

105TH CONGRESS  
1ST SESSION

# S. 609

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 reconstructive breast surgery if they provide coverage for mastectomies.

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## IN THE SENATE OF THE UNITED STATES

APRIL 17, 1997

Mr. KENNEDY (for himself, Ms. MIKULSKI, Mr. DASCHLE, Mr. DODD, Mr. HARKIN, Mr. WELLSTONE, Mrs. MURRAY, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mrs. FEINSTEIN, Mr. FORD, and Mr. INOUE) 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 reconstructive breast surgery if they provide coverage for mastectomies.

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 “Reconstructive Breast  
5 Surgery Benefits Act of 1997”.

1 **SEC. 2. COVERAGE OF RECONSTRUCTIVE BREAST SUR-**  
 2 **GERY.**

3 (a) GROUP HEALTH PLANS.—

4 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
 5 MENTS.—

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

11 **“SEC. 2706. STANDARDS RELATING TO BENEFITS FOR RE-**  
 12 **CONSTRUCTIVE BREAST SURGERY.**

13 “(a) REQUIREMENTS FOR RECONSTRUCTIVE BREAST  
 14 SURGERY.—

15 “(1) IN GENERAL.—A group health plan, and a  
 16 health insurance issuer offering group health insur-  
 17 ance coverage, that provides coverage for breast sur-  
 18 gery in connection with a mastectomy shall provide  
 19 coverage for reconstructive breast surgery resulting  
 20 from the mastectomy. Such coverage shall include  
 21 coverage for all stages of reconstructive breast sur-  
 22 gery performed on a nondiseased breast to establish  
 23 symmetry with the diseased when reconstruction on  
 24 the diseased breast is performed and coverage of  
 25 prostheses and complications of mastectomy includ-  
 26 ing lymphedema.

1           “(2) RECONSTRUCTIVE BREAST SURGERY DE-  
2           FINED.—In this section, the term ‘reconstructive  
3           breast surgery’ means surgery performed as a result  
4           of a mastectomy to reestablish symmetry between  
5           two breasts, and includes augmentation  
6           mammoplasty, reduction mammoplasty, and  
7           mastopexy.

8           “(3) MASTECTOMY DEFINED.—In this section,  
9           the term ‘mastectomy’ means the surgical removal of  
10          all or part of a breast.

11          “(b) PROHIBITIONS.—A group health plan, and a  
12          health insurance issuer offering group health insurance  
13          coverage in connection with a group health plan, may  
14          not—

15               “(1) deny coverage described in subsection  
16               (a)(1) on the basis that the coverage is for cosmetic  
17               surgery;

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

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

1           “(4) penalize or otherwise reduce or limit the  
2 reimbursement of an attending provider because  
3 such provider provided care to an individual partici-  
4 pant or beneficiary in accordance with this section;  
5 or

6           “(5) provide incentives (monetary or otherwise)  
7 to an attending provider to induce such provider to  
8 provide care to an individual participant or bene-  
9 ficiary in a manner inconsistent with this section.

10          “(c) RULES OF CONSTRUCTION.—

11           “(1) Nothing in this section shall be construed  
12 to require a woman who is a participant or bene-  
13 ficiary to undergo reconstructive breast surgery.

14           “(2) This section shall not apply with respect to  
15 any group health plan, or any group health insur-  
16 ance coverage offered by a health insurance issuer,  
17 which does not provide benefits for mastectomies.

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

1 such coinsurance or cost-sharing that is otherwise  
2 applicable with respect to benefits for mastectomies.

3 “(d) NOTICE.—A group health plan under this part  
4 shall comply with the notice requirement under section  
5 713(d) of the Employee Retirement Income Security Act  
6 of 1974 with respect to the requirements of this section  
7 as if such section applied to such plan.

8 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
9 Nothing in this section shall be construed to prevent a  
10 group health plan or a health insurance issuer offering  
11 group health insurance coverage from negotiating the level  
12 and type of reimbursement with a provider for care pro-  
13 vided in accordance with this section.

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

16 “(1) IN GENERAL.—The requirements of this  
17 section shall not apply with respect to health insur-  
18 ance coverage if there is a State law (as defined in  
19 section 2723(d)(1)) for a State that regulates such  
20 coverage and that requires coverage of at least the  
21 coverage of reconstructive breast surgery otherwise  
22 required under this section.

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

1 (B) CONFORMING AMENDMENT.—Section  
 2 2723(c) of the Public Health Service Act (42  
 3 U.S.C. 300gg–23(c)), as amended by section  
 4 604(b)(2) of Public Law 104–204, is amended  
 5 by striking “section 2704” and inserting “sec-  
 6 tions 2704 and 2706”.

