

108TH CONGRESS
1ST SESSION

H. R. 1886

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2003

Ms. DELAURO (for herself, Mr. ABERCROMBIE, Mr. ACKERMAN, Ms. BALDWIN, Ms. BERKLEY, Mr. BERRY, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BOSWELL, Mr. BOUCHER, Mr. BOYD, Mr. BRADY of Pennsylvania, Ms. CORRINE BROWN of Florida, Mr. BROWN of Ohio, Mrs. CAPPS, Mr. CAPUANO, Ms. CARSON of Indiana, Mr. CASE, Mrs. CHRISTENSEN, Mr. CLAY, Mr. COOPER, Mr. COSTELLO, Mr. CROWLEY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. DELAHUNT, Mr. DEUTSCH, Mr. DICKS, Mr. DINGELL, Mr. DOYLE, Mr. EMANUEL, Mr. ENGEL, Mr. ETHERIDGE, Mr. EVANS, Mr. FARR, Mr. FATTAH, Mr. FOLEY, Mr. FORD, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GORDON, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Ms. HARMAN, Ms. HART, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOFFEL, Mr. HOLDEN, Mr. HOLT, Mr. HONDA, Mr. INSLEE, Mr. ISRAEL, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Mr. KING of New York, Mr. KLECZKA, Mr. LANGEVIN, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LOBIONDO, Mrs. LOWEY, Mr. LYNCH, Ms. MCCARTHY of Missouri, Mrs. MCCARTHY of New York, Ms. MCCOLLUM, Mr. McDERMOTT, Mr. MCGOVERN, Mr. MCHUGH, Mr. MCINTYRE, Mr. McNULTY, Mrs. MALONEY, Mr. MARKEY, Mr. MATSUI, Mr. MEEHAN, Mr. MENENDEZ, Mr. MICHAUD, Ms. MILLENDER-McDONALD, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. MURTHA, Mr. NADLER, Mrs. NAPOLITANO, Ms. NORTON, Mr. OBERSTAR, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASTOR, Mr. PAYNE, Mr. REYES, Ms. ROS-LEHTINEN, Mr. ROSS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN of Ohio, Ms. LORETTA SANCHEZ of California, Mr. SANDLIN, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Mr. SHERMAN, Mr. SIMMONS, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Mr. SNYDER, Mr. STRICKLAND, Mrs. TAUSCHER, Mr. TAYLOR of Mis-

Mississippi, Mr. TIERNEY, Mr. TOWNS, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Mrs. JONES of Ohio, Mr. UDALL of New Mexico, Mr. VITTER, Ms. WATERS, Mr. WATT, Mr. WEXLER, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Energy and 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 2003”.

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:

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

3 “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY
4 FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-
5 TION.—

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

9 “(A) except as provided in paragraph
10 (2)—

11 “(i) restrict benefits for any hospital
12 length of stay in connection with a mastec-
13 tomy for the treatment of breast cancer to
14 less than 48 hours, or

15 “(ii) restrict benefits for any hospital
16 length of stay in connection with a lymph
17 node dissection for the treatment of breast
18 cancer to less than 24 hours, or

19 “(B) require that a provider obtain author-
20 ization from the plan or the issuer for pre-
21 scribing any length of stay required under sub-
22 paragraph (A) (without regard to paragraph
23 (2)).

24 “(2) EXCEPTION.—Paragraph (1)(A) shall not
25 apply in connection with any group health plan or
26 health insurance issuer in any case in which the de-

1 cision to discharge the woman involved prior to the
2 expiration of the minimum length of stay otherwise
3 required under paragraph (1)(A) is made by an at-
4 tending provider in consultation with the woman.

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

9 “(1) deny to a woman eligibility, or continued
10 eligibility, to enroll or to renew coverage under the
11 terms of the plan, solely for the purpose of avoiding
12 the requirements of this section;

13 “(2) provide monetary payments or rebates to
14 women to encourage such women to accept less than
15 the minimum protections available under this sec-
16 tion;

17 “(3) penalize or otherwise reduce or limit the
18 reimbursement of an attending provider because
19 such provider provided care to an individual partici-
20 pant or beneficiary in accordance with this section;

21 “(4) provide incentives (monetary or otherwise)
22 to an attending provider to induce such provider to
23 provide care to an individual participant or bene-
24 ficiary in a manner inconsistent with this section; or

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

6 “(c) RULES OF CONSTRUCTION.—

7 “(1) Nothing in this section shall be construed
8 to require a woman who is a participant or bene-
9 ficiary—

10 “(A) to undergo a mastectomy or lymph
11 node dissection in a hospital; or

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

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

21 “(3) Nothing in this section shall be construed
22 as preventing a group health plan or issuer from im-
23 posing deductibles, coinsurance, or other cost-shar-
24 ing in relation to benefits for hospital lengths of stay
25 in connection with a mastectomy or lymph node dis-

1 section for the treatment of breast cancer under the
2 plan (or under health insurance coverage offered in
3 connection with a group health plan), except that
4 such coinsurance or other cost-sharing for any por-
5 tion of a period within a hospital length of stay re-
6 quired under subsection (a) may not be greater than
7 such coinsurance or cost-sharing for any preceding
8 portion of such stay.

