

Calendar No. 505

104TH CONGRESS
2D Session

S. 969

[Report No. 104-326]

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.

JULY 19, 1996

Reported with an amendment

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2D SESSION**S. 969****[Report No. 104-326]**

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, Mr. GRAMS, Mr. D'AMATO, Mr. KOHL, Mrs. HUTCHISON, Mr. GRAHAM, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

JULY 19, 1996

Reported by Mrs. KASSEBAUM, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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”.

6 **SEC. 2. FINDING.**

7 Congress finds that—

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

17 (2) the timing of the discharge of a mother and
 18 her newborn child from the hospital should be made
 19 by the attending provider in consultation with the
 20 mother.

21 **SEC. 3. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 22 **STAY FOLLOWING BIRTH.**

23 (a) IN GENERAL.—Except as provided in subsection
 24 (b), a health plan or an employee health benefit plan that
 25 provides maternity benefits, including benefits for child-

1 birth, shall ensure that coverage is provided with respect
 2 to a mother who is a participant, beneficiary, or policy-
 3 holder under such plan and her newborn child for a mini-
 4 mum of 48 hours of in-patient care following a normal
 5 vaginal delivery, and a minimum of 96 hours of in-patient
 6 care following a caesarean section, without requiring the
 7 attending provider to obtain authorization from the health
 8 plan or employee health benefit plan in order to keep a
 9 mother and her newborn child in the inpatient setting for
 10 such period of time.

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

17 (1) a decision to discharge the mother and her
 18 newborn child prior to the expiration of such period
 19 is made by the attending provider in consultation
 20 with the mother; and

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

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

2 (a) ~~IN GENERAL.~~—In the case of a decision to dis-
 3 charge a mother and her newborn child from the inpatient
 4 setting prior to the expiration of 48 hours in the case of
 5 a normal vaginal delivery or 96 hours in the case of a
 6 caesarean section, the health plan or employee health ben-
 7 efit plan shall provide coverage for timely post-delivery
 8 care. Such health care shall be provided to a mother and
 9 her newborn child by a registered nurse, physician, nurse
 10 practitioner, nurse midwife or physician assistant experi-
 11 enced in maternal and child health in—

12 (1) the home, a provider's office, a hospital, a
 13 federally qualified health center, a federally qualified
 14 rural health clinic, or a State health department ma-
 15 ternity clinic; or

16 (2) another setting determined appropriate
 17 under regulations promulgated by the Secretary, in
 18 consultation with the Secretary of Health and
 19 Human Services, (including a birthing center or an
 20 intermediate care facility);

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

23 (b) ~~TIMELY CARE.~~—As used in subsection (a), the
 24 term “timely post-delivery care” means health care that
 25 is provided—

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

3 ~~(2) in a manner that meets the health care~~
4 needs of the mother and her newborn child; that
5 provides for the appropriate monitoring of the condi-
6 tions of the mother and child; and that occurs within
7 the ~~24-~~ to ~~72-~~hour period immediately following dis-
8 charge.

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

14 **SEC. 5. PROHIBITIONS.**

15 (a) **TERMS AND CONDITIONS.**—In implementing the
16 requirements of this Act, a health plan or an employee
17 health benefit plan may not—

18 (1) deny enrollment, renewal, or continued cov-
19 erage to a mother and her newborn child who are
20 participants, beneficiaries or policyholders based on
21 compliance with this Act;

22 (2) provide monetary incentives to mothers to
23 encourage such mothers to request less than the
24 minimum coverage required under this Act; or

1 ~~(3) provide incentives (monetary or otherwise)~~
 2 ~~to an attending provider to induce such provider to~~
 3 ~~provide treatment in a manner inconsistent with this~~
 4 ~~Act.~~

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

10 (c) RULE OF CONSTRUCTION.—Nothing in this Act
 11 shall be construed to require that a mother who is a par-
 12 ticipant, beneficiary, or policyholder covered under this
 13 Act—

14 (1) give birth in a hospital; or

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

17 **SEC. 6. NOTICE.**

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

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

1 (c) **REQUIREMENTS.**—Notice required under this sec-
 2 tion shall be in writing, prominently positioned in, and be
 3 transmitted—

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

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

9 **SEC. 7. APPLICABILITY.**

10 (a) **CONSTRUCTION.**—

11 (1) **IN GENERAL.**—A requirement or standard
 12 imposed under this Act on a health plan shall be
 13 deemed to be a requirement or standard imposed on
 14 the health plan issuer. Such requirements or stand-
 15 ards shall be enforced by the State insurance com-
 16 missioner for the State involved or the official or of-
 17 ficials designated by the State to enforce the re-
 18 quirements of this Act. In the case of a health plan
 19 offered by a health plan issuer in connection with an
 20 employee health benefit plan, the requirements or
 21 standards imposed under this Act shall be enforced
 22 with respect to the health plan issuer by the State
 23 insurance commissioner for the State involved or the
 24 official or officials designated by the State to enforce
 25 the requirements of this Act.

