

105TH CONGRESS  
1ST SESSION

# H. R. 164

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for reconstructive breast surgery if they provide coverage for mastectomies.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Ms. ESHOO (for herself, Ms. DELAURO, Mr. MCGOVERN, Mr. TOWNS, Mrs. MINK of Hawaii, Ms. SLAUGHTER, and Mr. FROST) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for reconstructive breast surgery if they provide coverage for mastectomies.

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 “Reconstructive Breast  
5 Surgery Benefits Act of 1997”.

1 **SEC. 2. COVERAGE OF RECONSTRUCTIVE BREAST SUR-**  
 2 **GERY.**

3 (a) GROUP HEALTH PLANS.—

4 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
 5 MENTS.—(A) Subpart 2 of part A of title XXVII of  
 6 the Public Health Service Act, as amended by sec-  
 7 tion 703(a) of Public Law 104–204, is amended by  
 8 adding at the end the following new section:

9 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR RE-**  
 10 **CONSTRUCTIVE BREAST SURGERY.**

11 **“(a) REQUIREMENTS FOR RECONSTRUCTIVE BREAST**  
 12 **SURGERY.—**

13 **“(1) IN GENERAL.—**A group health plan, and a  
 14 health insurance issuer offering group health insur-  
 15 ance coverage, that provides coverage for breast sur-  
 16 gery in connection with a mastectomy shall provide  
 17 coverage for reconstructive breast surgery resulting  
 18 from the mastectomy. Such coverage shall include  
 19 coverage for all stages of reconstructive breast sur-  
 20 gery performed on a nondiseased breast to establish  
 21 symmetry with the diseased when reconstruction on  
 22 the diseased breast is performed.

23 **“(2) RECONSTRUCTIVE BREAST SURGERY DE-**  
 24 **FINED.—**In this section, the term ‘reconstructive  
 25 breast surgery’ means surgery performed as a result  
 26 of a mastectomy to reestablish symmetry between

1 two breasts, and includes augmentation  
2 mammoplasty, reduction mammoplasty, and  
3 mastopexy.

4 “(3) MASTECTOMY DEFINED.—In this section,  
5 the term ‘mastectomy’ means the surgical removal of  
6 all or part of a breast.

7 “(b) PROHIBITIONS.—A group health plan, and a  
8 health insurance issuer offering group health insurance  
9 coverage in connection with a group health plan, may  
10 not—

11 “(1) deny coverage described in subsection  
12 (a)(1) on the basis that the coverage is for cosmetic  
13 surgery;

14 “(2) deny to a woman eligibility, or continued  
15 eligibility, to enroll or to renew coverage under the  
16 terms of the plan, solely for the purpose of avoiding  
17 the requirements of this section;

18 “(3) provide monetary payments or rebates to  
19 women to encourage such women to accept less than  
20 the minimum protections available under this sec-  
21 tion;

22 “(4) penalize or otherwise reduce or limit the  
23 reimbursement of an attending provider because

1 such provider provided care to an individual partici-  
2 pant or beneficiary in accordance with this section;  
3 or

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

8 “(c) RULES OF CONSTRUCTION.—

9 “(1) Nothing in this section shall be construed  
10 to require a woman who is a participant or bene-  
11 ficiary to undergo reconstructive breast surgery.

12 “(2) This section shall not apply with respect to  
13 any group health plan, or any group health insur-  
14 ance coverage offered by a health insurance issuer,  
15 which does not provide benefits for mastectomies.

16 “(3) Nothing in this section shall be construed  
17 as preventing a group health plan or issuer from im-  
18 posing deductibles, coinsurance, or other cost-shar-  
19 ing in relation to benefits for reconstructive breast  
20 surgery under the plan (or under health insurance  
21 coverage offered in connection with a group health  
22 plan), except that such coinsurance or other cost-  
23 sharing for any portion may not be greater than  
24 such coinsurance or cost-sharing that is otherwise  
25 applicable with respect to benefits for mastectomies.

1       “(d) NOTICE.—A group health plan under this part  
2 shall comply with the notice requirement under section  
3 713(d) of the Employee Retirement Income Security Act  
4 of 1974 with respect to the requirements of this section  
5 as if such section applied to such plan.

6       “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
7 Nothing in this section shall be construed to prevent a  
8 group health plan or a health insurance issuer offering  
9 group health insurance coverage from negotiating the level  
10 and type of reimbursement with a provider for care pro-  
11 vided in accordance with this section.

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

14               “(1) IN GENERAL.—The requirements of this  
15 section shall not apply with respect to health insur-  
16 ance coverage if there is a State law (as defined in  
17 section 2723(d)(1)) for a State that regulates such  
18 coverage and that requires coverage of at least the  
19 coverage of reconstructive breast surgery otherwise  
20 required under this section.

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

24               (B) Section 2723(c) of such Act (42 U.S.C.  
25 300gg-23(c)), as amended by section 604(b)(2) of

1 Public Law 104–204, is amended by striking “sec-  
2 tion 2704” and inserting “sections 2704 and 2706”.

3 (2) ERISA AMENDMENTS.—(A) Subpart B of  
4 part 7 of subtitle B of title I of the Employee Re-  
5 tirement Income Security Act of 1974, as amended  
6 by section 702(a) of Public Law 104–204, is amend-  
7 ed by adding at the end the following new section:

8 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR RE-**  
9 **CONSTRUCTIVE BREAST SURGERY.**

10 “(a) REQUIREMENTS FOR RECONSTRUCTIVE BREAST  
11 SURGERY.—

12 “(1) IN GENERAL.—A group health plan, and a  
13 health insurance issuer offering group health insur-  
14 ance coverage, that provides coverage for breast sur-  
15 gery in connection with a mastectomy shall provide  
16 coverage for reconstructive breast surgery resulting  
17 from the mastectomy. Such coverage shall include  
18 coverage for all stages of reconstructive breast sur-  
19 gery performed on a nondiseased breast to establish  
20 symmetry with the diseased when reconstruction on  
21 the diseased breast is performed.