9 “(d) NOTICE.—A group health plan under this part
10 shall comply with the notice requirement under section
11 713(d) of the Employee Retirement Income Security Act
12 of 1974 with respect to the requirements of this section
13 as if such section applied to such plan.

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 2723(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 2723(a)(1) shall
17 not be construed as superseding a State law de-
18 scribed in paragraph (1).”.

19 (B) Section 2723(c) of such Act (42 U.S.C.
20 300gg–23(c)) is amended by striking “section 2704”
21 and inserting “sections 2704 and 2707”.

22 (2) ERISA AMENDMENTS.—(A) Subpart B of
23 part 7 of subtitle B of title I of the Employee Re-
24 tirement Income Security Act of 1974 is amended by
25 adding at the end the following new section:

1 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CER-**
2 **TAIN BREAST CANCER TREATMENT.**

3 “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY
4 FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-
5 TION.—

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

9 “(A) except as provided in paragraph
10 (2)—

11 “(i) restrict benefits for any hospital
12 length of stay in connection with a mastec-
13 tomy for the treatment of breast cancer to
14 less than 48 hours, or

15 “(ii) restrict benefits for any hospital
16 length of stay in connection with a lymph
17 node dissection for the treatment of breast
18 cancer to less than 24 hours, or

19 “(B) require that a provider obtain author-
20 ization from the plan or the issuer for pre-
21 scribing any length of stay required under sub-
22 paragraph (A) (without regard to paragraph
23 (2)).

24 “(2) EXCEPTION.—Paragraph (1)(A) shall not
25 apply in connection with any group health plan or
26 health insurance issuer in any case in which the de-

1 cision to discharge the woman involved prior to the
2 expiration of the minimum length of stay otherwise
3 required under paragraph (1)(A) is made by an at-
4 tending provider in consultation with the woman.

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

9 “(1) deny to a woman eligibility, or continued
10 eligibility, to enroll or to renew coverage under the
11 terms of the plan, solely for the purpose of avoiding
12 the requirements of this section;

13 “(2) provide monetary payments or rebates to
14 women to encourage such women to accept less than
15 the minimum protections available under this sec-
16 tion;

17 “(3) penalize or otherwise reduce or limit the
18 reimbursement of an attending provider because
19 such provider provided care to an individual partici-
20 pant or beneficiary in accordance with this section;

21 “(4) provide incentives (monetary or otherwise)
22 to an attending provider to induce such provider to
23 provide care to an individual participant or bene-
24 ficiary in a manner inconsistent with this section; or

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

6 “(c) RULES OF CONSTRUCTION.—

7 “(1) Nothing in this section shall be construed
8 to require a woman who is a participant or bene-
9 ficiary—

10 “(A) to undergo a mastectomy or lymph
11 node dissection in a hospital; or

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

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

21 “(3) Nothing in this section shall be construed
22 as preventing a group health plan or issuer from im-
23 posing deductibles, coinsurance, or other cost-shar-
24 ing in relation to benefits for hospital lengths of stay
25 in connection with a mastectomy or lymph node dis-

1 section for the treatment of breast cancer under the
2 plan (or under health insurance coverage offered in
3 connection with a group health plan), except that
4 such coinsurance or other cost-sharing for any por-
5 tion of a period within a hospital length of stay re-
6 quired under subsection (a) may not be greater than
7 such coinsurance or cost-sharing for any preceding
8 portion of such stay.

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

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

1 “(f) 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 731(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 731(a)(1) shall
23 not be construed as superseding a State law de-
24 scribed in paragraph (1).”.

1 (B) Section 731(e) of such Act (29 U.S.C.
2 1191(e)) is amended by striking “section 711” and
3 inserting “sections 711 and 714”.

4 (C) Section 732(a) of such Act (29 U.S.C.
5 1191a(a)) is amended by striking “section 711” and
6 inserting “sections 711 and 714”.

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

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

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

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

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

23 “(b) NOTICE.—A health insurance issuer under this
24 part shall comply with the notice requirement under sec-
25 tion 714(d) of the Employee Retirement Income Security

1 Act of 1974 with respect to the requirements referred to
2 in subsection (a) as if such section applied to such issuer
3 and such issuer were a group health plan.

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

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

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

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

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

4 (2) Section 2762(b)(2) of such Act (42 U.S.C.
5 300gg-62(b)(2)) is amended by striking “section 2751”
6 and inserting “sections 2751 and 2753”.

7 (c) EFFECTIVE DATES.—(1) The amendments made
8 by subsection (a) shall apply with respect to group health
9 plans for plan years beginning on or after January 1,
10 2004.

11 (2) The amendments made by subsection (b) shall
12 apply with respect to health insurance coverage offered,
13 sold, issued, renewed, in effect, or operated in the indi-
14 vidual market on or after such date.

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