

107TH CONGRESS  
1ST SESSION

# S. 255

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2001

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

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## 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 2001”.

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 (29 U.S.C. 1185 et seq.) is amended by add-  
16 ing at the end the following:

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

22 “(a) INPATIENT CARE.—

23 “(1) IN GENERAL.—A group health plan, and a  
24 health insurance issuer providing health insurance  
25 coverage in connection with a group health plan,

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

7 “(A) a mastectomy;

8 “(B) a lumpectomy; or

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

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

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

24 “(c) NOTICE.—A group health plan, and a health in-  
25 surance issuer providing health insurance coverage in con-

1 nection with a group health plan shall provide notice to  
2 each participant and beneficiary under such plan regard-  
3 ing the coverage required by this section in accordance  
4 with regulations promulgated by the Secretary. Such no-  
5 tice shall be in writing and prominently positioned in any  
6 literature or correspondence made available or distributed  
7 by the plan or issuer and shall be transmitted—

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

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

12           “(3) not later than January 1, 2002;

13 whichever is earlier.

14           “(d) SECONDARY CONSULTATIONS.—

15           “(1) IN GENERAL.—A group health plan, and a  
16           health insurance issuer providing health insurance  
17           coverage in connection with a group health plan,  
18           that provides coverage with respect to medical and  
19           surgical 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 OR INCENTIVES.—  
21 A group health plan, and a health insurance issuer pro-  
22 viding health insurance coverage in connection with a  
23 group health plan, may not—

24 “(1) penalize or otherwise reduce or limit the  
25 reimbursement of a provider or specialist because

1 the provider or specialist provided care to a partici-  
 2 pant or beneficiary in accordance with this section;

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

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

16 (b) CLERICAL AMENDMENT.—The table of contents  
 17 in section 1 of the Employee Retirement Income Security  
 18 Act of 1974 is amended by inserting after the item relat-  
 19 ing to section 713 the following:

“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.”.

20 (c) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendments made by  
 22 this section shall apply with respect to plan years be-  
 23 ginning on or after the date of enactment of this  
 24 Act.

1           (2) SPECIAL RULE FOR COLLECTIVE BAR-  
2           GAINING AGREEMENTS.—In the case of a group  
3           health plan maintained pursuant to 1 or more collec-  
4           tive bargaining agreements between employee rep-  
5           resentatives and 1 or more employers ratified before  
6           the date of enactment of this Act, the amendments  
7           made by this section shall not apply to plan years  
8           beginning before the later of—

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

14                   (B) January 1, 2002.

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

21 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

22 **ACT RELATING TO THE GROUP MARKET.**

23           (a) IN GENERAL.—Subpart 2 of part A of title  
24 XXVII of the Public Health Service Act (42 U.S.C.

1 300gg-4 et seq.) is amended by adding at the end the  
 2 following:

3 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**  
 4 **STAY FOR MASTECTOMIES AND LYMPH NODE**  
 5 **DISSECTIONS FOR THE TREATMENT OF**  
 6 **BREAST CANCER AND COVERAGE FOR SEC-**  
 7 **ONDARY CONSULTATIONS.**

8 “(a) INPATIENT CARE.—

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

18 “(A) a mastectomy;

19 “(B) a lumpectomy; or

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

22 “(2) EXCEPTION.—Nothing in this section shall  
 23 be construed as requiring the provision of inpatient  
 24 coverage if the attending physician and patient de-

1        termine that a shorter period of hospital stay is  
2        medically appropriate.

3        “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

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

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

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

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

24                “(3) not later than January 1, 2002;

25       whichever is earlier.

1 “(d) SECONDARY CONSULTATIONS.—

2 “(1) IN GENERAL.—A group health plan, and a  
3 health insurance issuer providing health insurance  
4 coverage in connection with 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  
14 a positive or negative initial diagnosis. In any case  
15 in 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 the patient determines  
6 not to seek such a consultation.

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

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

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

22 “(3) provide financial or other incentives to a  
23 physician or specialist to induce the physician or  
24 specialist to refrain from referring a participant or  
25 beneficiary for a secondary consultation that would

1 otherwise be covered by the plan or coverage in-  
2 volved under subsection (d).”.