22 “(2) RECONSTRUCTIVE BREAST SURGERY DE-  
23 FINED.—In this section, the term ‘reconstructive  
24 breast surgery’ means surgery performed as a result  
25 of a mastectomy to reestablish symmetry between

1 two breasts, and includes augmentation  
2 mammoplasty, reduction mammoplasty, and  
3 mastopexy.

4 “(3) MASTECTOMY DEFINED.—In this section,  
5 the term ‘mastectomy’ means the surgical removal of  
6 all or part of a breast.

7 “(b) PROHIBITIONS.—A group health plan, and a  
8 health insurance issuer offering group health insurance  
9 coverage in connection with a group health plan, may  
10 not—

11 “(1) deny coverage described in subsection  
12 (a)(1) on the basis that the coverage is for cosmetic  
13 surgery;

14 “(2) deny to a woman eligibility, or continued  
15 eligibility, to enroll or to renew coverage under the  
16 terms of the plan, solely for the purpose of avoiding  
17 the requirements of this section;

18 “(3) provide monetary payments or rebates to  
19 women to encourage such women to accept less than  
20 the minimum protections available under this sec-  
21 tion;

22 “(4) penalize or otherwise reduce or limit the  
23 reimbursement of an attending provider because

1 such provider provided care to an individual partici-  
2 pant or beneficiary in accordance with this section;  
3 or

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

8 “(c) RULES OF CONSTRUCTION.—

9 “(1) Nothing in this section shall be construed  
10 to require a woman who is a participant or bene-  
11 ficiary to undergo reconstructive breast surgery.

12 “(2) This section shall not apply with respect to  
13 any group health plan, or any group health insur-  
14 ance coverage offered by a health insurance issuer,  
15 which does not provide benefits for mastectomies.

16 “(3) Nothing in this section shall be construed  
17 as preventing a group health plan or issuer from im-  
18 posing deductibles, coinsurance, or other cost-shar-  
19 ing in relation to benefits for reconstructive breast  
20 surgery under the plan (or under health insurance  
21 coverage offered in connection with a group health  
22 plan), except that such coinsurance or other cost-  
23 sharing for any portion may not be greater than  
24 such coinsurance or cost-sharing that is otherwise  
25 applicable with respect to benefits for mastectomies.



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

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

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

19               “(1) IN GENERAL.—The requirements of this  
20 section shall not apply with respect to health insur-  
21 ance coverage if there is a State law (as defined in  
22 section 731(d)(1)) for a State that regulates such  
23 coverage and that requires coverage of at least the  
24 coverage of reconstructive breast surgery otherwise  
25 required under this section.

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

4 (B) Section 731(e) of such Act (29 U.S.C.  
5 1191(e)), as amended by section 603(b)(1) of Public  
6 Law 104–204, is amended by striking “section 711”  
7 and inserting “sections 711 and 713”.

8 (C) Section 732(a) of such Act (29 U.S.C.  
9 1191a(a)), as amended by section 603(b)(2) of Pub-  
10 lic Law 104–204, is amended by striking “section  
11 711” and inserting “sections 711 and 713”.

12 (D) The table of contents in section 1 of such  
13 Act is amended by inserting after the item relating  
14 to section 712 the following new item:

“Sec. 713. Standards relating to benefits for reconstructive breast surgery.”.

15 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
16 of title XXVII of the Public Health Service Act, as amend-  
17 ed by section 605(a) of Public Law 104–204, is amended  
18 by inserting after section 2751 the following new section:

19 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR RE-**  
20 **CONSTRUCTIVE BREAST SURGERY.**

21 “(a) IN GENERAL.—The provisions of section 2706  
22 (other than subsection (d)) shall apply to health insurance  
23 coverage offered by a health insurance issuer in the indi-  
24 vidual market in the same manner as it applies to health  
25 insurance coverage offered by a health insurance issuer

1 in connection with a group health plan in the small or  
2 large group market.

3 “(b) NOTICE.—A health insurance issuer under this  
4 part shall comply with the notice requirement under sec-  
5 tion 713(d) of the Employee Retirement Income Security  
6 Act of 1974 with respect to the requirements referred to  
7 in subsection (a) as if such section applied to such issuer  
8 and such issuer were a group health plan.

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

11 “(1) IN GENERAL.—The requirements of this  
12 section shall not apply with respect to health insur-  
13 ance coverage if there is a State law (as defined in  
14 section 2723(d)(1)) for a State that regulates such  
15 coverage and that requires coverage of at least the  
16 coverage of reconstructive breast surgery otherwise  
17 required under this section.

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

21 (2) Section 2762(b)(2) of such Act (42 U.S.C.  
22 300gg-62(b)(2)), as added by section 605(b)(3)(B) of  
23 Public Law 104-204, is amended by striking “section  
24 2751” and inserting “sections 2751 and 2752”.

1           (c) EFFECTIVE DATES.—(1) The amendments made  
2 by subsection (a) shall apply with respect to group health  
3 plans for plan years beginning on or after January 1,  
4 1998.

5           (2) The amendment made by subsection (b) shall  
6 apply with respect to health insurance coverage offered,  
7 sold, issued, renewed, in effect, or operated in the individ-  
8 ual market on or after such date.

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