7 (2) ERISA AMENDMENTS.—

8 (A) IN GENERAL.—Subpart B of part 7 of  
 9 subtitle B of title I of the Employee Retirement  
 10 Income Security Act of 1974, as amended by  
 11 section 702(a) of Public Law 104–204, is  
 12 amended by adding at the end the following  
 13 new section:

14 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR RE-**  
 15 **CONSTRUCTIVE BREAST SURGERY.**

16 **“(a) REQUIREMENTS FOR RECONSTRUCTIVE BREAST**  
 17 **SURGERY.—**

18 **“(1) IN GENERAL.—**A group health plan, and a  
 19 health insurance issuer offering group health insur-  
 20 ance coverage, that provides coverage for breast sur-  
 21 gery in connection with a mastectomy shall provide  
 22 coverage for reconstructive breast surgery resulting  
 23 from the mastectomy. Such coverage shall include  
 24 coverage for all stages of reconstructive breast sur-  
 25 gery performed on a nondiseased breast to establish

1 symmetry with the diseased when reconstruction on  
2 the diseased breast is performed and coverage of  
3 prostheses and complications of mastectomy includ-  
4 ing lymphedema.

5 “(2) RECONSTRUCTIVE BREAST SURGERY DE-  
6 FINED.—In this section, the term ‘reconstructive  
7 breast surgery’ means surgery performed as a result  
8 of a mastectomy to reestablish symmetry between  
9 two breasts, and includes augmentation  
10 mammoplasty, reduction mammoplasty, and  
11 mastopexy.

12 “(3) MASTECTOMY DEFINED.—In this section,  
13 the term ‘mastectomy’ means the surgical removal of  
14 all or part of a breast.

15 “(b) 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 coverage described in subsection  
20 (a)(1) on the basis that the coverage is for cosmetic  
21 surgery;

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

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

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

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

14           “(c) RULES OF CONSTRUCTION.—

15           “(1) Nothing in this section shall be construed  
16 to require a woman who is a participant or bene-  
17 ficiary to undergo reconstructive breast surgery.

18           “(2) This section shall not apply with respect to  
19 any group health plan, or any group health insur-  
20 ance coverage offered by a health insurance issuer,  
21 which does not provide benefits for mastectomies.

22           “(3) Nothing in this section shall be construed  
23 as preventing a group health plan or issuer from im-  
24 posing deductibles, coinsurance, or other cost-shar-  
25 ing in relation to benefits for reconstructive breast

1 surgery under the plan (or under health insurance  
2 coverage offered in connection with a group health  
3 plan), except that such coinsurance or other cost-  
4 sharing for any portion may not be greater than  
5 such coinsurance or cost-sharing that is otherwise  
6 applicable with respect to benefits for mastectomies.

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

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

23 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
24 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 and that requires coverage of at least the  
6 coverage of reconstructive breast surgery otherwise  
7 required under this section.

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

11           (B) CONFORMING AMENDMENTS.—

12           (i) Section 731(c) of the Employee  
13 Retirement Income Security Act of 1974  
14 (29 U.S.C. 1191(c)), as amended by sec-  
15 tion 603(b)(1) of Public Law 104–204, is  
16 amended by striking “section 711” and in-  
17 serting “sections 711 and 713”.

18           (ii) Section 732(a) of the Employee  
19 Retirement Income Security Act of 1974  
20 (29 U.S.C. 1191a(a)), as amended by sec-  
21 tion 603(b)(2) of Public Law 104–204, is  
22 amended by striking “section 711” and in-  
23 serting “sections 711 and 713”.

24           (iii) The table of contents in section 1  
25 of the Employee Retirement Income Secu-

1                   rity Act of 1974 is amended by inserting  
 2                   after the item relating to section 712 the  
 3                   following new item:

“Sec. 713. Standards relating to benefits for reconstructive breast surgery.”.

4           (b) INDIVIDUAL HEALTH INSURANCE.—

5                   (1) IN GENERAL.—Part B of title XXVII of the  
 6           Public Health Service Act, as amended by section  
 7           605(a) of Public Law 104–204, is amended by in-  
 8           serting after section 2751 the following:

9   **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR RE-**  
 10                   **CONSTRUCTIVE BREAST SURGERY.**

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

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

24           “(c) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
 25 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 2723(d)(1)) for a State that regulates such  
5 coverage and that requires coverage of at least the  
6 coverage of reconstructive breast surgery otherwise  
7 required under this section.

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

11           (2) CONFORMING AMENDMENT.—Section  
12 2762(b)(2) of the Public Health Service Act (42  
13 U.S.C. 300gg–62(b)(2)), as added by section  
14 605(b)(3)(B) of Public Law 104–204, is amended by  
15 striking “section 2751” and inserting “sections  
16 2751 and 2752”.

17           (c) EFFECTIVE DATES.—

18           (1) GROUP HEALTH PLANS.—The amendments  
19 made by subsection (a) shall apply with respect to  
20 group health plans for plan years beginning on or  
21 after January 1, 1998.

22           (2) INDIVIDUAL MARKET.—The amendment  
23 made by subsection (b) shall apply with respect to  
24 health insurance coverage offered, sold, issued, re-

- 1       newed, in effect, or operated in the individual mar-
- 2       ket on or after such date.

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