

104TH CONGRESS
1ST SESSION

S. 969

To require that health plans provide coverage for a minimum hospital stay for a mother and child following the birth of the child, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 19), 1995

Mr. BRADLEY (for himself, Mrs. KASSEBAUM, Mr. ROCKEFELLER, Mrs. BOXER, Ms. MIKULSKI, Mrs. MURRAY, Mr. DEWINE, Mr. REID, Mr. PELL, Mr. KENNEDY, Mr. SARBANES, Mr. SIMON, Mr. WELLSTONE, Mr. KERREY, Ms. MOSELEY-BRAUN, Mr. BRYAN, Mr. FORD, Mr. LAUTENBERG, Mr. INOUE, Mr. CAMPBELL, Mr. MCCONNELL, Mr. LEVIN, Mr. GRASSLEY, Mr. HELMS, Mr. DOMENICI, Mr. KERRY, Ms. SNOWE, Mr. SIMPSON, Mr. LEAHY, Mr. GLENN, Mr. STEVENS, Mr. ROBB, Mrs. FEINSTEIN, Mr. FRIST, Mr. BIDEN, and Mr. GRAMS) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To require that health plans provide coverage for a minimum hospital stay for a mother and child following the birth of the child, and for other purposes.

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 “Newborns’ and Moth-
5 ers’ Health Protection Act of 1996”.

1 **SEC. 2. FINDING.**

2 Congress finds that—

3 (1) the length of post-delivery inpatient care
4 should be based on the unique characteristics of
5 each mother and her newborn child, taking into con-
6 sideration the health of the mother, the health and
7 stability of the infant, the ability and confidence of
8 the mother to care for her infant, the adequacy of
9 support systems at home, and the access of the
10 mother and infant to appropriate follow-up health
11 care; and

12 (2) the timing of the discharge of a mother and
13 her newborn child from the hospital should be made
14 by the attending provider in consultation with the
15 mother.

16 **SEC. 3. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
17 **STAY FOLLOWING BIRTH.**

18 (a) IN GENERAL.—Except as provided in subsection
19 (b), a health plan or an employee health benefit plan that
20 provides maternity benefits, including benefits for child-
21 birth, shall ensure that coverage is provided with respect
22 to a mother who is a participant, beneficiary, or policy-
23 holder under such plan and her newborn child for a mini-
24 mum of 48 hours of in-patient care following a normal
25 vaginal delivery, and a minimum of 96 hours of in-patient
26 care following a caesarean section, without requiring the

1 attending provider to obtain authorization from the health
2 plan or employee health benefit plan in order to keep a
3 mother and her newborn child in the inpatient setting for
4 such period of time.

5 (b) EXCEPTION.—Notwithstanding subsection (a), a
6 health plan or an employee health benefit plan shall not
7 be required to provide coverage for post-delivery in-patient
8 care for a mother who is a participant, beneficiary, or pol-
9 icyholder under such plan and her newborn child during
10 the period referred to in subsection (a) if—

11 (1) a decision to discharge the mother and her
12 newborn child prior to the expiration of such period
13 is made by the attending provider in consultation
14 with the mother; and

15 (2) the health plan or employee health benefit
16 plan provides coverage for post-delivery follow-up
17 care as described in section 4.

18 **SEC. 4. POST-DELIVERY FOLLOW-UP CARE.**

19 (a) IN GENERAL.—In the case of a decision to dis-
20 charge a mother and her newborn child from the inpatient
21 setting prior to the expiration of 48 hours in the case of
22 a normal vaginal delivery or 96 hours in the case of a
23 caesarean section, the health plan or employee health ben-
24 efit plan shall provide coverage for timely post-delivery
25 care. Such health care shall be provided to a mother and

1 her newborn child by a registered nurse, physician, nurse
2 practitioner, nurse midwife or physician assistant experi-
3 enced in maternal and child health in—

4 (1) the home, a provider’s office, a hospital, a
5 federally qualified health center, a federally qualified
6 rural health clinic, or a State health department ma-
7 ternity clinic; or

8 (2) another setting determined appropriate
9 under regulations promulgated by the Secretary, in
10 consultation with the Secretary of Health and
11 Human Services, (including a birthing center or an
12 intermediate care facility);

13 except that such coverage shall ensure that the mother has
14 the option to be provided with such care in the home.

