

114TH CONGRESS
2D SESSION

H. R. 5195

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 HOUSE OF REPRESENTATIVES

MAY 11, 2016

Ms. DELAURO (for herself, Mr. VAN HOLLEN, Ms. WASSERMAN SCHULTZ, Mr. FARR, Mr. DAVID SCOTT of Georgia, Ms. MOORE, Ms. JUDY CHU of California, Mr. TAKANO, Mr. ENGEL, Mr. GRIJALVA, Mr. RYAN of Ohio, Mrs. NAPOLITANO, Mr. PAYNE, Mr. HIGGINS, Ms. PINGREE, Ms. BORDALLO, Mr. SCHIFF, Mr. LANGEVIN, Ms. KAPTUR, Mr. NADLER, Mr. HASTINGS, Ms. TSONGAS, Mr. LARSON of Connecticut, Ms. LEE, Mr. SHERMAN, Mr. POCAN, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Ms. SLAUGHTER, Mr. RANGEL, Mr. SWALWELL of California, Ms. CASTOR of Florida, Mr. YOUNG of Alaska, Ms. SCHAKOWSKY, Mr. HINOJOSA, Mr. PRICE of North Carolina, Ms. JACKSON LEE, Mr. CONNOLLY, Mr. YARMUTH, and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and 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

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 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) According to the National Cancer Institute,
9 excluding cancers of the skin, breast cancer is the
10 most frequently diagnosed cancer in women.

11 (2) According to the National Cancer Institute,
12 an estimated 40,450 women and 440 men will die
13 from breast cancer in 2016.

14 (3) According to the National Cancer Institute,
15 in 2016 an estimated 246,660 new cases of breast
16 cancer will be diagnosed in women and an estimated
17 2,600 breast cancer cases will be diagnosed in men.

18 (4) According to the American Cancer Society,
19 most breast cancer patients undergo some type of
20 surgical treatment, which may involve lumpectomy
21 or mastectomy with removal of some of the axillary
22 lymph nodes.

23 (5) The offering and operation of health plans
24 affect commerce among the States.

1 (6) Health care providers located in a State
2 serve patients who reside in the State and patients
3 who reside in other States.

4 (7) In order to provide for uniform treatment
5 of health care providers and patients among the
6 States, it is necessary to cover health plans oper-
7 ating in one State as well as health plans operating
8 among the several States.

9 (8) Research has indicated that treatment for
10 breast cancer varies according to type of insurance
11 coverage and State of residence.

12 (9) Breast cancer patients have reported ad-
13 verse outcomes, including infection and inadequately
14 controlled pain, resulting from premature hospital
15 discharge following breast cancer surgery.

16 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
17 **COME SECURITY ACT OF 1974.**

18 (a) IN GENERAL.—Subpart B of part 7 of subtitle
19 B of title I of the Employee Retirement Income Security
20 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
21 ing at the end the following:

1 **“SEC. 716. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
2 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
3 **AND LYMPH NODE DISSECTIONS FOR THE**
4 **TREATMENT OF BREAST CANCER AND COV-**
5 **ERAGE FOR SECONDARY CONSULTATIONS.**

6 “(a) INPATIENT CARE.—

7 “(1) IN GENERAL.—A group health plan, and a
8 health insurance issuer providing health insurance
9 coverage in connection with a group health plan,
10 that provides medical and surgical benefits shall en-
11 sure that inpatient (and in the case of a
12 lumpectomy, outpatient) coverage and radiation
13 therapy is provided for breast cancer treatment.
14 Such plan or coverage may not—

15 “(A) insofar as the attending physician, in
16 consultation with the patient, determines it to
17 be medically necessary—

18 “(i) restrict benefits for any hospital
19 length of stay in connection with a mastec-
20 tomy or breast conserving surgery (such as
21 a lumpectomy) for the treatment of breast
22 cancer to less than 48 hours; or

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

1 “(B) require that a provider obtain author-
2 ization from the plan or the issuer for pre-
3 scribing any length of stay required under this
4 paragraph.

5 “(2) EXCEPTION.—Nothing in this section shall
6 be construed as requiring the provision of inpatient
7 coverage if the attending physician, in consultation
8 with the patient, determines that either a shorter pe-
9 riod of hospital stay, or outpatient treatment, is
10 medically appropriate.

