

105TH CONGRESS
1ST SESSION

H. R. 2693

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 qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 1997

Mrs. MALONEY of New York (for herself, Mrs. MORELLA, Mr. PASCRELL, Mr. COOK, Mrs. TAUSCHER, Mrs. KELLY, Mr. NEAL of Massachusetts, Ms. DELAURO, Mr. NADLER, Mr. LANTOS, Ms. SLAUGHTER, Ms. KILPATRICK, Mr. FROST, Mr. SANDERS, Mrs. THURMAN, Mr. FALCOMAVAEGA, Mr. GUTIERREZ, Mr. LIPINSKI, Mr. MCGOVERN, Mr. EVANS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. ACKERMAN, Mr. GREEN, Mr. DELLUMS, Mr. RUSH, Mr. FILNER, Mr. SHERMAN, Ms. HOOLEY of Oregon, Mr. FAZIO of California, Mr. WYNN, Mr. BROWN of California, Mr. CONDIT, Mr. CLEMENT, Mr. KENNEDY of Rhode Island, Mr. KLECZKA, Mr. HINCHEY, Mr. FORD, Ms. ESHOO, and Ms. WOOLSEY) 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 qualified individuals for bone mass measurement (bone density testing)

to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care.

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 “Osteoporosis Early Detection and Prevention Act of
6 1997”.

7 (b) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) NATURE OF OSTEOPOROSIS.—

10 (A) Osteoporosis is a disease characterized
11 by low bone mass and structural deterioration
12 of bone tissue leading to bone fragility and in-
13 creased susceptibility to fractures of the hip,
14 spine, and wrist.

15 (B) Osteoporosis has no symptoms and
16 typically remains undiagnosed until a fracture
17 occurs.

18 (C) Once a fracture occurs, the condition
19 has usually advanced to the stage where the
20 likelihood is high that another fracture will
21 occur.

22 (D) There is no cure for osteoporosis, but
23 drug therapy has been shown to reduce new hip

1 and spine fractures by 50 percent and other
2 treatments, such as nutrition therapy, have also
3 proven effective.

4 (2) INCIDENCE OF OSTEOPOROSIS.—

5 Osteoporosis is a common condition:

6 (A) Of the 28 million Americans who have
7 (or are at risk for) osteoporosis, 80 percent are
8 women.

9 (B) Annually there are 1.5 million bone
10 fractures attributable to osteoporosis.

11 (C) Half of all women, and one-eighth of
12 all men, age 50 or older will have a bone frac-
13 ture due to osteoporosis.

14 (3) IMPACT OF OSTEOPOROSIS.—The cost of
15 treating osteoporosis is significant:

16 (A) The annual cost of osteoporosis in the
17 United States is \$13.8 billion.

18 (B) The average cost in the United States
19 of repairing a hip fracture due to osteoporosis
20 is \$32,000.

21 (C) Fractures due to osteoporosis fre-
22 quently result in disability and institutionaliza-
23 tion of individuals.

24 (D) Because osteoporosis is a progressive
25 condition and affects primarily aging individ-

1 uals, reductions in the incidence or severity of
2 osteoporosis, particularly for post menopausal
3 women before they become eligible for Medicare,
4 has a significant potential of reducing
5 osteoporosis-related costs under the Medicare
6 program.

7 (4) USE OF BONE MASS MEASUREMENT.—

8 (A) Bone mass measurement is a non-
9 invasive, painless, and reliable way to diagnose
10 osteoporosis before costly fractures occur.

11 (B) Low bone mass is as predictive of fu-
12 ture fractures as is high cholesterol or high
13 blood pressure of heart disease or stroke.

14 (C) Bone mass measurement is the only
15 reliable method of detecting osteoporosis at an
16 early stage.

17 (D) Under section 4106 of the Balanced
18 Budget Act of 1997, Medicare will provide cov-
19 erage, effective July 1, 1998, for bone mass
20 measurement for qualified individuals who are
21 at risk of developing osteoporosis.

22 **SEC. 2. REQUIRING COVERAGE OF BONE MASS MEASURE-**
23 **MENT UNDER HEALTH PLANS.**

24 (a) GROUP HEALTH PLANS.—

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

6 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR BONE**
7 **MASS MEASUREMENT.**

8 “(a) REQUIREMENTS FOR COVERAGE OF BONE MASS
9 MEASUREMENT.—A group health plan, and a health in-
10 surance issuer offering group health insurance coverage,
11 shall include (consistent with this section) coverage for
12 bone mass measurement for beneficiaries and participants
13 who are qualified individuals.

