

108TH CONGRESS
1ST SESSION

H. R. 736

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 annual screening mammography for women 40 years of age or older if the coverage or plans include coverage for diagnostic mammography.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2003

Mr. NADLER (for himself, Mr. WEINER, Ms. LEE, Mr. SERRANO, Mr. TOWNS, Ms. WOOLSEY, Mr. MCINTYRE, Mr. LANGEVIN, Ms. NORTON, Mr. OBERSTAR, Mr. McNULTY, Mr. KILDEE, Mr. HOLDEN, Mr. FROST, Mr. TIERNEY, Mr. MEEHAN, Mr. GRIJALVA, Mr. LAMPSON, Mr. SANDERS, Mr. WALSH, Mr. CASE, Mrs. JONES of Ohio, Ms. KAPTUR, Ms. CARSON of Indiana, Mr. OLVER, Mr. BAIRD, Mr. RUSH, Mr. FRANK of Massachusetts, Ms. ROS-LEHTINEN, Mr. LANTOS, Mr. DAVIS of Illinois, Ms. BORDALLO, Mr. HINCHEY, Mr. RANGEL, Mr. HINOJOSA, Mr. MICHAUD, Mr. ROTHMAN, Mr. HASTINGS of Florida, Mr. CUMMINGS, Mr. WEXLER, Mrs. CHRISTENSEN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. VAN HOLLEN, Mr. WYNN, Mr. McDERMOTT, Mr. BRADY of Pennsylvania, Mr. LYNCH, Mr. GUTIERREZ, Mr. KUCINICH, Mr. ACKERMAN, Mr. PAYNE, Mr. OWENS, and Mr. RYAN of Ohio) 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 annual screening mammography for women 40 years of age or older if the coverage or plans include coverage for diagnostic mammography.

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Mammogram Availability Act of 2003”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) Breast cancer is the single leading cause of
8 death for women between the ages of 40 and 49 in
9 the United States.

10 (2) An expert panel convened by the National
11 Institutes of Health recommended on January 23,
12 1997, that all women between the ages of 40 and 49
13 should choose for themselves, following consultation
14 with their health care provider, whether to undergo
15 screening mammography.

16 (3) The same panel unanimously recommended
17 that for women between the ages of 40 and 49 who
18 choose to have a screening mammogram, costs of the
19 mammograms should be reimbursed by third-party
20 payers or covered by health maintenance organiza-
21 tions.

1 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**
2 **RAPHY UNDER GROUP HEALTH PLANS.**

3 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

4 (1) Subpart 2 of part A of title XXVII of the
5 Public Health Service Act is amended by adding at
6 the end the following new section:

7 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR**
8 **SCREENING MAMMOGRAPHY.**

9 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
10 SCREENING MAMMOGRAPHY.—

11 “(1) IN GENERAL.—A group health plan, and a
12 health insurance issuer offering group health insur-
13 ance coverage, that provides coverage for diagnostic
14 mammography for any woman who is 40 years of
15 age or older shall provide coverage for annual
16 screening mammography for such a woman under
17 terms and conditions that are not less favorable than
18 the terms and conditions for coverage of diagnostic
19 mammography.

20 “(2) DIAGNOSTIC AND SCREENING MAMMOG-
21 RAPHY DEFINED.—For purposes of this section—

22 “(A) The term ‘diagnostic mammography’
23 means a radiologic procedure that is medically
24 necessary for the purpose of diagnosing breast
25 cancer and includes a physician’s interpretation
26 of the results of the procedure.

1 “(B) The term ‘screening mammography’
2 means a radiologic procedure provided to a
3 woman for the purpose of early detection of
4 breast cancer and includes a physician’s inter-
5 pretation of the results of the procedure.

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

10 “(1) deny coverage for annual screening mam-
11 mography on the basis that the coverage is not
12 medically necessary or on the basis that the screen-
13 ing mammography is not pursuant to a referral, con-
14 sent, or recommendation by any health care pro-
15 vider;

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

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

24 “(4) penalize or otherwise reduce or limit the
25 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 annual screening mammography.