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

19 “(c) NOTICE.—A group health plan, and a health in-
20 surance issuer providing health insurance coverage in con-
21 nection with a group health plan, shall provide notice to
22 each participant and beneficiary under such plan regard-
23 ing the coverage required by this section in accordance
24 with regulations promulgated by the Secretary. Such no-
25 tice shall be in writing and prominently positioned in the

1 summary of the plan made available or distributed by the
2 plan or issuer and shall be transmitted—

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

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

7 whichever is earlier.

8 “(d) SECONDARY CONSULTATIONS.—

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 coverage with respect to medical and
13 surgical services provided in relation to the diagnosis
14 and treatment of cancer shall ensure that coverage
15 is provided for secondary consultations, on terms
16 and conditions that are no more restrictive than
17 those applicable to the initial consultations, by spe-
18 cialists in the appropriate medical fields (including
19 pathology, radiology, and oncology) to confirm or re-
20 fute such diagnosis. Such plan or issuer shall ensure
21 that coverage is provided for such secondary con-
22 sultation whether such consultation is based on a
23 positive or negative initial diagnosis. In any case in
24 which the attending physician certifies in writing
25 that services necessary for such a secondary con-

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

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

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

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

24 “(2) provide financial or other incentives to a
25 physician or specialist to induce the physician or

1 specialist to keep the length of inpatient stays of pa-
 2 tients following a mastectomy, lumpectomy, or a
 3 lymph node dissection for the treatment of breast
 4 cancer below certain limits or to limit referrals for
 5 secondary consultations; or

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

12 (b) CLERICAL AMENDMENT.—The table of contents
 13 in section 1 of the Employee Retirement Income Security
 14 Act of 1974 is amended by inserting after the item relat-
 15 ing to section 714 the following:

“Sec. 715. Additional market reforms.

“Sec. 716. Required coverage for minimum hospital stay for mastectomies,
 lumpectomies, and lymph node dissections for the treatment of
 breast cancer and coverage for secondary consultations.”.

16 (c) EFFECTIVE DATES.—

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

21 (2) SPECIAL RULE FOR COLLECTIVE BAR-
 22 GAINING AGREEMENTS.—In the case of a group
 23 health plan maintained pursuant to 1 or more collec-

1 tive bargaining agreements between employee rep-
2 resentatives and 1 or more employers ratified before
3 the date of enactment of this Act, the amendments
4 made by this section shall not apply to plan years
5 beginning before the date on which the last collective
6 bargaining agreements relating to the plan termi-
7 nates (determined without regard to any extension
8 thereof agreed to after the date of enactment of this
9 Act). For purposes of this paragraph, any plan
10 amendment made pursuant to a collective bargaining
11 agreement relating to the plan which amends the
12 plan solely to conform to any requirement added by
13 this section shall not be treated as a termination of
14 such collective bargaining agreement.

15 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
16 **ACT.**

17 (a) IN GENERAL.—Title XXVII of the Public Health
18 Service Act is amended by inserting after section 2728 of
19 such Act (42 U.S.C. 300gg–28), as redesignated by sec-
20 tion 1001(2) of the Patient Protection and Affordable
21 Care Act (Public Law 111–148), the following:

1 **“SEC. 2729. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
2 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
3 **AND LYMPH NODE DISSECTIONS FOR THE**
4 **TREATMENT OF BREAST CANCER AND COV-**
5 **ERAGE FOR SECONDARY CONSULTATIONS.**

6 “(a) INPATIENT CARE.—

7 “(1) IN GENERAL.—A group health plan, and a
8 health insurance issuer providing group or individual
9 health insurance coverage, that provides medical and
10 surgical benefits shall ensure that inpatient (and in
11 the case of a lumpectomy, outpatient) coverage and
12 radiation therapy is provided for breast cancer treat-
13 ment. Such plan or coverage may not—

14 “(A) insofar as the attending physician, in
15 consultation with the patient, determines it to
16 be medically necessary—

17 “(i) restrict benefits for any hospital
18 length of stay in connection with a mastec-
19 tomy or breast conserving surgery (such as
20 a lumpectomy) for the treatment of breast
21 cancer to 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 ization from the plan or the issuer for pre-
3 scribing any length of stay required under this
4 paragraph.

