

110TH CONGRESS
1ST SESSION

H. R. 119

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mrs. JO ANN DAVIS of Virginia introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, 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 require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

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 2007”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the offering and operation of health plans
4 affect commerce among the States;

5 (2) health care providers located in a State
6 serve patients who reside in the State and patients
7 who reside in other States; and

8 (3) in order to provide for uniform treatment of
9 health care providers and patients among the States,
10 it is necessary to cover health plans operating in 1
11 State as well as health plans operating among the
12 several States.

13 **SEC. 3. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
14 **COME SECURITY ACT OF 1974.**

15 (a) IN GENERAL.—Subpart B of part 7 of subtitle
16 B of title I of the Employee Retirement Income Security
17 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
18 ing at the end the following:

19 **“SEC. 714. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
20 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
21 **AND LYMPH NODE DISSECTIONS FOR THE**
22 **TREATMENT OF BREAST CANCER AND COV-**
23 **ERAGE FOR SECONDARY CONSULTATIONS.**

24 **“(a) INPATIENT CARE.—**

25 **“(1) IN GENERAL.—A group health plan, and a**
26 **health insurance issuer providing health insurance**

1 coverage in connection with a group health plan,
2 that provides medical and surgical benefits shall en-
3 sure that inpatient (and in the case of a
4 lumpectomy, outpatient) coverage and radiation
5 therapy is provided for breast cancer treatment.
6 Such plan or coverage may not—

7 “(A) except as provided for in paragraph
8 (2)—

9 “(i) restrict benefits for any hospital
10 length of stay in connection with a mastec-
11 tomy or breast conserving surgery (such as
12 a lumpectomy) for the treatment of breast
13 cancer to less than 48 hours; or

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

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

23 “(2) EXCEPTION.—Nothing in this section shall
24 be construed as requiring the provision of inpatient
25 coverage if the attending physician and patient de-

1 termine that either a shorter period of hospital stay,
2 or outpatient treatment, is medically appropriate.

3 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

4 In implementing the requirements of this section, a group
5 health plan, and a health insurance issuer providing health
6 insurance coverage in connection with a group health plan,
7 may not modify the terms and conditions of coverage
8 based on the determination by a participant or beneficiary
9 to request less than the minimum coverage required under
10 subsection (a).

11 “(c) NOTICE.—A group health plan, and a health in-
12 surance issuer providing health insurance coverage in con-
13 nection with a group health plan shall provide notice to
14 each participant and beneficiary under such plan regard-
15 ing the coverage required by this section in accordance
16 with regulations promulgated by the Secretary. Such no-
17 tice shall be in writing and prominently positioned in any
18 literature or correspondence made available or distributed
19 by the plan or issuer and shall be transmitted—

20 “(1) in the next mailing made by the plan or
21 issuer to the participant or beneficiary; or

22 “(2) as part of any yearly informational packet
23 sent to the participant or beneficiary;

24 whichever is earlier.

25 “(d) SECONDARY CONSULTATIONS.—

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer providing health insurance
3 coverage in connection with a group health plan,
4 that provides coverage with respect to medical and
5 surgical services provided in relation to the diagnosis
6 and treatment of cancer shall ensure that full cov-
7 erage is provided for secondary consultations by spe-
8 cialists in the appropriate medical fields (including
9 pathology, radiology, and oncology) to confirm or re-
10 fute such diagnosis. Such plan or issuer shall ensure
11 that full coverage is provided for such secondary
12 consultation whether such consultation is based on a
13 positive or negative initial diagnosis. In any case in
14 which the attending physician certifies in writing
15 that services necessary for such a secondary con-
16 sultation are not sufficiently available from special-
17 ists operating under the plan with respect to whose
18 services coverage is otherwise provided under such
19 plan or by such issuer, such plan or issuer shall en-
20 sure that coverage is provided with respect to the
21 services necessary for the secondary consultation
22 with any other specialist selected by the attending
23 physician for such purpose at no additional cost to
24 the individual beyond that which the individual

1 would have paid if the specialist was participating in
2 the network of the plan.

3 “(2) EXCEPTION.—Nothing in paragraph (1)
4 shall be construed as requiring the provision of sec-
5 ondary consultations where the patient determines
6 not to seek such a consultation.