3 (b) EFFECTIVE DATES.—

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

8 (2) SPECIAL RULE FOR COLLECTIVE BAR-  
9 GAINING AGREEMENTS.—In the case of a group  
10 health plan maintained pursuant to 1 or more collec-  
11 tive bargaining agreements between employee rep-  
12 resentatives and 1 or more employers ratified before  
13 the date of enactment of this Act, the amendments  
14 made by this section shall not apply to plan years  
15 beginning before the later of—

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

21 (B) January 1, 2002.

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

5 (a) IN GENERAL.—The first subpart 3 of part B of  
 6 title XXVII of the Public Health Service Act (42 U.S.C.  
 7 300gg–11 et seq.) is amended—

8 (1) by adding after section 2752 the following:

9 **“SEC. 2753. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**  
 10 **STAY FOR MASTECTOMIES AND LYMPH NODE**  
 11 **DISSECTIONS FOR THE TREATMENT OF**  
 12 **BREAST CANCER AND SECONDARY CON-**  
 13 **SULTATIONS.**

14 “The provisions of section 2707 shall apply to health  
 15 insurance coverage offered by a health insurance issuer  
 16 in the individual market in the same manner as they apply  
 17 to health insurance coverage offered by a health insurance  
 18 issuer in connection with a group health plan in the small  
 19 or large group market.”; and

20 (2) by redesignating such subpart 3 as subpart  
 21 2.

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 this section shall apply with respect to health insurance  
 24 coverage offered, sold, issued, renewed, in effect, or oper-

1 ated in the individual market on or after the date of enact-  
 2 ment of this Act.

3 **SEC. 6. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
 4 **OF 1986.**

5 (a) IN GENERAL.—Subchapter B of chapter 100 of  
 6 the Internal Revenue Code of 1986 is amended—

7 (1) in the table of sections, by inserting after  
 8 the item relating to section 9812 the following:

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

9 (2) by inserting after section 9812 the fol-  
 10 lowing:

11 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**  
 12 **STAY FOR MASTECTOMIES AND LYMPH NODE**  
 13 **DISSECTIONS FOR THE TREATMENT OF**  
 14 **BREAST CANCER AND COVERAGE FOR SEC-**  
 15 **ONDARY CONSULTATIONS.**

16 “(a) INPATIENT CARE.—

17 “(1) IN GENERAL.—A group health plan that  
 18 provides medical and surgical benefits shall ensure  
 19 that inpatient coverage with respect to the treatment  
 20 of breast cancer is provided for a period of time as  
 21 is determined by the attending physician, in con-  
 22 sultation with the patient, to be medically appro-  
 23 priate following—

1                   “(A) a mastectomy;

2                   “(B) a lumpectomy; or

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

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

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

16                  “(c) NOTICE.—A group health plan shall provide no-  
17                  tice to each participant and beneficiary under such plan  
18                  regarding the coverage required by this section in accord-  
19                  ance with regulations promulgated by the Secretary. Such  
20                  notice shall be in writing and prominently positioned in  
21                  any literature or correspondence made available or distrib-  
22                  uted by the plan and shall be transmitted—

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

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

3           “(3) not later than January 1, 2002;

4 whichever is earlier.

5           “(d) SECONDARY CONSULTATIONS.—

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

1 physician for such purpose at no additional cost to  
2 the individual beyond that which the individual  
3 would have paid if the specialist was participating in  
4 the network of the plan.

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

9 “(e) PROHIBITION ON PENALTIES.—A group health  
10 plan may not—

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

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

22 “(3) provide financial or other incentives to a  
23 physician or specialist to induce the physician or  
24 specialist to refrain from referring a participant or  
25 beneficiary for a secondary consultation that would

1 otherwise be covered by the plan involved under sub-  
 2 section (d).”.

3 (b) CLERICAL AMENDMENT.—The table of contents  
 4 for chapter 100 of such Code is amended by inserting after  
 5 the item relating to section 9812 the following:

“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.”.

6 (c) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendments made by  
 8 this section shall apply with respect to plan years be-  
 9 ginning on or after the date of enactment of this  
 10 Act.

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

19 (A) the date on which the last collective  
 20 bargaining agreements relating to the plan ter-  
 21 minates (determined without regard to any ex-  
 22 tension thereof agreed to after the date of en-  
 23 actment of this Act), or

24 (B) January 1, 2002.

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

○