1 (2) LIMITATION.—Except as provided in section
 2 8(e), the Secretary shall not enforce the require-
 3 ments or standards of this Act as they relate to
 4 health plan issuers or health plans. In no case shall
 5 a State enforce the requirements or standards of
 6 this Act as they relate to employee health benefit
 7 plans.

8 (b) RULE OF CONSTRUCTION.—Nothing in this Act
 9 shall be construed to affect or modify the provisions of
 10 section 514 of the Employee Retirement Income Security
 11 Act of 1974 (29 U.S.C. 1144).

12 **SEC. 8. ENFORCEMENT.**

13 (a) HEALTH PLAN ISSUERS.—Each State shall re-
 14 quire that each health plan issued, sold, renewed, offered
 15 for sale or operated in such State by a health plan issuer
 16 meet the standards established under this Act. A State
 17 shall submit such information as required by the Secretary
 18 demonstrating effective implementation of the require-
 19 ments of this Act.

20 (b) EMPLOYEE HEALTH BENEFIT PLANS.—With re-
 21 spect to employee health benefit plans, the standards es-
 22 tablished under this Act shall be enforced in the same
 23 manner as provided for under sections 502, 504, 506, and
 24 510 of the Employee Retirement Income Security Act of
 25 1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The civil

1 penalties contained in paragraphs (1) and (2) of section
 2 502(e) of such Act (29 U.S.C. 1132(e) (1) and (2)) shall
 3 apply to any information required by the Secretary to be
 4 disclosed and reported under this section.

5 (c) FAILURE TO ENFORCE.—In the case of the fail-
 6 ure of a State to substantially enforce the standards and
 7 requirements set forth in this Act with respect to health
 8 plans, the Secretary, in consultation with the Secretary
 9 of Health and Human Services, shall enforce the stand-
 10 ards of this Act in such State. In the case of a State that
 11 fails to substantially enforce the standards set forth in this
 12 Act, each health plan issuer operating in such State shall
 13 be subject to civil enforcement as provided for under sec-
 14 tions 502, 504, 506, and 510 of the Employee Retirement
 15 Income Security Act of 1974 (29 U.S.C. 1132, 1134,
 16 1136, and 1140). The civil penalties contained in para-
 17 graphs (1) and (2) of section 502(e) of such Act (29
 18 U.S.C. 1132(e) (1) and (2)) shall apply to any information
 19 required by the Secretary to be disclosed and reported
 20 under this section.

21 (d) REGULATIONS.—The Secretary, in consultation
 22 with the Secretary of Health and Human Services, may
 23 promulgate such regulations as may be necessary or ap-
 24 propriate to carry out this Act.

1 **SEC. 9. DEFINITIONS.**

2 As used in this Act:

3 (1) **ATTENDING PROVIDER.**—The term “attend-
 4 ing provider” shall include the obstetrician-gyne-
 5 cologists, pediatrician, family physician, or other
 6 physician attending the mother or newly born child.
 7 Such term shall also include any other health care
 8 provider who, in accordance with applicable State
 9 law, may be primarily responsible for the care of a
 10 mother and her newborn child (including nurse mid-
 11 wives and nurse practitioners).

12 (2) **BENEFICIARY.**—The term “beneficiary” has
 13 the meaning given such term under section 3(8) of
 14 the Employee Retirement Income Security Act of
 15 1974 (29 U.S.C. 1002(8)).

16 (3) **EMPLOYEE HEALTH BENEFIT PLAN.**—

17 (A) **IN GENERAL.**—The term “employee
 18 health benefit plan” means any employee wel-
 19 fare benefit plan, governmental plan, or church
 20 plan (as defined under paragraphs (1), (32),
 21 and (33) of section 3 of the Employee Retire-
 22 ment Income Security Act of 1974 (29 U.S.C.
 23 1002 (1), (32), and (33))) that provides or pays
 24 for health benefits (such as provider and hos-
 25 pital benefits) for participants and beneficiaries
 26 whether—

- 1 (i) directly;
- 2 (ii) through a health plan offered by
- 3 a health plan issuer as defined in para-
- 4 graph (4); or
- 5 (iii) otherwise.