14 “(b) DEFINITIONS RELATING TO COVERAGE.—In
15 this section:

16 “(1) BONE MASS MEASUREMENT.—The term
17 ‘bone mass measurement’ means a radiologic or
18 radioisotopic procedure or other procedure approved
19 by the Food and Drug Administration performed on
20 an individual for the purpose of identifying bone
21 mass or detecting bone loss or determining bone
22 quality, and includes a physician’s interpretation of
23 the results of the procedure. Nothing in this para-
24 graph shall be construed as requiring a bone mass
25 measurement to be conducted in a particular type of

1 facility or to prevent such a measurement from
2 being conducted through the use of mobile facilities
3 that are otherwise qualified.

4 “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-
5 fied individual’ means an individual who—

6 “(A) is an estrogen-deficient woman at
7 clinical risk for osteoporosis;

8 “(B) has vertebral abnormalities;

9 “(C) is receiving chemotherapy or long-
10 term glucocorticoid (steroid) therapy;

11 “(D) has primary hyperparathyroidism,
12 hyperthyroidism, or excess thyroid replacement;
13 or

14 “(E) is being monitored to assess the re-
15 sponse to or efficacy of approved osteoporosis
16 drug therapy.

17 “(c) LIMITATION ON FREQUENCY REQUIRED.—Tak-
18 ing into account the standards established under section
19 1861(rr)(3) of the Social Security Act, the Secretary shall
20 establish standards regarding the frequency with which a
21 qualified individual shall be eligible to be provided benefits
22 for bone mass measurement under this section. The Sec-
23 retary may vary such standards based on the clinical and
24 risk-related characteristics of qualified individuals.

25 “(d) RESTRICTIONS ON COST-SHARING.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 nothing in this section shall be construed as prevent-
3 ing a group health plan or issuer from imposing
4 deductibles, coinsurance, or other cost-sharing in re-
5 lation to bone mass measurement under the plan (or
6 health insurance coverage offered in connection with
7 a plan).

8 “(2) LIMITATION.—Deductibles, coinsurance,
9 and other cost-sharing or other limitations for bone
10 mass measurement may not be imposed under para-
11 graph (1) to the extent they exceed the deductibles,
12 coinsurance, and limitations that are applied to simi-
13 lar services under the group health plan or health
14 insurance coverage.

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

19 “(1) deny to an individual eligibility, or contin-
20 ued eligibility, to enroll or to renew coverage under
21 the terms of the plan, solely for the purpose of
22 avoiding the requirements of this section;

23 “(2) provide incentives (monetary or otherwise)
24 to individuals to encourage such individuals not to
25 be provided bone mass measurements to which they

1 are entitled under this section or to providers to in-
2 duce such providers not to provide such measure-
3 ments to qualified individuals;

4 “(3) prohibit a provider from discussing with a
5 patient osteoporosis preventive techniques or medical
6 treatment options relating to this section; or

7 “(4) penalize or otherwise reduce or limit the
8 reimbursement of a provider because such provider
9 provided bone mass measurements to a qualified in-
10 dividual in accordance with this section.

11 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to require an individual who is a
13 participant or beneficiary to undergo bone mass measure-
14 ment.

15 “(g) NOTICE.—A group health plan under this part
16 shall comply with the notice requirement under section
17 713(g) of the Employee Retirement Income Security Act
18 of 1974 with respect to the requirements of this section
19 as if such section applied to such plan.

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

1 “(i) PREEMPTION.—

2 “(1) IN GENERAL.—The provisions of this sec-
3 tion do not preempt State law relating to health in-
4 surance coverage to the extent such State law pro-
5 vides greater benefits with respect to osteoporosis
6 detection or prevention.

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

10 (B) Section 2723(c) of such Act (42 U.S.C.
11 300gg-23(c)), as amended by section 604(b)(2) of
12 Public Law 104-204, is amended by striking “sec-
13 tion 2704” and inserting “sections 2704 and 2706”.

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

19 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR BONE**
20 **MASS MEASUREMENT.**

21 “(a) REQUIREMENTS FOR COVERAGE OF BONE MASS
22 MEASUREMENT.—A group health plan, and a health in-
23 surance issuer offering group health insurance coverage,
24 shall include (consistent with this section) coverage for

1 bone mass measurement for beneficiaries and participants
2 who are qualified individuals.

3 “(b) DEFINITIONS RELATING TO COVERAGE.—In
4 this section:

5 “(1) BONE MASS MEASUREMENT.—The term
6 ‘bone mass measurement’ means a radiologic or
7 radioisotopic procedure or other procedure approved
8 by the Food and Drug Administration performed on
9 an individual for the purpose of identifying bone
10 mass or detecting bone loss or determining bone
11 quality, and includes a physician’s interpretation of
12 the results of the procedure. Nothing in this para-
13 graph shall be construed as requiring a bone mass
14 measurement to be conducted in a particular type of
15 facility or to prevent such a measurement from
16 being conducted through the use of mobile facilities
17 that are otherwise qualified.

