

106TH CONGRESS
1ST SESSION

S. 115

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

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Ms. SNOWE (for herself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require that health plans provide coverage for a minimum hospital stay for mastectomies 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 “Women’s Health and
5 Cancer Rights Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—



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

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

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

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

13 (a) IN GENERAL.—Subpart B of part 7 of subtitle
14 B of title I of the Employee Retirement Income Security
15 Act of 1974, as amended by the Omnibus Consolidated
16 and Emergency Supplemental Appropriations Act, 1999
17 (Public Law 105–277), is amended by adding at the end
18 the following:

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

24 **“(a) INPATIENT CARE.—**

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 medical and surgical benefits shall en-
5 sure that inpatient coverage with respect to the
6 treatment of breast cancer is provided for a period
7 of time as is determined by the attending physician,
8 in consultation with the patient, to be medically ap-
9 propriate following—

10 “(A) a mastectomy;

11 “(B) a lumpectomy; or

12 “(C) a lymph node dissection for the treat-
13 ment of breast cancer.

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

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

1 to request less than the minimum coverage required under
2 subsection (a).

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

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

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

16 “(3) not later than January 1, 2000;
17 whichever is earlier.

18 “(d) SECONDARY CONSULTATIONS.—

19 “(1) IN GENERAL.—A group health plan, and a
20 health insurance issuer providing health insurance
21 coverage in connection with a group health plan,
22 that provides coverage with respect to medical and
23 surgical services provided in relation to the diagnosis
24 and treatment of cancer shall ensure that full cov-
25 erage is provided for secondary consultations by spe-

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

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

24 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
25 A group health plan, and a health insurance issuer provid-

1 ing health insurance coverage in connection with a group
2 health plan, may not—

3 “(1) penalize or otherwise reduce or limit the
4 reimbursement of a provider or specialist because
5 the provider or specialist provided care to a partici-
6 pant or beneficiary in accordance with this section;

7 “(2) provide financial or other incentives to a
8 physician or specialist to induce the physician or
9 specialist to keep the length of inpatient stays of pa-
10 tients following a mastectomy, lumpectomy, or a
11 lymph node dissection for the treatment of breast
12 cancer below certain limits or to limit referrals for
13 secondary consultations; or

14 “(3) provide financial or other incentives to a
15 physician or specialist to induce the physician or
16 specialist to refrain from referring a participant or
17 beneficiary for a secondary consultation that would
18 otherwise be covered by the plan or coverage in-
19 volved under subsection (d).”.

20 (b) CLERICAL AMENDMENT.—The table of contents
21 in section 1 of the Employee Retirement Income Security
22 Act of 1974, as amended by the Omnibus Consolidated
23 and Emergency Supplemental Appropriations Act, 1999
24 (Public Law 105–277), is amended by inserting after the
25 item relating to section 713 the following new item:

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

1 (c) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply with respect to plan years be-
4 ginning on or after the date of enactment of this
5 Act.

6 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
7 ING AGREEMENTS.—In the case of a group health
8 plan maintained pursuant to 1 or more collective
9 bargaining agreements between employee representa-
10 tives and 1 or more employers ratified before the
11 date of enactment of this Act, the amendments made
12 by this section shall not apply to plan years begin-
13 ning before the later of—

14 (A) the date on which the last collective
15 bargaining agreements relating to the plan ter-
16 minates (determined without regard to any ex-
17 tension thereof agreed to after the date of en-
18 actment of this Act), or

19 (B) January 1, 2000.