6 (B) ~~RULE OF CONSTRUCTION.~~—An em-
 7 ployee health benefit plan shall not be con-
 8 strued to be a health plan or a health plan is-
 9 suer.

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

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

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

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

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

24 (v) Workers compensation or similar
 25 insurance.

1 (vi) Automobile medical payment in-
2 surance.

3 (vii) Coverage for a specified disease
4 or illness.

5 (viii) Hospital or fixed indemnity in-
6 surance.

7 (ix) Short-term limited duration in-
8 surance.

9 (x) Credit-only, dental-only, or vision-
10 only insurance.

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

16 (4) GROUP PURCHASER.—The term “group
17 purchaser” means any person (as defined under
18 paragraph (9) of section 3 of the Employee Retire-
19 ment Income Security Act of 1974 (29 U.S.C.
20 1002(9)) or entity that purchases or pays for health
21 benefits (such as provider or hospital benefits) on
22 behalf of participants or beneficiaries in connection
23 with an employee health benefit plan.

24 (5) HEALTH PLAN.—

1 (A) ~~IN GENERAL.~~—The term “health plan”
 2 means any group health plan or individual
 3 health plan.

4 (B) ~~GROUP HEALTH PLAN.~~—The term
 5 “group health plan” means any contract, policy,
 6 certificate or other arrangement offered by a
 7 health plan issuer to a group purchaser that
 8 provides or pays for health benefits (such as
 9 provider and hospital benefits) in connection
 10 with an employee health benefit plan.

11 (C) ~~INDIVIDUAL HEALTH PLAN.~~—The term
 12 “individual health plan” means any contract,
 13 policy, certificate or other arrangement offered
 14 to individuals by a health plan issuer that pro-
 15 vides or pays for health benefits (such as pro-
 16 vider and hospital benefits) and that is not a
 17 group health plan.

18 (D) ~~ARRANGEMENTS NOT INCLUDED.~~—
 19 Such term does not include the following, or
 20 any combination thereof:

21 (i) Coverage only for accident, or dis-
 22 ability income insurance, or any combina-
 23 tion thereof.

1 (ii) Medicare supplemental health in-
2 surance (as defined under section
3 1882(g)(1) of the Social Security Act).

4 (iii) Coverage issued as a supplement
5 to liability insurance.

6 (iv) Liability insurance, including gen-
7 eral liability insurance and automobile li-
8 ability insurance.

9 (v) Workers compensation or similar
10 insurance.

11 (vi) Automobile medical payment in-
12 surance.

13 (vii) Coverage for a specified disease
14 or illness.

15 (viii) Hospital or fixed indemnity in-
16 surance.

17 (ix) Short-term limited duration in-
18 surance.

19 (x) Credit-only, dental-only, or vision-
20 only insurance.

21 (xi) A health insurance policy provid-
22 ing benefits only for long-term care, nurs-
23 ing home care, home health care, commu-
24 nity-based care, or any combination there-
25 of.

1 ~~(E) CERTAIN PLANS INCLUDED.~~—Such
 2 term includes any plan or arrangement not de-
 3 scribed in any clause of subparagraph ~~(D)~~
 4 which provides for benefit payments, on a peri-
 5 odic basis, for—

6 ~~(i) a specified disease or illness, or~~

7 ~~(ii) a period of hospitalization,~~

8 without regard to the costs incurred or services
 9 rendered during the period to which the pay-
 10 ments relate.

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

15 ~~(7) PARTICIPANT.~~—The term “participant” has
 16 the meaning given such term under section ~~3(7)~~ of
 17 the Employee Retirement Income Security Act of
 18 1974 (~~29 U.S.C. 1002(7)~~).

19 ~~(8) SECRETARY.~~—The term “Secretary” unless
 20 otherwise specified means the Secretary of Labor.

21 **SEC. 10. PREEMPTION.**

22 The provisions of this Act shall not preempt those
 23 provisions of State law that require health plans to provide
 24 a minimum of 48 hours of in-patient care in the case of
 25 a normal vaginal delivery, and 96 hours of in-patient care

1 in the case of a caesarean section, or that require health
 2 plans to provide for maternity and pediatric care that is
 3 in accordance with guidelines established by the American
 4 College of Obstetricians and Gynecologists and the Amer-
 5 ican Academy of Pediatrics, and to provide follow-up care
 6 consistent with this Act.

7 **SEC. 11. EFFECTIVE DATE.**

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

10 (1) With respect to health plans, such provi-
 11 sions shall apply to plans offered, sold, issued, re-
 12 newed, in effect, or operated on or after January 1,
 13 1997.