15 (b) **TIMELY CARE.**—As used in subsection (a), the
16 term “timely post-delivery care” means health care that
17 is provided—

18 (1) following the discharge of a mother and her
19 newborn child from the inpatient setting; and

20 (2) in a manner that meets the health care
21 needs of the mother and her newborn child, that
22 provides for the appropriate monitoring of the condi-
23 tions of the mother and child, and that occurs within
24 the 24- to 72-hour period immediately following dis-
25 charge.

1 (c) CONSISTENCY WITH STATE LAW.—The Secretary
2 shall, with respect to regulations promulgated under sub-
3 section (a) concerning appropriate post-delivery care set-
4 tings, ensure that, to the extent practicable, such regula-
5 tions are consistent with State licensing and practice laws.

6 **SEC. 5. PROHIBITIONS.**

7 (a) TERMS AND CONDITIONS.—In implementing the
8 requirements of this Act, a health plan or an employee
9 health benefit plan may not—

10 (1) deny enrollment, renewal, or continued cov-
11 erage to a mother and her newborn child who are
12 participants, beneficiaries or policyholders based on
13 compliance with this Act;

14 (2) provide monetary incentives to mothers to
15 encourage such mothers to request less than the
16 minimum coverage required under this Act; or

17 (3) provide incentives (monetary or otherwise)
18 to an attending provider to induce such provider to
19 provide treatment in a manner inconsistent with this
20 Act.

21 (b) PROVIDERS.—In implementing the requirements
22 of this section, a health plan or an employee health benefit
23 plan may not penalize or otherwise reduce or limit the re-
24 imbursement of an attending provider because such pro-
25 vider provided treatment in accordance with this Act.

1 (c) RULE OF CONSTRUCTION.—Nothing in this Act
2 shall be construed to require that a mother who is a par-
3 ticipant, beneficiary, or policyholder covered under this
4 Act—

5 (1) give birth in a hospital; or

6 (2) stay in the hospital for a fixed period of
7 time following the birth of her child.

8 **SEC. 6. NOTICE.**

9 (a) EMPLOYEE HEALTH BENEFIT PLAN.—An em-
10 ployee health benefit plan shall provide notice to each par-
11 ticipant regarding coverage required under this Act in ac-
12 cordance with regulations promulgated by the Secretary.

13 (b) HEALTH PLAN.—A health plan shall provide no-
14 tice to each policyholder regarding coverage required
15 under this Act.

16 (c) REQUIREMENTS.—Notice required under this sec-
17 tion shall be in writing, prominently positioned in, and be
18 transmitted—

19 (1) in a mailing made within 120 days of the
20 date of enactment of this Act by such plan to the
21 participant or policyholder; and

22 (2) as part of the annual informational packet
23 sent to the participant or policyholder.

24 **SEC. 7. APPLICABILITY.**

25 (a) CONSTRUCTION.—

1 (1) IN GENERAL.—A requirement or standard
2 imposed under this Act on a health plan shall be
3 deemed to be a requirement or standard imposed on
4 the health plan issuer. Such requirements or stand-
5 ards shall be enforced by the State insurance com-
6 missioner for the State involved or the official or of-
7 ficials designated by the State to enforce the re-
8 quirements of this Act. In the case of a health plan
9 offered by a health plan issuer in connection with an
10 employee health benefit plan, the requirements or
11 standards imposed under this Act shall be enforced
12 with respect to the health plan issuer by the State
13 insurance commissioner for the State involved or the
14 official or officials designated by the State to enforce
15 the requirements of this Act.

16 (2) LIMITATION.—Except as provided in section
17 8(c), the Secretary shall not enforce the require-
18 ments or standards of this Act as they relate to
19 health plan issuers or health plans. In no case shall
20 a State enforce the requirements or standards of
21 this Act as they relate to employee health benefit
22 plans.

23 (b) RULE OF CONSTRUCTION.—Nothing in this Act
24 shall be construed to affect or modify the provisions of

1 section 514 of the Employee Retirement Income Security
2 Act of 1974 (29 U.S.C. 1144).