20 For purposes of subparagraph (A), any plan amend-
21 ment made pursuant to a collective bargaining
22 agreement relating to the plan which amends the
23 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. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 4 **ACT RELATING TO THE GROUP MARKET.**

5 (a) IN GENERAL.—Subpart 2 of part A of title
 6 XXVII of the Public Health Service Act, as amended by
 7 the Omnibus Consolidated and Emergency Supplemental
 8 Appropriations Act, 1999 (Public Law 105–277), is
 9 amended by adding at the end the following new section:

10 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 11 **STAY FOR MASTECTOMIES AND LYMPH NODE**
 12 **DISSECTIONS FOR THE TREATMENT OF**
 13 **BREAST CANCER AND COVERAGE FOR SEC-**
 14 **ONDARY CONSULTATIONS.**

15 “(a) INPATIENT CARE.—

16 “(1) IN GENERAL.—A group health plan, and a
 17 health insurance issuer providing health insurance
 18 coverage in connection with a group health plan,
 19 that provides medical and surgical benefits shall en-
 20 sure that inpatient coverage with respect to the
 21 treatment of breast cancer is provided for a period
 22 of time as is determined by the attending physician,
 23 in consultation with the patient, to be medically ap-
 24 propriate following—

25 “(A) a mastectomy;

1 “(B) a lumpectomy; or

2 “(C) a lymph node dissection for the treat-
3 ment of breast cancer.

4 “(2) EXCEPTION.—Nothing in this section shall
5 be construed as requiring the provision of inpatient
6 coverage if the attending physician and patient de-
7 termine that a shorter period of hospital stay is
8 medically appropriate.

9 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—
10 In implementing the requirements of this section, a group
11 health plan, and a health insurance issuer providing health
12 insurance coverage in connection with a group health plan,
13 may not modify the terms and conditions of coverage
14 based on the determination by a participant or beneficiary
15 to request less than the minimum coverage required under
16 subsection (a).

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

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

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

5 “(3) not later than January 1, 2000;

6 whichever is earlier.

7 “(d) SECONDARY CONSULTATIONS.—

8 “(1) IN GENERAL.—A group health plan, and a
9 health insurance issuer providing health insurance
10 coverage in connection with a group health plan that
11 provides coverage with respect to medical and sur-
12 gical services provided in relation to the diagnosis
13 and treatment of cancer shall ensure that full cov-
14 erage is provided for secondary consultations by spe-
15 cialists in the appropriate medical fields (including
16 pathology, radiology, and oncology) to confirm or re-
17 fute such diagnosis. Such plan or issuer shall ensure
18 that full coverage is provided for such secondary
19 consultation whether such consultation is based on a
20 positive or negative initial diagnosis. In any case in
21 which the attending physician certifies in writing
22 that services necessary for such a secondary con-
23 sultation are not sufficiently available from special-
24 ists operating under the plan with respect to whose
25 services coverage is otherwise provided under such

1 plan or by such issuer, such plan or issuer shall en-
2 sure that coverage is provided with respect to the
3 services necessary for the secondary consultation
4 with any other specialist selected by the attending
5 physician for such purpose at no additional cost to
6 the individual beyond that which the individual
7 would have paid if the specialist was participating
8 in the network of the plan.

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

13 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
14 A group health plan, and a health insurance issuer provid-
15 ing health insurance coverage in connection with a group
16 health plan, may not—

17 “(1) penalize or otherwise reduce or limit the
18 reimbursement of a provider or specialist because
19 the provider or specialist provided care to a partici-
20 pant or beneficiary in accordance with this section;

21 “(2) provide financial or other incentives to a
22 physician or specialist to induce the physician or
23 specialist to keep the length of inpatient stays of pa-
24 tients following a mastectomy, lumpectomy, or a
25 lymph node dissection for the treatment of breast

1 cancer below certain limits or to limit referrals for
2 secondary consultations; or

3 “(3) provide financial or other incentives to a
4 physician or specialist to induce the physician or
5 specialist to refrain from referring a participant or
6 beneficiary for a secondary consultation that would
7 otherwise be covered by the plan or coverage in-
8 volved under subsection (d).”.

9 (b) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to group health plans for
12 plan years beginning on or after the date of enact-
13 ment of this Act.