14 (2) With respect to employee health benefit
 15 plans, such provisions shall apply to such plans on
 16 the first day of the first plan year beginning on or
 17 after January 1, 1997.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Newborns’ and Mothers’*
 20 *Health Protection Act of 1996”.*

21 **SEC. 2. FINDINGS.**

22 *Congress finds that—*

23 (1) *the length of post-delivery inpatient care*
 24 *should be based on the unique characteristics of each*
 25 *mother and her newborn child, taking into consider-*

1 *ation the health of the mother, the health and stability*
 2 *of the newborn, the ability and confidence of the*
 3 *mother and father to care for the newborn, the ade-*
 4 *quacy of support systems at home, and the access of*
 5 *the mother and newborn to appropriate follow-up*
 6 *health care; and*

7 *(2) the timing of the discharge of a mother and*
 8 *her newborn child from the hospital should be made*
 9 *by the attending provider in consultation with the*
 10 *mother.*

11 **SEC. 3. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 12 **STAY FOLLOWING BIRTH.**

13 *(a) IN GENERAL.—Except as provided in subsection*
 14 *(b), a health plan or an employee health benefit plan that*
 15 *provides maternity benefits, including benefits for child-*
 16 *birth, shall ensure that coverage is provided with respect*
 17 *to a mother who is a participant, beneficiary, or policy-*
 18 *holder under such plan and her newborn child for a mini-*
 19 *imum of 48 hours of inpatient length of stay following a*
 20 *normal vaginal delivery, and a minimum of 96 hours of*
 21 *inpatient length of stay following a caesarean section, with-*
 22 *out requiring the attending provider to obtain authoriza-*
 23 *tion from the health plan or employee health benefit plan.*

24 *(b) EXCEPTION.—Notwithstanding subsection (a), a*
 25 *health plan or an employee health benefit plan shall not*

1 *be required to provide coverage for post-delivery inpatient*
 2 *length of stay for a mother who is a participant, bene-*
 3 *ficiary, or policyholder under such plan and her newborn*
 4 *child for the period referred to in subsection (a) if—*

5 *(1) a decision to discharge the mother and her*
 6 *newborn child prior to the expiration of such period*
 7 *is made by the attending provider in consultation*
 8 *with the mother; and*

9 *(2) the health plan or employee health benefit*
 10 *plan provides coverage for post-delivery follow-up care*
 11 *as described in section 4.*

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

13 *(a) IN GENERAL.—*

14 *(1) GENERAL RULE.—In the case of a decision to*
 15 *discharge a mother and her newborn child from the*
 16 *inpatient setting prior to the expiration of 48 hours*
 17 *following a normal vaginal delivery or 96 hours fol-*
 18 *lowing a caesarean section, the health plan or em-*
 19 *ployee health benefit plan shall provide coverage for*
 20 *timely post-delivery care. Such health care shall be*
 21 *provided to a mother and her newborn child by a reg-*
 22 *istered nurse, physician, nurse practitioner, nurse*
 23 *midwife or physician assistant experienced in mater-*
 24 *nal and child health in—*

1 (A) *the home, a provider’s office, a hospital,*
 2 *a birthing center, an intermediate care facility,*
 3 *a federally qualified health center, a federally*
 4 *qualified rural health clinic, or a State health*
 5 *department maternity clinic; or*

6 (B) *another setting determined appropriate*
 7 *under regulations promulgated by the Secretary,*
 8 *in consultation with the Secretary of Health and*
 9 *Human Services;*

10 *except that such coverage shall ensure that the mother*
 11 *has the option to be provided with such care in the*
 12 *home.*

13 (2) *CONSIDERATIONS BY SECRETARY.—In pro-*
 14 *mulgating regulations under paragraph (1)(B), the*
 15 *Secretary shall consider telemedicine and other inno-*
 16 *vative means to provide follow-up care and shall con-*
 17 *sider care in both urban and rural settings.*

18 (b) *TIMELY CARE.—As used in subsection (a), the term*
 19 *“timely post-delivery care” means health care that is pro-*
 20 *vided—*

21 (1) *following the discharge of a mother and her*
 22 *newborn child from the inpatient setting; and*

23 (2) *in a manner that meets the health care needs*
 24 *of the mother and her newborn child, that provides for*
 25 *the appropriate monitoring of the conditions of the*

1 *mother and child, and that occurs not later than the*
 2 *72-hour period immediately following discharge.*

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

8 **SEC. 5. PROHIBITIONS.**

9 *In implementing the requirements of this Act, a health*
 10 *plan or an employee health benefit plan may not—*

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

15 *(2) provide monetary payments or rebates to*
 16 *mothers to encourage such mothers to request less than*
 17 *the minimum coverage required under this Act;*