3 **SEC. 8. ENFORCEMENT.**

4 (a) HEALTH PLAN ISSUERS.—Each State shall re-
5 quire that each health plan issued, sold, renewed, offered
6 for sale or operated in such State by a health plan issuer
7 meet the standards established under this Act. A State
8 shall submit such information as required by the Secretary
9 demonstrating effective implementation of the require-
10 ments of this Act.

11 (b) EMPLOYEE HEALTH BENEFIT PLANS.—With re-
12 spect to employee health benefit plans, the standards es-
13 tablished under this Act shall be enforced in the same
14 manner as provided for under sections 502, 504, 506, and
15 510 of the Employee Retirement Income Security Act of
16 1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The civil
17 penalties contained in paragraphs (1) and (2) of section
18 502(c) of such Act (29 U.S.C. 1132(c) (1) and (2)) shall
19 apply to any information required by the Secretary to be
20 disclosed and reported under this section.

21 (c) FAILURE TO ENFORCE.—In the case of the fail-
22 ure of a State to substantially enforce the standards and
23 requirements set forth in this Act with respect to health
24 plans, the Secretary, in consultation with the Secretary
25 of Health and Human Services, shall enforce the stand-

ards of this Act in such State. In the case of a State that fails to substantially enforce the standards set forth in this Act, each health plan issuer operating in such State shall be subject to civil enforcement as provided for under sections 502, 504, 506, and 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The civil penalties contained in paragraphs (1) and (2) of section 502(e) of such Act (29 U.S.C. 1132(e) (1) and (2)) shall apply to any information required by the Secretary to be disclosed and reported under this section.

(d) REGULATIONS.—The Secretary, in consultation with the Secretary of Health and Human Services, may promulgate such regulations as may be necessary or appropriate to carry out this Act.

SEC. 9. DEFINITIONS.

As used in this Act:

(1) ATTENDING PROVIDER.—The term “attending provider” shall include the obstetrician-gynecologists, pediatrician, family physician, or other physician attending the mother or newly born child. Such term shall also include any other health care provider who, in accordance with applicable State law, may be primarily responsible for the care of a

1 mother and her newborn child (including nurse mid-
2 wives and nurse practitioners).

3 (2) BENEFICIARY.—The term “beneficiary” has
4 the meaning given such term under section 3(8) of
5 the Employee Retirement Income Security Act of
6 1974 (29 U.S.C. 1002(8)).

7 (3) EMPLOYEE HEALTH BENEFIT PLAN.—

8 (A) IN GENERAL.—The term “employee
9 health benefit plan” means any employee wel-
10 fare benefit plan, governmental plan, or church
11 plan (as defined under paragraphs (1), (32),
12 and (33) of section 3 of the Employee Retirement
13 Income Security Act of 1974 (29 U.S.C.
14 1002 (1), (32), and (33))) that provides or pays
15 for health benefits (such as provider and hos-
16 pital benefits) for participants and beneficiaries
17 whether—

18 (i) directly;

19 (ii) through a health plan offered by
20 a health plan issuer as defined in para-
21 graph (4); or

22 (iii) otherwise.

23 (B) RULE OF CONSTRUCTION.—An em-
24 ployee health benefit plan shall not be con-

1 strued to be a health plan or a health plan is-
2 suer.

3 (C) ARRANGEMENTS NOT INCLUDED.—
4 Such term does not include the following, or
5 any combination thereof:

6 (i) Coverage only for accident, or dis-
7 ability income insurance, or any combina-
8 tion thereof.

9 (ii) Medicare supplemental health in-
10 surance (as defined under section
11 1882(g)(1) of the Social Security Act).

12 (iii) Coverage issued as a supplement
13 to liability insurance.

14 (iv) Liability insurance, including gen-
15 eral liability insurance and automobile li-
16 ability insurance.

17 (v) Workers compensation or similar
18 insurance.

19 (vi) Automobile medical payment in-
20 surance.

21 (vii) Coverage for a specified disease
22 or illness.

23 (viii) Hospital or fixed indemnity in-
24 surance.

1 (ix) Short-term limited duration in-
2 surance.

3 (x) Credit-only, dental-only, or vision-
4 only insurance.

5 (xi) A health insurance policy provid-
6 ing benefits only for long-term care, nurs-
7 ing home care, home health care, commu-
8 nity-based care, or any combination there-
9 of.