7 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
8 A group health plan, and a health insurance issuer pro-
9 viding health insurance coverage in connection with a
10 group health plan, may not—

11 “(1) penalize or otherwise reduce or limit the
12 reimbursement of a provider or specialist because
13 the provider or specialist provided care to a partici-
14 pant or beneficiary in accordance with this section;

15 “(2) provide financial or other incentives to a
16 physician or specialist to induce the physician or
17 specialist to keep the length of inpatient stays of pa-
18 tients following a mastectomy, lumpectomy, or a
19 lymph node dissection for the treatment of breast
20 cancer below certain limits or to limit referrals for
21 secondary consultations;

22 “(3) provide financial or other incentives to a
23 physician or specialist to induce the physician or
24 specialist to refrain from referring a participant or
25 beneficiary for a secondary consultation that would

1 otherwise be covered by the plan or coverage in-
2 volved under subsection (d); or

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

7 (b) CLERICAL AMENDMENT.—The table of contents
8 in section 1 of the Employee Retirement Income Security
9 Act of 1974 is amended by inserting after the item relat-
10 ing to section 713 the following:

“Sec. 714. Required coverage for minimum hospital stay for mastectomies,
lumpectomies, and lymph node dissections for the treatment of
breast cancer and coverage for secondary consultations.”.

11 (c) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply with respect to plan years be-
14 ginning on or after the date that is 90 days after
15 the date of enactment of this Act.

16 (2) SPECIAL RULE FOR COLLECTIVE BAR-
17 GAINING AGREEMENTS.—In the case of a group
18 health plan maintained pursuant to 1 or more collec-
19 tive bargaining agreements between employee rep-
20 resentatives and 1 or more employers ratified before
21 the date of enactment of this Act, the amendments
22 made by this section shall not apply to plan years
23 beginning before the date on which the last collective
24 bargaining agreements relating to the plan termi-

1 nates (determined without regard to any extension
 2 thereof agreed to after the date of enactment of this
 3 Act). For purposes of this paragraph, any plan
 4 amendment made pursuant to a collective bargaining
 5 agreement relating to the plan which amends the
 6 plan solely to conform to any requirement added by
 7 this section shall not be treated as a termination of
 8 such collective bargaining agreement.

9 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

10 **ACT RELATING TO THE GROUP MARKET.**

11 (a) IN GENERAL.—Subpart 2 of part A of title
 12 XXVII of the Public Health Service Act (42 U.S.C.
 13 300gg–4 et seq.) is amended by adding at the end the
 14 following:

15 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**

16 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**

17 **AND LYMPH NODE DISSECTIONS FOR THE**

18 **TREATMENT OF BREAST CANCER AND COV-**

19 **ERAGE FOR SECONDARY CONSULTATIONS.**

20 **“(a) INPATIENT CARE.—**

21 **“(1) IN GENERAL.—**A group health plan, and a

22 health insurance issuer providing health insurance

23 coverage in connection with a group health plan,

24 that provides medical and surgical benefits shall en-

25 sure that inpatient (and in the case of a

1 lumpectomy, outpatient) coverage and radiation
2 therapy is provided for breast cancer treatment.

3 Such plan or coverage may not—

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

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

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

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

20 “(2) EXCEPTION.—Nothing in this section shall
21 be construed as requiring the provision of inpatient
22 coverage if the attending physician and patient de-
23 termine that either a shorter period of hospital stay,
24 or outpatient treatment, is medically appropriate.

1 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

2 In implementing the requirements of this section, a group
3 health plan, and a health insurance issuer providing health
4 insurance coverage in connection with a group health plan,
5 may not modify the terms and conditions of coverage
6 based on the determination by a participant or beneficiary
7 to request less than the minimum coverage required under
8 subsection (a).

9 “(c) NOTICE.—A group health plan, and a health in-
10 surance issuer providing health insurance coverage in con-
11 nection with a group health plan shall provide notice to
12 each participant and beneficiary under such plan regard-
13 ing the coverage required by this section in accordance
14 with regulations promulgated by the Secretary. Such no-
15 tice shall be in writing and prominently positioned in any
16 literature or correspondence made available or distributed
17 by the plan or issuer and shall be transmitted—

18 “(1) in the next mailing made by the plan or
19 issuer to the participant or beneficiary; or

20 “(2) as part of any yearly informational packet
21 sent to the participant or beneficiary;

22 whichever is earlier.