18 *(3) penalize or otherwise reduce or limit the re-*
 19 *imbursement of an attending provider because such*
 20 *provider provided treatment in accordance with this*
 21 *Act; or*

22 *(4) provide incentives (monetary or otherwise) to*
 23 *an attending provider to induce such provider to pro-*
 24 *vide treatment to an individual policyholder, partici-*

1 *pant, or beneficiary in a manner inconsistent with*
 2 *this Act.*

3 **SEC. 6. NOTICE.**

4 *(a) EMPLOYEE HEALTH BENEFIT PLAN.—An em-*
 5 *ployee health benefit plan shall provide conspicuous notice*
 6 *to each participant regarding coverage required under this*
 7 *Act not later than 120 days after the date of enactment*
 8 *of this Act, and as part of its summary plan description.*

9 *(b) HEALTH PLAN.—A health plan shall provide notice*
 10 *to each policyholder regarding coverage required under this*
 11 *Act. Such notice shall be in writing, prominently posi-*
 12 *tioned, and be transmitted—*

13 *(1) in a mailing made within 120 days of the*
 14 *date of enactment of this Act by such plan to the pol-*
 15 *icyholder; and*

16 *(2) as part of the annual informational packet*
 17 *sent to the policyholder.*

18 **SEC. 7. APPLICABILITY.**

19 *(a) CONSTRUCTION.—*

20 *(1) IN GENERAL.—A requirement or standard*
 21 *imposed under this Act on a health plan shall be*
 22 *deemed to be a requirement or standard imposed on*
 23 *the health plan issuer. Such requirements or stand-*
 24 *ards shall be enforced by the State insurance commis-*
 25 *sioner for the State involved or the official or officials*

1 *designated by the State to enforce the requirements of*
 2 *this Act. In the case of a health plan offered by a*
 3 *health plan issuer in connection with an employee*
 4 *health benefit plan, the requirements or standards im-*
 5 *posed under this Act shall be enforced with respect to*
 6 *the health plan issuer by the State insurance commis-*
 7 *sioner for the State involved or the official or officials*
 8 *designated by the State to enforce the requirements of*
 9 *this Act.*

10 (2) *LIMITATION.—Except as provided in section*
 11 *8(c), the Secretary shall not enforce the requirements*
 12 *or standards of this Act as they relate to health plan*
 13 *issuers or health plans. In no case shall a State en-*
 14 *force the requirements or standards of this Act as they*
 15 *relate to employee health benefit plans.*

16 (b) *RULE OF CONSTRUCTION.—Nothing in this Act*
 17 *shall be construed to affect or modify the provisions of sec-*
 18 *tion 514 of the Employee Retirement Income Security Act*
 19 *of 1974 (29 U.S.C. 1144).*

20 (c) *RULE OF CONSTRUCTION.—Nothing in this Act*
 21 *shall be construed to require that a mother who is a partici-*
 22 *pant, beneficiary, or policyholder covered under this Act—*

23 (1) *give birth in a hospital; or*

24 (2) *stay in the hospital for a fixed period of time*
 25 *following the birth of her child.*

1 **SEC. 8. ENFORCEMENT.**

2 (a) *HEALTH PLAN ISSUERS.*—Each State shall require
3 that each health plan issued, sold, renewed, offered for sale
4 or operated in such State by a health plan issuer meet the
5 standards established under this Act. A State shall submit
6 such information as required by the Secretary demonstrat-
7 ing effective implementation of the requirements of this Act.

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

18 (c) *FAILURE TO ENFORCE.*—In the case of the failure
19 of a State to substantially enforce the standards and re-
20 quirements set forth in this Act with respect to health plans,
21 the Secretary, in consultation with the Secretary of Health
22 and Human Services, shall enforce the standards of this Act
23 in such State. In the case of a State that fails to substan-
24 tially enforce the standards set forth in this Act, each health
25 plan issuer operating in such State shall be subject to civil
26 enforcement as provided for under sections 502, 504, 506,

1 *and 510 of the Employee Retirement Income Security Act*
 2 *of 1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The civil*
 3 *penalties contained in paragraphs (1) and (2) of section*
 4 *502(c) of such Act (29 U.S.C. 1132(c)(1) and (2)) shall*
 5 *apply to any information required by the Secretary to be*
 6 *disclosed and reported under this section.*

7 (d) *REGULATIONS.—The Secretary, in consultation*
 8 *with the Secretary of Health and Human Services, may*
 9 *promulgate such regulations as may be necessary or appro-*
 10 *priate to carry out this Act.*