5 “(2) EXCEPTION.—Nothing in this section shall
6 be construed as requiring the provision of inpatient
7 coverage if the attending physician, in consultation
8 with the patient, determines that either a shorter pe-
9 riod of hospital stay, or outpatient treatment, is
10 medically appropriate.

11 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
12 In implementing the requirements of this section, a group
13 health plan, and a health insurance issuer providing group
14 or individual health insurance coverage, may not modify
15 the terms and conditions of coverage based on the deter-
16 mination by a participant or beneficiary to request less
17 than the minimum coverage required under subsection (a).

18 “(c) NOTICE.—A group health plan, and a health in-
19 surance issuer providing group or individual health insur-
20 ance coverage, shall provide notice to each participant and
21 beneficiary under such plan or coverage regarding the cov-
22 erage required by this section in accordance with regula-
23 tions promulgated by the Secretary. Such notice shall be
24 in writing and prominently positioned in the summary of

1 the plan or coverage made available or distributed by the
2 plan or issuer and shall be transmitted—

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

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

7 whichever is earlier.

8 “(d) SECONDARY CONSULTATIONS.—

9 “(1) IN GENERAL.—A group health plan, and a
10 health insurance issuer providing group or individual
11 health insurance coverage, that provides coverage
12 with respect to medical and surgical services pro-
13 vided in relation to the diagnosis and treatment of
14 cancer shall ensure that coverage is provided for sec-
15 ondary consultations, on terms and conditions that
16 are no more restrictive than those applicable to the
17 initial consultations, by specialists in the appropriate
18 medical fields (including pathology, radiology, and
19 oncology) to confirm or refute such diagnosis. Such
20 plan or issuer shall ensure that coverage is provided
21 for such secondary consultation whether such con-
22 sultation is based on a positive or negative initial di-
23 agnosis. In any case in which the attending physi-
24 cian certifies in writing that services necessary for
25 such a secondary consultation are not sufficiently

1 available from specialists operating under the plan
2 or coverage with respect to whose services coverage
3 is otherwise provided under such plan or by such
4 issuer, such plan or issuer shall ensure that coverage
5 is provided with respect to the services necessary for
6 the secondary consultation with any other specialist
7 selected by the attending physician for such purpose
8 at no additional cost to the individual beyond that
9 which the individual would have paid if the specialist
10 was participating in the network of the plan.

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

15 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
16 A group health plan, and a health insurance issuer pro-
17 viding group or individual health insurance coverage, may
18 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; or

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 or coverage in-
10 volved under subsection (d).”.

11 (b) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply with respect to plan years be-
14 ginning on or after 90 days after the date of enact-
15 ment of this Act.

16 (2) SPECIAL RULE FOR COLLECTIVE BAR-
17 GAINING AGREEMENTS.—In the case of a group
18 health plan maintained pursuant to 1 or more collec-
19 tive bargaining agreements between employee rep-
20 resentatives and 1 or more employers ratified before
21 the date of enactment of this Act, the amendments
22 made by this section shall not apply to plan years
23 beginning before the date on which the last collective
24 bargaining agreements relating to the plan termi-
25 nates (determined without regard to any extension

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

(1) in the table of sections, by inserting after
the item relating to section 9813 the following:

14 and

(2) by inserting after section 9813 the following:

22 “(a) INPATIENT CARE.—

23 “(1) IN GENERAL.—A group health plan that
24 provides medical and surgical benefits shall ensure

1 that inpatient (and in the case of a lumpectomy,
2 outpatient) coverage and radiation therapy is pro-
3 vided for breast cancer treatment. Such plan may
4 not—

5 “(A) insofar as the attending physician, in
6 consultation with the patient, determines it to
7 be medically necessary—

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 for prescribing any length
19 of stay required under this paragraph.

20 “(2) EXCEPTION.—Nothing in this section shall
21 be construed as requiring the provision of inpatient
22 coverage if the attending physician, in consultation
23 with the patient, determines that either a shorter pe-
24 riod of hospital stay, or outpatient treatment, is
25 medically appropriate.

1 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

2 In implementing the requirements of this section, a group
3 health plan may not modify the terms and conditions of
4 coverage based on the determination by a participant or
5 beneficiary to request less than the minimum coverage re-
6 quired under subsection (a).

