

107TH CONGRESS
1ST SESSION

H. R. 1485

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 HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. LOBIONDO introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, 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 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 Cancer Re-
5 covery Act of 2001”.

1 **SEC. 2. AMENDMENTS TO THE EMPLOYEE RETIREMENT IN-**
2 **COME SECURITY ACT OF 1974.**

3 (a) IN GENERAL.—Subpart B of part 7 of subtitle
4 B of title I of the Employee Retirement Income Security
5 Act of 1974 is amended by adding at the end the following
6 new section:

7 **“SEC. 714. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
8 **STAY FOR MASTECTOMIES AND LYMPH NODE**
9 **DISSECTIONS FOR THE TREATMENT OF**
10 **BREAST CANCER AND COVERAGE FOR SEC-**
11 **ONDARY CONSULTATIONS.**

12 “(a) INPATIENT CARE.—

13 “(1) IN GENERAL.—A group health plan, and a
14 health insurance issuer providing health insurance
15 coverage in connection with a group health plan,
16 that provides medical and surgical benefits shall en-
17 sure that inpatient coverage with respect to the sur-
18 gical treatment of breast cancer (including a mastec-
19 tomy, lumpectomy, or lymph node dissection for the
20 treatment of breast cancer) is provided for a period
21 of time as is determined by the attending physician,
22 in the physician’s professional judgment consistent
23 with generally accepted principles of professional
24 medical practice, in consultation with the patient, to
25 be medically necessary or appropriate.

1 “(2) EXCEPTION.—Nothing in this section shall
2 be construed as requiring the provision of inpatient
3 coverage if the attending physician in consultation
4 with the patient determines that a shorter period of
5 hospital stay is medically necessary or appropriate.

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

14 “(c) NOTICE REQUIREMENT.—The imposition of the
15 requirements of this section shall be treated as a material
16 modification in the terms of the plan described in section
17 102(a)(1), for purposes of assuring notice of such require-
18 ments under the plan; except that the summary descrip-
19 tion required to be provided under the last sentence of sec-
20 tion 104(b)(1) with respect to such modification shall be
21 provided by not later than 60 days after the first day of
22 the first plan year in which such requirements apply and
23 shall be made available at the time of initial coverage and
24 at any time upon request of a participant or beneficiary.

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
2 in 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 there is a financial rela-
6 tionship (including an ownership or investment in-
7 terest or compensation arrangement) between the
8 specialist and the attending physician or where the
9 patient determines not to seek such a consultation.

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

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

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

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

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

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

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

22 “(B) Such State law requires, in connec-
23 tion with such coverage for surgical treatment
24 of breast cancer, that the hospital length of
25 stay for such care is left to the decision of (or

1 required to be made by) the attending provider
2 in consultation with the woman involved.

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

6 (b) CONFORMING AMENDMENT.—Section 731(c) of
7 such Act (29 U.S.C. 1191(c)) is amended by striking “sec-
8 tion 711” and inserting “sections 711 and 714”.

9 (c) CLERICAL AMENDMENT.—The table of contents
10 in section 1 of such Act is amended by inserting after the
11 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.”.

12 (d) EFFECTIVE DATES.—

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

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

1 (A) the date on which the last collective
 2 bargaining agreements relating to the plan ter-
 3 minates (determined without regard to any ex-
 4 tension thereof agreed to after the date of en-
 5 actment of this Act), or

6 (B) January 1, 2002.

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

13 **SEC. 3. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 14 **ACT RELATING TO THE GROUP MARKET.**

15 (a) IN GENERAL.—Subpart 2 of part A of title
 16 XXVII of the Public Health Service Act is amended by
 17 adding at the end the following new section:

18 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
 19 **STAY FOR MASTECTOMIES AND LYMPH NODE**
 20 **DISSECTIONS FOR THE TREATMENT OF**
 21 **BREAST CANCER AND COVERAGE FOR SEC-**
 22 **ONDARY CONSULTATIONS.**

23 “(a) INPATIENT CARE.—

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,
2 that provides medical and surgical benefits shall en-
3 sure that inpatient coverage with respect to the sur-
4 gical treatment of breast cancer (including a mastec-
5 tomy, lumpectomy, or lymph node dissection for the
6 treatment of breast cancer) is provided for a period
7 of time as is determined by the attending physician,
8 in the physician’s professional judgment consistent
9 with generally accepted principles of professional
10 medical practice, in consultation with the patient, to
11 be medically necessary or appropriate.

12 “(2) EXCEPTION.—Nothing in this section shall
13 be construed as requiring the provision of inpatient
14 coverage if the attending physician in consultation
15 with the patient determines that a shorter period of
16 hospital stay is medically necessary or appropriate.

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

1 “(c) NOTICE REQUIREMENT.—A group health plan
2 under this part shall comply with the notice requirement
3 under section 714(c) of the Employee Retirement Income
4 Security Act of 1974 with respect to the requirements of
5 this section as if such section applied to such plan.

6 “(d) SECONDARY CONSULTATIONS.—

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

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

8 “(2) EXCEPTION.—Nothing in paragraph (1)
9 shall be construed as requiring the provision of sec-
10 ondary consultations where there is a financial rela-
11 tionship (including an ownership or investment in-
12 terest or compensation arrangement) between the
13 specialist and the attending physician or where the
14 patient determines not to seek such a consultation.