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 diagnostic mam-
16 mography.

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

1 applicable with respect to benefits for diagnostic
2 mammography.

3 “(4) Women between the ages of 40 and 49
4 should (but are not required to) consult with appro-
5 priate health care practitioners before undergoing
6 screening mammography, but nothing in this section
7 shall be construed as requiring the approval of such
8 a practitioner before undergoing an annual screening
9 mammography.

10 “(d) NOTICE.—A group health plan under this part
11 shall comply with the notice requirement under section
12 714(d) of the Employee Retirement Income Security Act
13 of 1974 with respect to the requirements of this section
14 as if such section applied to such plan.

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

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

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

1 section 2723(d)(1)) for a State that regulates such
2 coverage, that requires coverage to be provided for
3 annual screening mammography for women who are
4 40 years of age or older and that provides at least
5 the protections described in subsection (b).

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

9 (2) Section 2723(c) of such Act (42 U.S.C.
10 300gg–23(c)) is amended by striking “section 2704”
11 and inserting “sections 2704 and 2707”.

12 (b) ERISA AMENDMENTS.—

13 (1) Subpart B of part 7 of subtitle B of title
14 I of the Employee Retirement Income Security Act
15 of 1974 is amended by adding at the end the fol-
16 lowing new section:

17 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR**
18 **SCREENING MAMMOGRAPHY.**

19 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
20 SCREENING MAMMOGRAPHY.—

21 “(1) IN GENERAL.—A group health plan, and a
22 health insurance issuer offering group health insur-
23 ance coverage, that provides coverage for diagnostic
24 mammography for any woman who is 40 years of
25 age or older shall provide coverage for annual

1 screening mammography for such a woman under
2 terms and conditions that are not less favorable than
3 the terms and conditions for coverage of diagnostic
4 mammography.

5 “(2) DIAGNOSTIC AND SCREENING MAMMOG-
6 RAPHY DEFINED.—For purposes of this section—

7 “(A) The term ‘diagnostic mammography’
8 means a radiologic procedure that is medically
9 necessary for the purpose of diagnosing breast
10 cancer and includes a physician’s interpretation
11 of the results of the procedure.

12 “(B) The term ‘screening mammography’
13 means a radiologic procedure provided to a
14 woman for the purpose of early detection of
15 breast cancer and includes a physician’s inter-
16 pretation of the results of the procedure.

17 “(b) PROHIBITIONS.—A group health plan, and a
18 health insurance issuer offering group health insurance
19 coverage in connection with a group health plan, may
20 not—

21 “(1) deny coverage described in subsection
22 (a)(1) on the basis that the coverage is not medically
23 necessary or on the basis that the screening mam-
24 mography is not pursuant to a referral, consent, or
25 recommendation by any health care provider;

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

5 “(3) provide monetary payments or rebates to
6 women to encourage such women to accept less than
7 the minimum protections available under this sec-
8 tion;

9 “(4) penalize or otherwise reduce or limit the
10 reimbursement of an attending provider because
11 such provider provided care to an individual partici-
12 pant or beneficiary in accordance with this section;
13 or

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

18 “(c) RULES OF CONSTRUCTION.—

19 “(1) Nothing in this section shall be construed
20 to require a woman who is a participant or bene-
21 ficiary to undergo annual screening mammography.

22 “(2) This section shall not apply with respect to
23 any group health plan, or any group health insur-
24 ance coverage offered by a health insurance issuer,

1 which does not provide benefits for diagnostic mam-
2 mography.

