

106TH CONGRESS  
1ST SESSION

# H. R. 116

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 a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Ms. DELAURO (for herself, Mr. DINGELL, Mrs. ROUKEMA, Ms. ESHOO, Mr. HASTINGS of Florida, Mrs. MEEK of Florida, Ms. SANCHEZ, Mr. WYNN, Mr. MASCARA, Mr. KILDEE, Mr. BURTON of Indiana, Mr. GEJDENSON, Mr. MALONEY of Connecticut, Mr. SHAYS, Mr. KLECZKA, Mrs. MALONEY of New York, Ms. LEE, Mr. MORAN of Virginia, Mr. MCINTYRE, Mr. DIXON, Mr. FRANK of Massachusetts, Mr. DELAHUNT, Mr. SHERMAN, Mr. ROMERO-BARCELÓ, Mr. ANDREWS, Mrs. MINK of Hawaii, Mr. FILNER, Mr. TURNER, Mr. SANDLIN, Mrs. MORELLA, Mr. STRICKLAND, Mr. DEUTSCH, Mr. PALLONE, Mr. EDWARDS, Mr. RANGEL, Mr. DOOLEY of California, Mr. BOUCHER, Mr. COYNE, Mr. BROWN of Ohio, Mr. BENTSEN, Mr. BOYD, Mr. MEEHAN, Mr. SERRANO, Mrs. LOWEY, Mr. HINCHEY, Mr. COOKSEY, Mr. BALDACCI, Mr. FALEOMAVAEGA, Mr. PRICE of North Carolina, Mr. DAVIS of Illinois, Ms. PELOSI, Mr. McNULTY, Mr. TIERNEY, Ms. KILPATRICK, Mr. TOWNS, Mr. BARRETT of Wisconsin, Mr. HILLIARD, Ms. DANNER, Mrs. CLAYTON, Mr. HORN, Mr. WOLF, Mr. LUTHER, Mr. FARR of California, Mr. HOYER, Mr. FROST, Mr. KUCINICH, Mr. RAHALL, Mr. RODRIGUEZ, Mr. BONIOR, Mrs. CAPPS, Mr. GUTIERREZ, Ms. NORTON, Ms. MILLENDER-McDONALD, Mr. FORD, Mrs. THURMAN, Mr. DEFazio, Mr. ETHERIDGE, Mr. GEPHARDT, Ms. KAPTUR, Mr. LAFALCE, Ms. SLAUGHTER, Mr. MATSUI, Mr. GEORGE MILLER of California, Mr. BRADY of Pennsylvania, Mr. KING, Mr. LEWIS of Georgia, Mr. MCGOVERN, Mrs. MCCARTHY of New York, Mr. BERRY, Mr. WALSH, Ms. MCCARTHY of Missouri, Ms. VELÁZQUEZ, Mr. BLAGOJEVICH, Mr. BOEHLERT, Ms. MCKINNEY, Mr. QUINN, Mr. ACKERMAN, Mr. OLVER, Mr. STUPAK, Ms. ROYBAL-ALLARD, Mr. PASCRELL, and Ms. STABENOW) 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

# 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 a minimum hospital stay for mastectomies and lymph node dissections performed for the treatment of breast cancer.

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 1999”.

6 **SEC. 2. COVERAGE OF MINIMUM HOSPITAL STAY FOR CER-**  
 7 **TAIN BREAST CANCER TREATMENT.**

8       (a) GROUP HEALTH PLANS.—

9           (1) PUBLIC HEALTH SERVICE ACT AMEND-  
 10       MENTS.—(A) Subpart 2 of part A of title XXVII of  
 11       the Public Health Service Act is amended by adding  
 12       at the end the following new section:

13 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CER-**  
 14 **TAIN BREAST CANCER TREATMENT.**

15       “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY  
 16       FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-  
 17       TION.—

1           “(1) IN GENERAL.—A group health plan, and a  
2 health insurance issuer offering group health insur-  
3 ance coverage, may not—

4           “(A) except as provided in paragraph  
5 (2)—

6           “(i) restrict benefits for any hospital  
7 length of stay in connection with a mastec-  
8 tomy for the treatment of breast cancer to  
9 less than 48 hours, or

10           “(ii) restrict benefits for any hospital  
11 length of stay in connection with a lymph  
12 node dissection for the treatment of breast  
13 cancer to less than 24 hours, or

14           “(B) require that a provider obtain author-  
15 ization from the plan or the issuer for prescrib-  
16 ing any length of stay required under subpara-  
17 graph (A) (without regard to paragraph (2)).

18           “(2) EXCEPTION.—Paragraph (1)(A) shall not  
19 apply in connection with any group health plan or  
20 health insurance issuer in any case in which the de-  
21 cision to discharge the woman involved prior to the  
22 expiration of the minimum length of stay otherwise  
23 required under paragraph (1)(A) is made by an at-  
24 tending provider in consultation with the woman.