23 “(d) SECONDARY CONSULTATIONS.—

24 “(1) IN GENERAL.—A group health plan, and a
25 health insurance issuer providing health insurance

1 coverage in connection with a group health plan that
2 provides coverage with respect to medical and sur-
3 gical services provided in relation to the diagnosis
4 and treatment of cancer shall ensure that full cov-
5 erage is provided for secondary consultations by spe-
6 cialists in the appropriate medical fields (including
7 pathology, radiology, and oncology) to confirm or re-
8 fute such diagnosis. Such plan or issuer shall ensure
9 that full coverage is provided for such secondary
10 consultation whether such consultation is based on a
11 positive or negative initial diagnosis. In any case in
12 which the attending physician certifies in writing
13 that services necessary for such a secondary con-
14 sultation are not sufficiently available from special-
15 ists operating under the plan with respect to whose
16 services coverage is otherwise provided under such
17 plan or by such issuer, such plan or issuer shall en-
18 sure that coverage is provided with respect to the
19 services necessary for the secondary consultation
20 with any other specialist selected by the attending
21 physician for such purpose at no additional cost to
22 the individual beyond that which the individual
23 would have paid if the specialist was participating in
24 the network of the plan.

1 “(2) EXCEPTION.—Nothing in paragraph (1)
2 shall be construed as requiring the provision of sec-
3 ondary consultations where the patient determines
4 not to seek such a consultation.

5 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
6 A group health plan, and a health insurance issuer pro-
7 viding health insurance coverage in connection with a
8 group health plan, may not—

9 “(1) penalize or otherwise reduce or limit the
10 reimbursement of a provider or specialist because
11 the provider or specialist provided care to a partici-
12 pant or beneficiary in accordance with this section;

13 “(2) provide financial or other incentives to a
14 physician or specialist to induce the physician or
15 specialist to keep the length of inpatient stays of pa-
16 tients following a mastectomy, lumpectomy, or a
17 lymph node dissection for the treatment of breast
18 cancer below certain limits or to limit referrals for
19 secondary consultations;

20 “(3) provide financial or other incentives to a
21 physician or specialist to induce the physician or
22 specialist to refrain from referring a participant or
23 beneficiary for a secondary consultation that would
24 otherwise be covered by the plan or coverage in-
25 volved under subsection (d); or

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

5 (b) EFFECTIVE DATES.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall apply to group health plans for
8 plan years beginning on or after 90 days after the
9 date of enactment of this Act.

10 (2) SPECIAL RULE FOR COLLECTIVE BAR-
11 GAINING AGREEMENTS.—In the case of a group
12 health plan maintained pursuant to 1 or more collec-
13 tive bargaining agreements between employee rep-
14 resentatives and 1 or more employers ratified before
15 the date of enactment of this Act, the amendments
16 made by this section shall not apply to plan years
17 beginning before the date on which the last collective
18 bargaining agreements relating to the plan termi-
19 nates (determined without regard to any extension
20 thereof agreed to after the date of enactment of this
21 Act). For purposes of this paragraph, any plan
22 amendment made pursuant to a collective bargaining
23 agreement relating to the plan which amends the
24 plan solely to conform to any requirement added by

1 this section shall not be treated as a termination of
2 such collective bargaining agreement.

3 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
4 **RELATING TO THE INDIVIDUAL MARKET.**

5 (a) IN GENERAL.—The first subpart 3 of part B of
6 title XXVII of the Public Health Service Act (42 U.S.C.
7 300gg–11 et seq.) is amended—

8 (1) by adding after section 2752 the following:

9 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
10 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
11 **AND LYMPH NODE DISSECTIONS FOR THE**
12 **TREATMENT OF BREAST CANCER AND SEC-**
13 **ONDARY CONSULTATIONS.**

14 “The provisions of section 2707 shall apply to health
15 insurance coverage offered by a health insurance issuer
16 in the individual market in the same manner as they apply
17 to health insurance coverage offered by a health insurance
18 issuer in connection with a group health plan in the small
19 or large group market.”; and

20 (2) by redesignating such subpart 3 as subpart
21 2.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply with respect to health insurance
24 coverage offered, sold, issued, renewed, in effect, or oper-

1 ated in the individual market on or after the date of enact-
2 ment of this Act.