10 (4) GROUP PURCHASER.—The term “group
11 purchaser” means any person (as defined under
12 paragraph (9) of section 3 of the Employee Retirement
13 Income Security Act of 1974 (29 U.S.C.
14 1002(9)) or entity that purchases or pays for health
15 benefits (such as provider or hospital benefits) on
16 behalf of participants or beneficiaries in connection
17 with an employee health benefit plan.

18 (5) HEALTH PLAN.—

19 (A) IN GENERAL.—The term “health plan”
20 means any group health plan or individual
21 health plan.

22 (B) GROUP HEALTH PLAN.—The term
23 “group health plan” means any contract, policy,
24 certificate or other arrangement offered by a
25 health plan issuer to a group purchaser that

1 provides or pays for health benefits (such as
2 provider and hospital benefits) in connection
3 with an employee health benefit plan.

4 (C) INDIVIDUAL HEALTH PLAN.—The term
5 “individual health plan” means any contract,
6 policy, certificate or other arrangement offered
7 to individuals by a health plan issuer that pro-
8 vides or pays for health benefits (such as pro-
9 vider and hospital benefits) and that is not a
10 group health plan.

11 (D) ARRANGEMENTS NOT INCLUDED.—
12 Such term does not include the following, or
13 any combination thereof:

14 (i) Coverage only for accident, or dis-
15 ability income insurance, or any combina-
16 tion thereof.

17 (ii) Medicare supplemental health in-
18 surance (as defined under section
19 1882(g)(1) of the Social Security Act).

20 (iii) Coverage issued as a supplement
21 to liability insurance.

22 (iv) Liability insurance, including gen-
23 eral liability insurance and automobile li-
24 ability insurance.

1 (v) Workers compensation or similar
2 insurance.

3 (vi) Automobile medical payment in-
4 surance.

5 (vii) Coverage for a specified disease
6 or illness.

7 (viii) Hospital or fixed indemnity in-
8 surance.

9 (ix) Short-term limited duration in-
10 surance.

11 (x) Credit-only, dental-only, or vision-
12 only insurance.

13 (xi) A health insurance policy provid-
14 ing benefits only for long-term care, nurs-
15 ing home care, home health care, commu-
16 nity-based care, or any combination there-
17 of.

18 (E) CERTAIN PLANS INCLUDED.—Such
19 term includes any plan or arrangement not de-
20 scribed in any clause of subparagraph (D)
21 which provides for benefit payments, on a peri-
22 odic basis, for—

23 (i) a specified disease or illness, or

24 (ii) a period of hospitalization,

1 without regard to the costs incurred or services
2 rendered during the period to which the pay-
3 ments relate.

4 (6) HEALTH PLAN ISSUER.—The term “health
5 plan issuer” means any entity that is licensed (prior
6 to or after the date of enactment of this Act) by a
7 State to offer a health plan.

8 (7) PARTICIPANT.—The term “participant” has
9 the meaning given such term under section 3(7) of
10 the Employee Retirement Income Security Act of
11 1974 (29 U.S.C. 1002(7)).

12 (8) SECRETARY.—The term “Secretary” unless
13 otherwise specified means the Secretary of Labor.

14 **SEC. 10. PREEMPTION.**

15 The provisions of this Act shall not preempt those
16 provisions of State law that require health plans to provide
17 a minimum of 48 hours of in-patient care in the case of
18 a normal vaginal delivery, and 96 hours of in-patient care
19 in the case of a caesarean section, or that require health
20 plans to provide for maternity and pediatric care that is
21 in accordance with guidelines established by the American
22 College of Obstetricians and Gynecologists and the Amer-
23 ican Academy of Pediatrics, and to provide follow-up care
24 consistent with this Act.

1 **SEC. 11. EFFECTIVE DATE.**

2 Except as otherwise provided for in this Act, the pro-
3 visions of this Act shall apply as follows:

4 (1) With respect to health plans, such provi-
5 sions shall apply to plans offered, sold, issued, re-
6 newed, in effect, or operated on or after January 1,
7 1997.

8 (2) With respect to employee health benefit
9 plans, such provisions shall apply to such plans on
10 the first day of the first plan year beginning on or
11 after January 1, 1997.

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