1       “(b) PROHIBITIONS.—A group health plan, and a  
2 health insurance issuer offering group health insurance  
3 coverage in connection with a group health plan, may  
4 not—

5           “(1) deny to a woman eligibility, or continued  
6 eligibility, to enroll or to renew coverage under the  
7 terms of the plan, solely for the purpose of avoiding  
8 the requirements of this section;

9           “(2) provide monetary payments or rebates to  
10 women to encourage such women to accept less than  
11 the minimum protections available under this sec-  
12 tion;

13           “(3) penalize or otherwise reduce or limit the  
14 reimbursement of an attending provider because  
15 such provider provided care to an individual partici-  
16 pant or beneficiary in accordance with this section;

17           “(4) provide incentives (monetary or otherwise)  
18 to an attending provider to induce such provider to  
19 provide care to an individual participant or bene-  
20 ficiary in a manner inconsistent with this section; or

21           “(5) subject to subsection (c)(3), restrict bene-  
22 fits for any portion of a period within a hospital  
23 length of stay required under subsection (a) in a  
24 manner which is less favorable than the benefits pro-  
25 vided for any preceding portion of such stay.

1 “(c) RULES OF CONSTRUCTION.—

2 “(1) Nothing in this section shall be construed  
3 to require a woman who is a participant or  
4 beneficiary—

5 “(A) to undergo a mastectomy or lymph  
6 node dissection in a hospital; or

7 “(B) to stay in the hospital for a fixed pe-  
8 riod of time following a mastectomy or lymph  
9 node dissection.

10 “(2) This section shall not apply with respect to  
11 any group health plan, or any group health insur-  
12 ance coverage offered by a health insurance issuer,  
13 which does not provide benefits for hospital lengths  
14 of stay in connection with a mastectomy or lymph  
15 node dissection for the treatment of breast cancer.

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 hospital lengths of stay  
20 in connection with a mastectomy or lymph node dis-  
21 section for the treatment of breast cancer under the  
22 plan (or under health insurance coverage offered in  
23 connection with a group health plan), except that  
24 such coinsurance or other cost-sharing for any por-  
25 tion of a period within a hospital length of stay re-

1       quired under subsection (a) may not be greater than  
2       such coinsurance or cost-sharing for any preceding  
3       portion of such stay.

4       “(d) NOTICE.—A group health plan under this part  
5 shall comply with the notice requirement under section  
6 713(d) of the Employee Retirement Income Security Act  
7 of 1974 with respect to the requirements of this section  
8 as if such section applied to such plan.

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

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

17               “(1) IN GENERAL.—The requirements of this  
18 section shall not apply with respect to health insur-  
19 ance coverage if there is a State law (as defined in  
20 section 2723(d)(1)) for a State that regulates such  
21 coverage that is described in any of the following  
22 subparagraphs:

23                       “(A) Such State law requires such cov-  
24 erage to provide for at least a 48-hour hospital  
25 length of stay following a mastectomy per-



1           “(1) IN GENERAL.—A group health plan, and a  
2 health insurance issuer offering group health insur-  
3 ance coverage, may not—

4           “(A) except as provided in paragraph  
5 (2)—

6           “(i) restrict benefits for any hospital  
7 length of stay in connection with a mastec-  
8 tomy for the treatment of breast cancer to  
9 less than 48 hours, or

10           “(ii) restrict benefits for any hospital  
11 length of stay in connection with a lymph  
12 node dissection for the treatment of breast  
13 cancer to less than 24 hours, or

14           “(B) require that a provider obtain author-  
15 ization from the plan or the issuer for prescrib-  
16 ing any length of stay required under subpara-  
17 graph (A) (without regard to paragraph (2)).

18           “(2) EXCEPTION.—Paragraph (1)(A) shall not  
19 apply in connection with any group health plan or  
20 health insurance issuer in any case in which the de-  
21 cision to discharge the woman involved prior to the  
22 expiration of the minimum length of stay otherwise  
23 required under paragraph (1)(A) is made by an at-  
24 tending provider in consultation with the woman.

1       “(b) PROHIBITIONS.—A group health plan, and a  
2 health insurance issuer offering group health insurance  
3 coverage in connection with a group health plan, may  
4 not—

5           “(1) deny to a woman eligibility, or continued  
6 eligibility, to enroll or to renew coverage under the  
7 terms of the plan, solely for the purpose of avoiding  
8 the requirements of this section;

9           “(2) provide monetary payments or rebates to  
10 women to encourage such women to accept less than  
11 the minimum protections available under this sec-  
12 tion;

13           “(3) penalize or otherwise reduce or limit the  
14 reimbursement of an attending provider because  
15 such provider provided care to an individual partici-  
16 pant or beneficiary in accordance with this section;

17           “(4) provide incentives (monetary or otherwise)  
18 to an attending provider to induce such provider to  
19 provide care to an individual participant or bene-  
20 ficiary in a manner inconsistent with this section; or

21           “(5) subject to subsection (c)(3), restrict bene-  
22 fits for any portion of a period within a hospital  
23 length of stay required under subsection (a) in a  
24 manner which is less favorable than the benefits pro-  
25 vided for any preceding portion of such stay.