11 **SEC. 9. DEFINITIONS.**

12 *As used in this Act:*

13 (1) *ATTENDING PROVIDER.—The term “attend-*
 14 *ing provider” shall include—*

15 (A) *the obstetrician-gynecologists, pediatri-*
 16 *cians, family physicians, and other physicians*
 17 *primarily responsible for the care of a mother*
 18 *and newborn; and*

19 (B) *the nurse midwives and nurse practi-*
 20 *tioners primarily responsible for the care of a*
 21 *mother and her newborn child in accordance*
 22 *with State licensure and certification laws.*

23 (2) *BENEFICIARY.—The term “beneficiary” has*
 24 *the meaning given such term under section 3(8) of the*

1 *Employee Retirement Income Security Act of 1974*
2 *(29 U.S.C. 1002(8)).*

3 (3) *EMPLOYEE HEALTH BENEFIT PLAN.*—

4 (A) *IN GENERAL.*—*The term “employee*
5 *health benefit plan” means any employee welfare*
6 *benefit plan, governmental plan, or church plan*
7 *(as defined under paragraphs (1), (32), and (33)*
8 *of section 3 of the Employee Retirement Income*
9 *Security Act of 1974 (29 U.S.C. 1002 (1), (32),*
10 *and (33))) that provides or pays for health bene-*
11 *fits (such as provider and hospital benefits) for*
12 *participants and beneficiaries whether—*

13 (i) *directly;*

14 (ii) *through a health plan offered by a*
15 *health plan issuer as defined in paragraph*
16 *(4); or*

17 (iii) *otherwise.*

18 (B) *RULE OF CONSTRUCTION.*—*An em-*
19 *ployee health benefit plan shall not be construed*
20 *to be a health plan or a health plan issuer.*

21 (C) *ARRANGEMENTS NOT INCLUDED.*—*Such*
22 *term does not include the following, or any com-*
23 *bination thereof:*

1 (i) Coverage only for accident, or dis-
2 ability income insurance, or any combina-
3 tion thereof.

4 (ii) Medicare supplemental health in-
5 surance (as defined under section
6 1882(g)(1) of the Social Security Act).

7 (iii) Coverage issued as a supplement
8 to liability insurance.

9 (iv) Liability insurance, including
10 general liability insurance and automobile
11 liability insurance.

12 (v) Workers compensation or similar
13 insurance.

14 (vi) Automobile medical payment in-
15 surance.

16 (vii) Coverage for a specified disease or
17 illness.

18 (viii) Hospital or fixed indemnity in-
19 surance.

20 (ix) Short-term limited duration insur-
21 ance.

22 (x) Credit-only, dental-only, or vision-
23 only insurance.

24 (xi) A health insurance policy provid-
25 ing benefits only for long-term care, nursing

1 home care, home health care, community-
2 based care, or any combination thereof.

3 (4) *GROUP PURCHASER.*—The term “group pur-
4 chaser” means any person (as defined under para-
5 graph (9) of section 3 of the *Employee Retirement In-*
6 *come Security Act of 1974 (29 U.S.C. 1002(9))* or en-
7 tity that purchases or pays for health benefits (such
8 as provider or hospital benefits) on behalf of partici-
9 pants or beneficiaries in connection with an employee
10 health benefit plan.

11 (5) *HEALTH PLAN.*—

12 (A) *IN GENERAL.*—The term “health plan”
13 means any group health plan or individual
14 health plan.

15 (B) *GROUP HEALTH PLAN.*—The term
16 “group health plan” means any contract, policy,
17 certificate or other arrangement offered by a
18 health plan issuer to a group purchaser that pro-
19 vides or pays for health benefits (such as pro-
20 vider and hospital benefits) in connection with
21 an employee health benefit plan.

22 (C) *INDIVIDUAL HEALTH PLAN.*—The term
23 “individual health plan” means any contract,
24 policy, certificate or other arrangement offered to
25 individuals by a health plan issuer that provides

1 or pays for health benefits (such as provider and
2 hospital benefits) and that is not a group health
3 plan.