3 “(3) Nothing in this section shall be construed
4 as preventing a group health plan or issuer from im-
5 posing deductibles, coinsurance, or other cost-shar-
6 ing in relation to benefits for screening mammog-
7 raphy under the plan (or under health insurance
8 coverage offered in connection with a group health
9 plan), except that such coinsurance or other cost-
10 sharing for any portion may not be greater than
11 such coinsurance or cost-sharing that is otherwise
12 applicable with respect to benefits for diagnostic
13 mammography.

14 “(4) Women between the ages of 40 and 49
15 should (but are not required to) consult with appro-
16 priate health care practitioners before undergoing
17 screening mammography, but nothing in this section
18 shall be construed as requiring the approval of such
19 a practitioner before undergoing an annual screening
20 mammography.

21 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
22 imposition of the requirements of this section shall be
23 treated as a material modification in the terms of the plan
24 described in section 102(a)(1), for purposes of assuring
25 notice of such requirements under the plan; except that

1 the summary description required to be provided under the
2 last sentence of section 104(b)(1) with respect to such
3 modification shall be provided by not later than 60 days
4 after the first day of the first plan year in which such
5 requirements apply.

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 731(d)(1)) for a State that regulates such
18 coverage, that requires coverage to be provided for
19 annual screening mammography for women who are
20 40 years of age or older, and that provides at least
21 the protections described in subsection (b).

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

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

4 (3) 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 (4) 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 screening mammography.”.

10 (c) EFFECTIVE DATES.—(1) Subject to paragraph
11 (2), the amendments made by this section shall apply with
12 respect to group health plans (and health insurance cov-
13 erage offered in connection with group health plans) for
14 plan years beginning on or after 1 year after the date of
15 the enactment of this Act.

16 (2) In the case of a group health plan maintained
17 pursuant to 1 or more collective bargaining agreements
18 between employee representatives and 1 or more employ-
19 ers ratified before the date of enactment of this Act, the
20 amendments made by this section shall not apply to plan
21 years beginning before the later of—

22 (A) the date on which the last collective bar-
23 gaining agreements relating to the plan terminates
24 (determined without regard to any extension thereof

1 agreed to after the date of enactment of this Act),
2 or

3 (B) 1 year after the date of the enactment of
4 this Act.

5 For purposes of subparagraph (A), any plan amendment
6 made pursuant to a collective bargaining agreement relat-
7 ing to the plan which amends the plan solely to conform
8 to any requirement added by this section shall not be
9 treated as a termination of such collective bargaining
10 agreement.

11 **SEC. 3. COVERAGE OF ANNUAL SCREENING MAMMOG-**
12 **RAPHY UNDER INDIVIDUAL HEALTH COV-**
13 **ERAGE.**

14 (a) IN GENERAL.—Part B of title XXVII of the Pub-
15 lic Health Service Act is amended by inserting after sec-
16 tion 2751 the following new section:

17 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR**
18 **SCREENING MAMMOGRAPHY.**

19 “(a) IN GENERAL.—The provisions of section 2706
20 (other than subsections (d) and (f)) shall apply to health
21 insurance coverage offered by a health insurance issuer
22 in the individual market in the same manner as it applies
23 to health insurance coverage offered by a health insurance
24 issuer in connection with a group health plan in the small
25 or large group market.

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

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

9 “(1) IN GENERAL.—The requirements of this
10 section shall not apply with respect to health insur-
11 ance coverage if there is a State law (as defined in
12 section 2723(d)(1)) for a State that regulates such
13 coverage, that requires coverage in the individual
14 health insurance market to be provided for annual
15 screening mammography for women who are 40
16 years of age or older and that provides at least the
17 protections described in section 2706(b) (as applied
18 under subsection (a)).

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

22 (b) CONFORMING AMENDMENT.—Section 2763(b)(2)
23 of such Act (42 U.S.C. 300gg–63(b)(2)) is amended by
24 striking “section 2751” and inserting “sections 2751 and
25 2753”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to health insurance
3 coverage offered, sold, issued, or renewed in the individual
4 market on or after the date that is 1 year after the date
5 of the enactment of this Act.

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