

105TH CONGRESS  
1ST SESSION

# S. 143

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 SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. DASCHLE (for himself, Mr. HOLLINGS, Mr. KENNEDY, Ms. MIKULSKI, Mr. LEVIN, Ms. MOSELEY-BRAUN, Mrs. BOXER, Mrs. FEINSTEIN, Mr. INOUE, Mrs. MURRAY, Mr. JOHNSON, Mr. BRYAN, Mr. SARBANES, Mr. FORD, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Breast Cancer Patient  
3 Protection Act of 1997”.

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

6 (a) GROUP HEALTH PLANS.—

7 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
8 MENTS.—

9 (A) IN GENERAL.—Subpart 2 of part A of  
10 title XXVII of the Public Health Service Act,  
11 as amended by section 703(a) of Public Law  
12 104–204, is amended by adding at the end the  
13 following new section:

14 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR CER-**  
15 **TAIN BREAST CANCER TREATMENT.**

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

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

22 “(A) except as provided in paragraph  
23 (2)—

1                   “(i) restrict benefits for any hospital  
2                   length of stay in connection with a mastec-  
3                   tomy for the treatment of breast cancer to  
4                   less than 48 hours, or

5                   “(ii) restrict benefits for any hospital  
6                   length of stay in connection with a lymph  
7                   node dissection for the treatment of breast  
8                   cancer to less than 24 hours, or

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

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

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

24                         “(1) deny to a woman eligibility, or continued  
25                         eligibility, to enroll or to renew coverage under the

1 terms of the plan, solely for the purpose of avoiding  
2 the requirements of this section;

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

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

11 “(4) provide incentives (monetary or otherwise)  
12 to an attending provider to induce such provider to  
13 provide care to an individual participant or bene-  
14 ficiary in a manner inconsistent with this section; or

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

20 “(c) RULES OF CONSTRUCTION.—

21 “(1) Nothing in this section shall be construed  
22 to require a woman who is a participant or bene-  
23 ficiary—

24 “(A) to undergo a mastectomy or lymph  
25 node dissection in a hospital; or

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

4           “(2) This section shall not apply with respect to  
5           any group health plan, or any group health insur-  
6           ance coverage offered by a health insurance issuer,  
7           which does not provide benefits for hospital lengths  
8           of stay in connection with a mastectomy or lymph  
9           node dissection for the treatment of breast cancer.

10          “(3) Nothing in this section shall be construed  
11          as preventing a group health plan or issuer from im-  
12          posing deductibles, coinsurance, or other cost-shar-  
13          ing in relation to benefits for hospital lengths of stay  
14          in connection with a mastectomy or lymph node dis-  
15          section for the treatment of breast cancer under the  
16          plan (or under health insurance coverage offered in  
17          connection with a group health plan), except that  
18          such coinsurance or other cost-sharing for any por-  
19          tion of a period within a hospital length of stay re-  
20          quired under subsection (a) may not be greater than  
21          such coinsurance or cost-sharing for any preceding  
22          portion of such stay.

23          “(d) NOTICE.—A group health plan under this part  
24          shall comply with the notice requirement under section  
25          713(d) of the Employee Retirement Income Security Act

1 of 1974 with respect to the requirements of this section  
2 as if such section applied to such plan.

3 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—

4 Nothing in this section shall be construed to prevent a  
5 group health plan or a health insurance issuer offering  
6 group health insurance coverage from negotiating the level  
7 and type of reimbursement with a provider for care pro-  
8 vided in accordance with this section.

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

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

17 “(A) Such State law requires such cov-  
18 erage to provide for at least a 48-hour hospital  
19 length of stay following a mastectomy per-  
20 formed for treatment of breast cancer and at  
21 least a 24-hour hospital length of stay following  
22 a lymph node dissection for treatment of breast  
23 cancer.

24 “(B) Such State law requires, in connec-  
25 tion with such coverage for surgical treatment

1 of breast cancer, that the hospital length of  
 2 stay for such care is left to the decision of (or  
 3 required to be made by) the attending provider  
 4 in consultation with the woman involved.

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

8 (B) CONFORMING AMENDMENT.—Section  
 9 2723(c) of such Act (42 U.S.C. 300gg–23(c)),  
 10 as amended by section 604(b)(2) of Public Law  
 11 104–204, is amended by striking “section  
 12 2704” and inserting “sections 2704 and 2706”.