4 (D) *ARRANGEMENTS NOT INCLUDED.*—Such
5 term does not include the following, or any com-
6 bination thereof:

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

10 (ii) *Medicare supplemental health in-*
11 *surance (as defined under section*
12 *1882(g)(1) of the Social Security Act).*

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

15 (iv) *Liability insurance, including*
16 *general liability insurance and automobile*
17 *liability insurance.*

18 (v) *Workers compensation or similar*
19 *insurance.*

20 (vi) *Automobile medical payment in-*
21 *surance.*

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

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

1 *(ix) Short-term limited duration insur-*
 2 *ance.*

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, nursing*
 7 *home care, home health care, community-*
 8 *based care, or any combination thereof.*

9 *(E) CERTAIN PLANS INCLUDED.—Such term*
 10 *includes any plan or arrangement not described*
 11 *in any clause of subparagraph (D) which pro-*
 12 *vides for benefit payments, on a periodic basis,*
 13 *for—*

14 *(i) a specified disease or illness, or*
 15 *(ii) a period of hospitalization,*
 16 *without regard to the costs incurred or services*
 17 *rendered during the period to which the pay-*
 18 *ments relate.*

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

23 *(7) PARTICIPANT.—The term “participant” has*
 24 *the meaning given such term under section 3(7) of the*

1 *Employee Retirement Income Security Act of 1974*
 2 *(29 U.S.C. 1002(7)).*

3 (8) *SECRETARY.*—*The term “Secretary” unless*
 4 *otherwise specified means the Secretary of Labor.*

5 **SEC. 10. PREEMPTION.**

6 (a) *IN GENERAL.*—*The provisions of sections 3, 5, and*
 7 6 *relating to inpatient care shall not preempt a State law*
 8 *or regulation—*

9 (1) *that provides greater protections to patients*
 10 *or policyholders than those required in this Act;*

11 (2) *that requires health plans to provide coverage*
 12 *for at least 48 hours of inpatient length of stay fol-*
 13 *lowing a normal vaginal delivery, and at least 96*
 14 *hours of inpatient length of stay following a caesar-*
 15 *ean section;*

16 (3) *that requires health plans to provide coverage*
 17 *for maternity and pediatric care in accordance with*
 18 *guidelines established by the American College of Ob-*
 19 *stetricians and Gynecologists, the American Academy*
 20 *of Pediatrics, or other established professional medical*
 21 *associations; or*

22 (4) *that leaves decisions regarding appropriate*
 23 *length of stay entirely to the attending provider, in*
 24 *consultation with the mother.*

1 (b) *FOLLOW-UP CARE.*—*The provisions of section 4 re-*
 2 *lating to follow-up care shall not preempt those provisions*
 3 *of State law or regulation that provide greater protection*
 4 *to patients or policyholders than those required under this*
 5 *Act or that provide mothers and newborns with an option*
 6 *of timely post delivery follow-up care (as defined in section*
 7 *4(b)) in the home.*

8 (c) *EMPLOYEE HEALTH BENEFIT PLANS.*—*Nothing in*
 9 *this section affects the application of this Act to employee*
 10 *health benefit plans, as defined in section 9(3).*

11 **SEC. 11. REPORTS TO CONGRESS CONCERNING CHILD-**
 12 **BIRTH.**

13 (a) *FINDINGS.*—*Congress finds that—*

14 (1) *childbirth is one part of a continuum of ex-*
 15 *perience that includes prepregnancy, pregnancy and*
 16 *prenatal care, labor and delivery, the immediate*
 17 *postpartum period, and a longer period of adjustment*
 18 *for the newborn, the mother, and the family;*

19 (2) *health care practices across this continuum*
 20 *are changing in response to health care financing and*
 21 *delivery system changes, science and clinical research,*
 22 *and patient preferences; and*

23 (3) *there is a need to—*

1 (A) examine the issues and consequences as-
 2 sociated with the length of hospital stays follow-
 3 ing childbirth;

4 (B) examine the follow-up practices for
 5 mothers and newborns used in conjunction with
 6 shorter hospital stays;

7 (C) identify appropriate health care prac-
 8 tices and procedures with regard to the hospital
 9 discharge of newborns and mothers;

10 (D) examine the extent to which such care
 11 is affected by family and environmental factors;
 12 and

13 (E) examine the content of care during hos-
 14 pital stays following childbirth.

15 (b) *ADVISORY PANEL.*—

16 (1) *IN GENERAL.*—Not later than 90 days after
 17 the date of enactment of this Act, the Secretary of
 18 Health and Human Services shall establish an advi-
 19 sory panel (hereafter referred to in this section as the
 20 “advisory panel”) to—

21 (A) guide and review methods, procedures,
 22 and data collection necessary to conduct the
 23 study described in subsection (c) that is intended
 24 to enhance the quality, safety, and effectiveness

1 *of health care services provided to mothers and*
 2 *newborns;*

3 *(B) develop a consensus among the members*
 4 *of the advisory panel regarding the appropriate-*
 5 *ness of the specific requirements of this Act; and*

6 *(C) prepare and submit to the Secretary of*
 7 *Health and Human Services, as part of the re-*
 8 *port of the Secretary submitted under subsection*
 9 *(d), a report summarizing the consensus devel-*
 10 *oped under subparagraph (B) if any, including*
 11 *the reasons for not reaching such a consensus.*