18 “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-
19 fied individual’ means an individual who—

20 “(A) is an estrogen-deficient woman at
21 clinical risk for osteoporosis;

22 “(B) has vertebral abnormalities;

23 “(C) is receiving chemotherapy or long-
24 term glucocorticoid (steroid) therapy;

1 “(D) has primary hyperparathyroidism,
2 hyperthyroidism, or excess thyroid replacement;
3 or

4 “(E) is being monitored to assess the re-
5 sponse to or efficacy of approved osteoporosis
6 drug therapy.

7 “(e) LIMITATION ON FREQUENCY REQUIRED.—
8 The standards established under section 2706(e) of
9 the Public Health Service Act shall apply to benefits
10 provided under this section in the same manner as
11 they apply to benefits provided under section 2706
12 of such Act.

13 “(d) RESTRICTIONS ON COST-SHARING.—

14 “(1) IN GENERAL.—Subject to paragraph (2),
15 nothing in this section shall be construed as prevent-
16 ing a group health plan or issuer from imposing
17 deductibles, coinsurance, or other cost-sharing in re-
18 lation to bone mass measurement under the plan (or
19 health insurance coverage offered in connection with
20 a plan).

21 “(2) LIMITATION.—Deductibles, coinsurance,
22 and other cost-sharing or other limitations for bone
23 mass measurement may not be imposed under para-
24 graph (1) to the extent they exceed the deductibles,
25 coinsurance, and limitations that are applied to simi-

1 lar services under the group health plan or health
2 insurance coverage.

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

7 “(1) deny to an individual eligibility, or contin-
8 ued eligibility, to enroll or to renew coverage under
9 the terms of the plan, solely for the purpose of
10 avoiding the requirements of this section;

11 “(2) provide incentives (monetary or otherwise)
12 to individuals to encourage such individuals not to
13 be provided bone mass measurements to which they
14 are entitled under this section or to providers to in-
15 duce such providers not to provide such measure-
16 ments to qualified individuals;

17 “(3) prohibit a provider from discussing with a
18 patient osteoporosis preventive techniques or medical
19 treatment options relating to this section; or

20 “(4) penalize or otherwise reduce or limit the
21 reimbursement of a provider because such provider
22 provided bone mass measurements to a qualified in-
23 dividual in accordance with this section.

24 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to require an individual who is a

1 participant or beneficiary to undergo bone mass measure-
2 ment.

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

13 “(h) PREEMPTION.—

14 “(1) IN GENERAL.—The provisions of this sec-
15 tion do not preempt State law relating to health in-
16 surance coverage to the extent such State law pro-
17 vides greater benefits with respect to osteoporosis
18 detection or prevention.

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

22 (B) Section 731(e) of such Act (29 U.S.C.
23 1191(e)), as amended by section 603(b)(1) of Public
24 Law 104–204, is amended by striking “section 711”
25 and inserting “sections 711 and 713”.

1 (C) Section 732(a) of such Act (29 U.S.C.
2 1191a(a)), as amended by section 603(b)(2) of Pub-
3 lic Law 104–204, is amended by striking “section
4 711” and inserting “sections 711 and 713”.

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

“Sec. 713. Standards relating to benefits for bone mass measurement.

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

12 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR BONE**
13 **MASS MEASUREMENT.**

14 “(a) IN GENERAL.—The provisions of section 2706
15 (other than subsection (g)) shall apply to health insurance
16 coverage offered by a health insurance issuer in the indi-
17 vidual market in the same manner as it applies to health
18 insurance coverage offered by a health insurance issuer
19 in connection with a group health plan in the small or
20 large group market.

21 “(b) NOTICE.—A health insurance issuer under this
22 part shall comply with the notice requirement under sec-
23 tion 713(g) of the Employee Retirement Income Security
24 Act of 1974 with respect to the requirements referred to

1 in subsection (a) as if such section applied to such issuer
2 and such issuer were a group health plan.

3 “(c) PREEMPTION.—

4 “(1) IN GENERAL.—The provisions of this sec-
5 tion do not preempt State law relating to health in-
6 surance coverage to the extent such State law pro-
7 vides greater benefits with respect to osteoporosis
8 detection or prevention.

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

12 (2) Section 2762(b)(2) of such Act (42 U.S.C.
13 300gg-62(b)(2)), as added by section 605(b)(3)(B) of
14 Public Law 104-204, is amended by striking “section
15 2751” and inserting “sections 2751 and 2752”.

16 (c) EFFECTIVE DATES.—(1) The amendments made
17 by subsection (a) shall apply with respect to group health
18 plans for plan years beginning on or after January 1,
19 1999.

20 (2) The amendments made by subsection (b) shall
21 apply with respect to health insurance coverage offered,
22 sold, issued, renewed, in effect, or operated in the individ-
23 ual market on or after such date.

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