1 “(c) RULES OF CONSTRUCTION.—

2 “(1) Nothing in this section shall be construed  
3 to require a woman who is a participant or  
4 beneficiary—

5 “(A) to undergo a mastectomy or lymph  
6 node dissection in a hospital; or

7 “(B) to stay in the hospital for a fixed pe-  
8 riod of time following a mastectomy or lymph  
9 node dissection.

10 “(2) This section shall not apply with respect to  
11 any group health plan, or any group health insur-  
12 ance coverage offered by a health insurance issuer,  
13 which does not provide benefits for hospital lengths  
14 of stay in connection with a mastectomy or lymph  
15 node dissection for the treatment of breast cancer.

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 hospital lengths of stay  
20 in connection with a mastectomy or lymph node dis-  
21 section for the treatment of breast cancer under the  
22 plan (or under health insurance coverage offered in  
23 connection with a group health plan), except that  
24 such coinsurance or other cost-sharing for any por-  
25 tion of a period within a hospital length of stay re-

1       quired under subsection (a) may not be greater than  
2       such coinsurance or cost-sharing for any preceding  
3       portion of such stay.

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

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

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

22              “(1) IN GENERAL.—The requirements of this  
23      section shall not apply with respect to health insur-  
24      ance coverage if there is a State law (as defined in  
25      section 731(d)(1)) for a State that regulates such

1 coverage that is described in any of the following  
2 subparagraphs:

3 “(A) Such State law requires such cov-  
4 erage to provide for at least a 48-hour hospital  
5 length of stay following a mastectomy per-  
6 formed for treatment of breast cancer and at  
7 least a 24-hour hospital length of stay following  
8 a lymph node dissection for treatment of breast  
9 cancer.

10 “(B) Such State law requires, in connec-  
11 tion with such coverage for surgical treatment  
12 of breast cancer, that the hospital length of  
13 stay for such care is left to the decision of (or  
14 required to be made by) the attending provider  
15 in consultation with the woman involved.

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

19 (B) Section 731(e) of such Act (29 U.S.C.  
20 1191(e)), as amended by section 603(b)(1) of Public  
21 Law 104–204, is amended by striking “section 711”  
22 and inserting “sections 711 and 714”.

23 (C) Section 732(a) of such Act (29 U.S.C.  
24 1191a(a)), as amended by section 603(b)(2) of Pub-

1       lic Law 104–204, is amended by striking “section  
2       711” and inserting “sections 711 and 714”.

3               (D) The table of contents in section 1 of such  
4       Act is amended by inserting after the item relating  
5       to section 713 the following new item:

“Sec. 714. Standards relating to benefits for certain breast cancer treatment.”.

6       (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
7       of title XXVII of the Public Health Service Act is amend-  
8       ed by inserting after section 2752 the following new sec-  
9       tion:

10      **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CER-**  
11                                      **TAIN BREAST CANCER TREATMENT.**

12       “(a) IN GENERAL.—The provisions of section 2707  
13       (other than subsection (d)) shall apply to health insurance  
14       coverage offered by a health insurance issuer in the indi-  
15       vidual market in the same manner as it applies to health  
16       insurance coverage offered by a health insurance issuer  
17       in connection with a group health plan in the small or  
18       large group market.

19       “(b) NOTICE.—A health insurance issuer under this  
20       part shall comply with the notice requirement under sec-  
21       tion 714(d) of the Employee Retirement Income Security  
22       Act of 1974 with respect to the requirements referred to  
23       in subsection (a) as if such section applied to such issuer  
24       and such issuer were a group health plan.

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

3           “(1) IN GENERAL.—The requirements of this  
4 section shall not apply with respect to health insur-  
5 ance coverage if there is a State law (as defined in  
6 section 2723(d)(1)) for a State that regulates such  
7 coverage that is described in any of the following  
8 subparagraphs:

9           “(A) Such State law requires such cov-  
10 erage to provide for at least a 48-hour hospital  
11 length of stay following a mastectomy per-  
12 formed for treatment of breast cancer and at  
13 least a 24-hour hospital length of stay following  
14 a lymph node dissection for treatment of breast  
15 cancer.

16           “(B) Such State law requires, in connec-  
17 tion with such coverage for surgical treatment  
18 of breast cancer, that the hospital length of  
19 stay for such care is left to the decision of (or  
20 required to be made by) the attending provider  
21 in consultation with the woman involved.

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

1       (2) Section 2762(b)(2) of such Act (42 U.S.C.  
2 300gg-62(b)(2)), as added by section 605(b)(3)(B) of  
3 Public Law 104-204, is amended by striking “section  
4 2751” and inserting “sections 2751 and 2753”.

5       (c) EFFECTIVE DATES.—(1) The amendments made  
6 by subsection (a) shall apply with respect to group health  
7 plans for plan years beginning on or after January 1,  
8 2000.

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

○