12 *(2) PARTICIPATION.—*

13 *(A) DEPARTMENT REPRESENTATIVES.—The*
 14 *Secretary of Health and Human Services shall*
 15 *ensure that representatives from within the De-*
 16 *partment of Health and Human Services that*
 17 *have expertise in the area of maternal and child*
 18 *health or in outcomes research are appointed to*
 19 *the advisory panel established under paragraph*
 20 *(1).*

21 *(B) REPRESENTATIVES OF PUBLIC AND PRI-*
 22 *VATE SECTOR ENTITIES.—*

23 *(i) IN GENERAL.—The Secretary of*
 24 *Health and Human Services shall ensure*
 25 *that members of the advisory panel include*

representatives of public and private sector entities having knowledge or experience in one or more of the following areas:

(I) Patient care.

(II) Patient education.

(III) Quality assurance.

(IV) Outcomes research.

(V) Consumer issues.

(ii) *REQUIREMENT.*—The panel shall include representatives from each of the following categories:

(I) Health care practitioners.

(II) Health plans.

(III) Hospitals.

(IV) Employers.

(V) States.

(VI) Consumers.

(c) *STUDIES.*—

(1) *IN GENERAL.*—The Secretary of Health and Human Services shall conduct a study of—

(A) the factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth;

(B) the factors determining the length of hospital stay following childbirth;

1 (C) *the diversity of negative or positive out-*
 2 *comes affecting mothers, infants, and families;*

3 (D) *the manner in which post natal care*
 4 *has changed over time and the manner in which*
 5 *that care has adapted or related to changes in*
 6 *the length of hospital stay, taking into account—*

7 (i) *the types of post natal care avail-*
 8 *able and the extent to which such care is*
 9 *accessed; and*

10 (ii) *the challenges associated with pro-*
 11 *viding post natal care to all populations,*
 12 *including vulnerable populations, and solu-*
 13 *tions for overcoming these challenges; and*

14 (E) *the financial incentives that may—*

15 (i) *impact the health of newborns and*
 16 *mothers; and*

17 (ii) *influence the clinical decisionmak-*
 18 *ing of health care providers.*

19 (2) *RESOURCES.—The Secretary of Health and*
 20 *Human Services shall provide to the advisory panel*
 21 *the resources necessary to carry out the duties of the*
 22 *advisory panel.*

23 (d) *REPORTS.—*

24 (1) *IN GENERAL.—The Secretary of Health and*
 25 *Human Services shall prepare and submit to the*

1 *Committee on Labor and Human Resources of the*
 2 *Senate and the Committee on Commerce of the House*
 3 *of Representatives a report that contains—*

4 *(A) a summary of the study conducted*
 5 *under subsection (c);*

6 *(B) a summary of the best practices used in*
 7 *the public and private sectors for the care of*
 8 *newborns and mothers;*

9 *(C) recommendations for improvements in*
 10 *prenatal care, post natal care, delivery and fol-*
 11 *low-up care, and whether the implementation of*
 12 *such improvements should be accomplished by*
 13 *the private health care sector, Federal or State*
 14 *governments, or any combination thereof; and*

15 *(D) limitations on the databases in exist-*
 16 *ence on the date of enactment of this Act.*

17 *(2) SUBMISSION OF REPORTS.—The Secretary of*
 18 *Health and Human Services shall prepare and sub-*
 19 *mit to the Committees referred to in paragraph (1)—*

20 *(A) an initial report concerning the study*
 21 *conducted under subsection (c) and the report re-*
 22 *quired under subsection (d), not later than 18*
 23 *months after the date of enactment of this Act;*

1 (B) an interim report concerning such
2 study and report not later than 3 years after the
3 date of enactment of this Act; and

4 (C) a final report concerning such study
5 and report not later than 5 years after the date
6 of enactment of this Act.

7 (e) *TERMINATION OF PANEL.*—The advisory panel
8 shall terminate on the date that occurs 60 days after the
9 date on which the last report is submitted under this sec-
10 tion.

11 **SEC. 12. EFFECTIVE DATE.**

12 *Except as otherwise provided for in this Act, the provi-*
13 *sions of this Act shall apply as follows:*

14 (1) *With respect to health plans, such provisions*
15 *shall apply to such plans on the first day of the con-*
16 *tract year beginning on or after January 1, 1997.*

17 (2) *With respect to employee health benefit plans,*
18 *such provisions shall apply to such plans on the first*
19 *day of the first plan year beginning on or after Janu-*
20 *ary 1, 1997.*