13 (2) ERISA AMENDMENTS.—

14 (A) IN GENERAL.—Subpart B of part 7 of  
 15 subtitle B of title I of the Employee Retirement  
 16 Income Security Act of 1974, as amended by  
 17 section 702(a) of Public Law 104–204, is  
 18 amended by adding at the end the following  
 19 new section:

20 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR CER-**  
 21 **TAIN BREAST CANCER TREATMENT.**

22 “(a) REQUIREMENTS FOR MINIMUM HOSPITAL STAY  
 23 FOLLOWING MASTECTOMY OR LYMPH NODE DISSEC-  
 24 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 bene-  
4 ficiary—

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

1 such coinsurance or other cost-sharing for any por-  
2 tion of a period within a hospital length of stay re-  
3 quired under subsection (a) may not be greater than  
4 such coinsurance or cost-sharing for any preceding  
5 portion of such stay.

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

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

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

1           “(1) IN GENERAL.—The requirements of this  
2 section shall not apply with respect to health insur-  
3 ance coverage if there is a State law (as defined in  
4 section 731(d)(1)) for a State that regulates such  
5 coverage that is described in any of the following  
6 subparagraphs:

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

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

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

23           (B) CONFORMING AMENDMENTS.—

24           (i) Section 731(c) of such Act (29  
25 U.S.C. 1191(c)), as amended by section

1           603(b)(1) of Public Law 104–204, is  
 2           amended by striking “section 711” and in-  
 3           serting “sections 711 and 713”.

4           (ii) Section 732(a) of such Act (29  
 5           U.S.C. 1191a(a)), as amended by section  
 6           603(b)(2) of Public Law 104–204, is  
 7           amended by striking “section 711” and in-  
 8           serting “sections 711 and 713”.

9           (iii) The table of contents in section 1  
 10          of such Act is amended by inserting after  
 11          the item relating to section 712 the follow-  
 12          ing new item:

“Sec. 713. Standards relating to benefits for certain breast cancer treatment.”.

13          (b) INDIVIDUAL HEALTH INSURANCE.—

14           (1) IN GENERAL.—Part B of title XXVII of the  
 15          Public Health Service Act, as amended by section  
 16          605(a) of Public Law 104–204, is amended by in-  
 17          serting after section 2751 the following new section:

18          **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CER-**  
 19          **TAIN BREAST CANCER TREATMENT.**

20           “(a) IN GENERAL.—The provisions of section 2706  
 21          (other than subsection (d)) shall apply to health insurance  
 22          coverage offered by a health insurance issuer in the indi-  
 23          vidual market in the same manner as it applies to health  
 24          insurance coverage offered by a health insurance issuer

1 in connection with a group health plan in the small or  
2 large group market.

3 “(b) NOTICE.—A health insurance issuer under this  
4 part shall comply with the notice requirement under sec-  
5 tion 713(d) of the Employee Retirement Income Security  
6 Act of 1974 with respect to the requirements referred to  
7 in subsection (a) as if such section applied to such issuer  
8 and such issuer were a group health plan.

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

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

17 “(A) Such State law requires such cov-  
18 erage to provide for at least a 48-hour hospital  
19 length of stay following a mastectomy per-  
20 formed for treatment of breast cancer and at  
21 least a 24-hour hospital length of stay following  
22 a lymph node dissection for treatment of breast  
23 cancer.

24 “(B) Such State law requires, in connec-  
25 tion with such coverage for surgical treatment

1           of breast cancer, that the hospital length of  
2           stay for such care is left to the decision of (or  
3           required to be made by) the attending provider  
4           in consultation with the woman involved.

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

8           (2) CONFORMING AMENDMENT.—Section  
9           2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2)),  
10          as added by section 605(b)(3)(B) of Public Law  
11          104–204, is amended by striking “section 2751”  
12          and inserting “sections 2751 and 2752”.

13          (c) EFFECTIVE DATES.—

14           (1) GROUP MARKET.—The amendments made  
15           by subsection (a) shall apply with respect to group  
16           health plans for plan years beginning on or after  
17           January 1, 1998.

18           (2) INDIVIDUAL MARKET.—The amendment  
19           made by subsection (b) shall apply with respect to  
20           health insurance coverage offered, sold, issued, re-  
21           newed, in effect, or operated in the individual mar-  
22           ket on or after such date.

○