7 “(c) NOTICE.—A group health plan shall provide no-
8 tice to each participant and beneficiary under such plan
9 regarding the coverage required by this section in accord-
10 ance with regulations promulgated by the Secretary. Such
11 notice shall be in writing and prominently positioned in
12 the summary of the plan made available or distributed by
13 the plan and shall be transmitted—

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

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

19 “(d) SECONDARY CONSULTATIONS.—

20 “(1) IN GENERAL.—A group health plan that
21 provides coverage with respect to medical and sur-
22 gical services provided in relation to the diagnosis
23 and treatment of cancer shall ensure that coverage
24 is provided for secondary consultations, on terms
25 and conditions that are no more restrictive than

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

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

1 “(e) PROHIBITION ON PENALTIES.—A group health
2 plan may not—

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

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

14 “(3) provide financial or other incentives to a
15 physician or specialist to induce the physician or
16 specialist to refrain from referring a participant or
17 beneficiary for a secondary consultation that would
18 otherwise be covered by the plan involved under sub-
19 section (d).”.

20 (b) 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 date on which the last collective
9 bargaining agreements relating to the plan termi-
10 nates (determined without regard to any extension
11 thereof agreed to after the date of enactment of this
12 Act). For purposes of this paragraph, any plan
13 amendment made pursuant to a collective bargaining
14 agreement relating to the plan which amends the
15 plan solely to conform to any requirement added by
16 this section shall not be treated as a termination of
17 such collective bargaining agreement.

18 **SEC. 6. OPPORTUNITY FOR INDEPENDENT, EXTERNAL**
19 **THIRD PARTY REVIEWS OF CERTAIN NON-**
20 **RENEWALS AND DISCONTINUATIONS, IN-**
21 **CLUDING RESCISSIONS, OF INDIVIDUAL**
22 **HEALTH INSURANCE COVERAGE.**

23 (a) CLARIFICATION REGARDING APPLICATION OF
24 GUARANTEED RENEWABILITY OF INDIVIDUAL HEALTH

1 INSURANCE COVERAGE.—Section 2742 of the Public
 2 Health Service Act (42 U.S.C. 300gg–42) is amended—

3 (1) in its heading, by inserting “**AND CON-**
 4 **TINUATION IN FORCE, INCLUDING PROHIBI-**
 5 **TION OF RESCISSION,”** after “**GUARANTEED RE-**
 6 **NEWABILITY”**;

7 (2) in subsection (a), by inserting “, including
 8 without rescission,” after “continue in force”; and

9 (3) in subsection (b)(2), by inserting before the
 10 period at the end the following: “, including inten-
 11 tional concealment of material facts regarding a
 12 health condition related to the condition for which
 13 coverage is being claimed”.

14 (b) OPPORTUNITY FOR INDEPENDENT, EXTERNAL
 15 THIRD PARTY REVIEW IN CERTAIN CASES.—Subpart 1
 16 of part B of title XXVII of the Public Health Service Act
 17 is amended by adding at the end the following new section:

18 “**SEC. 2746. OPPORTUNITY FOR INDEPENDENT, EXTERNAL**
 19 **THIRD PARTY REVIEW IN CERTAIN CASES.**

20 “(a) NOTICE AND REVIEW RIGHT.—If a health in-
 21 surance issuer determines to nonrenew or not continue in
 22 force, including rescind, health insurance coverage for an
 23 individual in the individual market on the basis described
 24 in section 2742(b)(2) before such nonrenewal, discontinu-
 25 ation, or rescission, may take effect the issuer shall pro-

1 vide the individual with notice of such proposed non-
2 renewal, discontinuation, or rescission and an opportunity
3 for a review of such determination by an independent, ex-
4 ternal third party under procedures specified by the Sec-
5 retary.

6 “(b) INDEPENDENT DETERMINATION.—If the indi-
7 vidual requests such review by an independent, external
8 third party of a nonrenewal, discontinuation, or rescission
9 of health insurance coverage, the coverage shall remain in
10 effect until such third party determines that the coverage
11 may be nonrenewed, discontinued, or rescinded under sec-
12 tion 2742(b)(2).”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply after the date of the enactment
15 of this Act with respect to health insurance coverage
16 issued before, on, or after such date.

○