15 “(e) PROHIBITION ON PENALTIES OR INCENTIVES.—
16 A group health plan, and a health insurance issuer pro-
17 viding health insurance coverage in connection with a
18 group health plan, may not—

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

23 “(2) provide financial or other incentives to a
24 physician or specialist to induce the physician or
25 specialist to keep the length of inpatient stays of pa-

1 tients following a mastectomy, lumpectomy, or a
2 lymph node dissection for the treatment of breast
3 cancer below certain limits or to limit referrals for
4 secondary consultations; or

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

11 “(f) EXCEPTION FOR HEALTH INSURANCE COV-
12 ERAGE IN CERTAIN STATES.—

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

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

1 “(B) Such State law requires, in connec-
2 tion with such coverage for surgical treatment
3 of breast cancer, that the hospital length of
4 stay for such care is left to the decision of (or
5 required to be made by) the attending provider
6 in consultation with the woman involved.

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) CONFORMING AMENDMENT.—Section 2723(c) of
11 such Act (42 U.S.C. 300gg–23(c)) is amended by striking
12 “section 2704” and inserting “sections 2704 and 2707”.

13 (c) EFFECTIVE DATES.—

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

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

1 (A) the date on which the last collective
 2 bargaining agreements relating to the plan ter-
 3 minates (determined without regard to any ex-
 4 tension thereof agreed to after the date of en-
 5 actment of this Act), or

6 (B) January 1, 2002.

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

13 **SEC. 4. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 14 **RELATING TO THE INDIVIDUAL MARKET.**

15 (a) IN GENERAL.—Subpart 3 of part B of title
 16 XXVII of the Public Health Service Act is amended by
 17 adding at the end the following new section:

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

23 “(a) IN GENERAL.—The provisions of section 2707
 24 (other than subsection (c)) shall apply to health insurance
 25 coverage offered by a health insurance issuer in the indi-

1 vidual market in the same manner as they apply to health
2 insurance coverage offered by a health insurance issuer
3 in connection with a group health plan in the small or
4 large group market.

5 “(b) REQUIREMENT.—A health insurance issuer
6 under this part shall comply with the notice requirement
7 under section 714(c) of the Employee Retirement Income
8 Security Act of 1974 with respect to the requirements re-
9 ferred to in subsection (a) as if such section applied to
10 such issuer and such issuer were a group health plan.

11 “(c) EXCEPTION FOR HEALTH INSURANCE COV-
12 ERAGE IN CERTAIN STATES.—

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

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

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 surgical
10 treatment of breast cancer (including a mastectomy,
11 lumpectomy, or lymph node dissection for the treat-
12 ment of breast cancer) is provided for a period of
13 time as is determined by the attending physician, in
14 the physician’s professional judgment consistent with
15 generally accepted principles of professional medical
16 practice, in consultation with the patient, to be
17 medically necessary or appropriate.

18 “(2) EXCEPTION.—Nothing in this section shall
19 be construed as requiring the provision of inpatient
20 coverage if the attending physician in consultation
21 with the patient determines that a shorter period of
22 hospital stay is medically necessary or 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) SECONDARY CONSULTATIONS.—

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

1 would have paid if the specialist was participating
2 in 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 there is a financial rela-
6 tionship (including an ownership or investment in-
7 terest or compensation arrangement) between the
8 specialist and the attending physician or where the
9 patient determines not to seek such a consultation.

10 “(d) PROHIBITION ON PENALTIES.—A group health
11 plan may not—

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

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

23 “(3) provide financial or other incentives to a
24 physician or specialist to induce the physician or
25 specialist to refrain from referring a participant or

1 beneficiary for a secondary consultation that would
2 otherwise be covered by the plan involved under sub-
3 section (d).

4 “(e) EXCEPTION FOR HEALTH INSURANCE COV-
5 ERAGE IN CERTAIN STATES.—The requirements of this
6 section shall not apply with respect to health insurance
7 coverage if there is a State law (including a decision, rule,
8 regulation, or other State action having the effect of law)
9 for a State that regulates such coverage that is described
10 in any of the following paragraphs:

11 “(1) Such State law requires such coverage to
12 provide for at least a 48-hour hospital length of stay
13 following a mastectomy performed for treatment of
14 breast cancer and at least a 24-hour hospital length
15 of stay following a lymph node dissection for treat-
16 ment of breast cancer.

17 “(2) Such State law requires, in connection
18 with such coverage for surgical treatment of breast
19 cancer, that the hospital length of stay for such care
20 is left to the decision of (or required to be made by)
21 the attending provider in consultation with the
22 woman involved.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for such subchapter is amended by adding at the end the
25 following new item:

“Sec. 9813. 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 BAR-
7 GAINING AGREEMENTS.—In the case of a group
8 health plan maintained pursuant to 1 or more collec-
9 tive bargaining agreements between employee rep-
10 resentatives and 1 or more employers ratified before
11 the date of enactment of this Act, the amendments
12 made by this section shall not apply to plan years
13 beginning 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, 2002.

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. 6. COORDINATION OF ADMINISTRATION.**

4 The Secretary of Labor, the Secretary of the Treas-
5 ury, and the Secretary of Health and Human Services
6 shall ensure, through the execution of an interagency
7 memorandum of understanding among such Secretaries,
8 that—

9 (1) regulations, rulings, and interpretations
10 issued by such Secretaries relating to the same mat-
11 ter over which two or more such Secretaries have re-
12 sponsibility under the provisions of this Act (and the
13 amendments made thereby) are administered so as
14 to have the same effect at all times; and

15 (2) coordination of policies relating to enforcing
16 the same requirements through such Secretaries in
17 order to have a coordinated enforcement strategy
18 that avoids duplication of enforcement efforts and
19 assigns priorities in enforcement.

○