECONDARY CONSULTATIONS.**

15 “(a) INPATIENT CARE.—

16 “(1) IN GENERAL.—A group health plan that
 17 provides medical and surgical benefits shall ensure
 18 that inpatient (and in the case of a lumpectomy,
 19 outpatient) coverage and radiation therapy is pro-
 20 vided for breast cancer treatment. Such plan may
 21 not—

22 “(A) except as provided for in paragraph

23 (2)—

1 “(i) restrict benefits for any hospital
 2 length of stay in connection with a mastec-
 3 tomy or breast conserving surgery (such as
 4 a lumpectomy) for the treatment of breast
 5 cancer to less than 48 hours; or

6 “(ii) restrict benefits for any hospital
 7 length of stay in connection with a lymph
 8 node dissection for the treatment of breast
 9 cancer to less than 24 hours; or

10 “(B) require that a provider obtain author-
 11 ization from the plan for prescribing any length
 12 of stay required under subparagraph (A) (with-
 13 out regard to paragraph (2)).

14 “(2) EXCEPTION.—Nothing in this section shall
 15 be construed as requiring the provision of inpatient
 16 coverage if the attending physician and patient de-
 17 termine that either a shorter period of hospital stay,
 18 or outpatient treatment, is medically appropriate.

19 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
 20 In implementing the requirements of this section, a group
 21 health plan may not modify the terms and conditions of
 22 coverage based on the determination by a participant or
 23 beneficiary to request less than the minimum coverage re-
 24 quired under subsection (a).

1 “(c) NOTICE.—A group health plan shall provide no-
 2 tice to each participant and beneficiary under such plan
 3 regarding the coverage required by this section in accord-
 4 ance with regulations promulgated by the Secretary. Such
 5 notice shall be in writing and prominently positioned in
 6 any literature or correspondence made available or distrib-
 7 uted by the plan and shall be transmitted—

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

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

13 “(d) SECONDARY CONSULTATIONS.—

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

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

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

17 “(e) PROHIBITION ON PENALTIES.—A group health
 18 plan may not—

19 “(1) penalize or otherwise reduce or limit the
 20 reimbursement of a provider or specialist because
 21 the provider or specialist provided care to a partici-
 22 pant or beneficiary in accordance with this section;

23 “(2) provide financial or other incentives to a
 24 physician or specialist to induce the physician or
 25 specialist to keep the length of inpatient stays of pa-

1 tients following a mastectomy, lumpectomy, or a
 2 lymph node dissection for the treatment of breast
 3 cancer below certain limits or to limit referrals for
 4 secondary consultations;

5 “(3) provide financial or other incentives to a
 6 physician or specialist to induce the physician or
 7 specialist to refrain from referring a participant or
 8 beneficiary for a secondary consultation that would
 9 otherwise be covered by the plan involved under sub-
 10 section (d); or

11 “(4) deny to a woman eligibility, or continued
 12 eligibility, to enroll or to renew coverage under the
 13 terms of the plan solely for the purpose of avoiding
 14 the requirements of this section.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
 16 for chapter 100 of such Code is amended by inserting after
 17 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.”.

18 (c) EFFECTIVE DATES.—

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

23 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 24 GAINING AGREEMENTS.—In the case of a group

1 health plan maintained pursuant to 1 or more collec-
2 tive bargaining agreements between employee rep-
3 resentatives and 1 or more employers ratified before
4 the date of enactment of this Act, the amendments
5 made by this section shall not apply to plan years
6 beginning before the date on which the last collective
7 bargaining agreements relating to the plan termi-
8 nates (determined without regard to any extension
9 thereof agreed to after the date of enactment of this
10 Act). For purposes of this paragraph, any plan
11 amendment 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.

○