3 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
4 **OF 1986.**

5 (a) IN GENERAL.—Subchapter B of chapter 100 of
6 the Internal Revenue Code of 1986 is amended—

7 (1) in the table of sections, by inserting after
8 the item relating to section 9812 the following:

“Sec. 9813. Required coverage for minimum hospital stay for mastectomies,
lumpectomies, and lymph node dissections for the treatment of
breast cancer and coverage for secondary consultations.”;

9 and

10 (2) by inserting after section 9812 the fol-
11 lowing:

12 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
13 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**
14 **AND LYMPH NODE DISSECTIONS FOR THE**
15 **TREATMENT OF BREAST CANCER AND COV-**
16 **ERAGE FOR SECONDARY CONSULTATIONS.**

17 “(a) INPATIENT CARE.—

18 “(1) IN GENERAL.—A group health plan that
19 provides medical and surgical benefits shall ensure
20 that inpatient (and in the case of a lumpectomy,
21 outpatient) coverage and radiation therapy is pro-
22 vided for breast cancer treatment. Such plan may
23 not—

1 “(A) except as provided for in paragraph
2 (2)—

3 “(i) restrict benefits for any hospital
4 length of stay in connection with a mastec-
5 tomy or breast conserving surgery (such as
6 a lumpectomy) for the treatment of breast
7 cancer to less than 48 hours; or

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

12 “(B) require that a provider obtain author-
13 ization from the plan for prescribing any length
14 of stay required under subparagraph (A) (with-
15 out regard to paragraph (2)).

16 “(2) EXCEPTION.—Nothing in this section shall
17 be construed as requiring the provision of inpatient
18 coverage if the attending physician and patient de-
19 termine that either a shorter period of hospital stay,
20 or outpatient treatment, is medically appropriate.

21 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
22 In implementing the requirements of this section, a group
23 health plan may not modify the terms and conditions of
24 coverage based on the determination by a participant or

1 beneficiary to request less than the minimum coverage re-
2 quired under subsection (a).

3 “(c) NOTICE.—A group health plan shall provide no-
4 tice to each participant and beneficiary under such plan
5 regarding the coverage required by this section in accord-
6 ance with regulations promulgated by the Secretary. Such
7 notice shall be in writing and prominently positioned in
8 any literature or correspondence made available or distrib-
9 uted by the plan and shall be transmitted—

10 “(1) in the next mailing made by the plan to
11 the participant or beneficiary; or

12 “(2) as part of any yearly informational packet
13 sent to the participant or beneficiary;
14 whichever is earlier.

15 “(d) SECONDARY CONSULTATIONS.—

16 “(1) IN GENERAL.—A group health plan that
17 provides coverage with respect to medical and sur-
18 gical services provided in relation to the diagnosis
19 and treatment of cancer shall ensure that full cov-
20 erage is provided for secondary consultations by spe-
21 cialists in the appropriate medical fields (including
22 pathology, radiology, and oncology) to confirm or re-
23 fute such diagnosis. Such plan or issuer shall ensure
24 that full coverage is provided for such secondary
25 consultation whether such consultation is based on a

1 positive or negative initial diagnosis. In any case in
2 which the attending physician certifies in writing
3 that services necessary for such a secondary con-
4 sultation are not sufficiently available from special-
5 ists operating under the plan with respect to whose
6 services coverage is otherwise provided under such
7 plan or by such issuer, such plan or issuer shall en-
8 sure that coverage is provided with respect to the
9 services necessary for the secondary consultation
10 with any other specialist selected by the attending
11 physician for such purpose at no additional cost to
12 the individual beyond that which the individual
13 would have paid if the specialist was participating in
14 the network of the plan.

15 “(2) EXCEPTION.—Nothing in paragraph (1)
16 shall be construed as requiring the provision of sec-
17 ondary consultations where the patient determines
18 not to seek such a consultation.

19 “(e) PROHIBITION ON PENALTIES.—A group health
20 plan may not—

21 “(1) penalize or otherwise reduce or limit the
22 reimbursement of a provider or specialist because
23 the provider or specialist provided care to a partici-
24 pant or beneficiary in accordance with this section;

1 ginning on or after the date of enactment of this
2 Act.

3 (2) SPECIAL RULE FOR COLLECTIVE BAR-
4 GAINING AGREEMENTS.—In the case of a group
5 health plan maintained pursuant to 1 or more collec-
6 tive bargaining agreements between employee rep-
7 resentatives and 1 or more employers ratified before
8 the date of enactment of this Act, the amendments
9 made by this section shall not apply to plan years
10 beginning before the date on which the last collective
11 bargaining agreements relating to the plan termi-
12 nates (determined without regard to any extension
13 thereof agreed to after the date of enactment of this
14 Act). For purposes of this paragraph, any plan
15 amendment made pursuant to a collective bargaining
16 agreement relating to the plan which amends the
17 plan solely to conform to any requirement added by
18 this section shall not be treated as a termination of
19 such collective bargaining agreement.

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