14 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
15 ING AGREEMENTS.—In the case of a group health
16 plan maintained pursuant to 1 or more collective
17 bargaining agreements between employee representa-
18 tives and 1 or more employers ratified before the
19 date of enactment of this Act, the amendments made
20 by this section shall not apply to plan years begin-
21 ning before the later of—

22 (A) the date on which the last collective
23 bargaining agreements relating to the plan ter-
24 minates (determined without regard to any ex-

1 tension thereof agreed to after the date of en-
2 actment of this Act), or

3 (B) January 1, 2000.

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

10 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**

11 **RELATING TO THE INDIVIDUAL MARKET.**

12 (a) IN GENERAL.—Subpart 3 of part B of title
13 XXVII of the Public Health Service Act, as amended by
14 the Omnibus Consolidated and Emergency Supplemental
15 Appropriations Act, 1999 (Public Law 105–277), is
16 amended by adding at the end the following new section:

17 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
18 **STAY FOR MASTECTOMIES AND LYMPH NODE**
19 **DISSECTIONS FOR THE TREATMENT OF**
20 **BREAST CANCER AND SECONDARY CON-**
21 **SULTATIONS.**

22 “The provisions of section 2707 shall apply to health
23 insurance coverage offered by a health insurance issuer
24 in the individual market in the same manner as they apply
25 to health insurance coverage offered by a health insurance

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

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply with respect to health insurance
5 coverage offered, sold, issued, renewed, in effect, or oper-
6 ated in the individual market on or after the date of enact-
7 ment of this Act.

8 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**
9 **OF 1986.**

10 (a) **IN GENERAL.**—Subchapter B of chapter 100 of
11 the Internal Revenue Code of 1986 (as amended by sec-
12 tion 1531(a) of the Taxpayer Relief Act of 1997) is
13 amended—

14 (1) in the table of sections, by inserting after
15 the item relating to section 9812 the following new
16 item:

“Sec. 9813. Required coverage for minimum hospital stay for
mastectomies and lymph node dissections for the
treatment of breast cancer and coverage for second-
ary consultations.”; and

17 (2) by inserting after section 9812 the follow-
18 ing:

1 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
2 **STAY FOR MASTECTOMIES AND LYMPH NODE**
3 **DISSECTIONS FOR THE TREATMENT OF**
4 **BREAST CANCER AND COVERAGE FOR SEC-**
5 **ONDARY CONSULTATIONS.**

6 “(a) INPATIENT CARE.—

7 “(1) IN GENERAL.—A group health plan that
8 provides medical and surgical benefits shall ensure
9 that inpatient coverage with respect to the treatment
10 of breast cancer is provided for a period of time as
11 is determined by the attending physician, in con-
12 sultation with the patient, to be medically appro-
13 priate following—

14 “(A) a mastectomy;

15 “(B) a lumpectomy; or

16 “(C) a lymph node dissection for the treat-
17 ment of breast cancer.

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

23 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

24 In implementing the requirements of this section, a group
25 health plan may not modify the terms and conditions of
26 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;

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

14 “(3) not later than January 1, 2000;
15 whichever is earlier.

16 “(d) SECONDARY CONSULTATIONS.—

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

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

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

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

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

1 bargaining agreements between employee representa-
2 tives and 1 or more employers ratified before the
3 date of enactment of this Act, the amendments made
4 by this section shall not apply to plan years begin-
5 ning before the later of—

6 (A) the date on which the last collective
7 bargaining agreements relating to the plan ter-
8 minates (determined without regard to any ex-
9 tension thereof agreed to after the date of en-
10 actment of this Act), or

11 (B) January 1, 2000.

12 For purposes of subparagraph (A), any plan amend-
13 ment made pursuant to a collective bargaining
14 agreement relating to the plan which amends the
15 plan solely to conform to any requirement added by
16 this section shall not be treated as a termination of
17 such collective bargaining agreement.

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