

110TH CONGRESS  
1ST SESSION

# H. R. 119

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mrs. JO ANN DAVIS of Virginia introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor 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

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## A BILL

To require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, 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 “Breast Cancer Patient  
5 Protection Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

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

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

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

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

15 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
16 B of title I of the Employee Retirement Income Security  
17 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-  
18 ing at the end the following:

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

24 **“(a) INPATIENT CARE.—**

25 **“(1) IN GENERAL.—A group health plan, and a**  
26 **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 (and in the case of a  
4 lumpectomy, outpatient) coverage and radiation  
5 therapy is provided for breast cancer treatment.  
6 Such plan or coverage may not—

7 “(A) except as provided for in paragraph  
8 (2)—

9 “(i) restrict benefits for any hospital  
10 length of stay in connection with a mastec-  
11 tomy or breast conserving surgery (such as  
12 a lumpectomy) for the treatment of breast  
13 cancer to less than 48 hours; or

14 “(ii) restrict benefits for any hospital  
15 length of stay in connection with a lymph  
16 node dissection for the treatment of breast  
17 cancer to less than 24 hours; or

18 “(B) require that a provider obtain author-  
19 ization from the plan or the issuer for pre-  
20 scribing any length of stay required under sub-  
21 paragraph (A) (without regard to paragraph  
22 (2)).

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

1        termine that either a shorter period of hospital stay,  
2        or outpatient treatment, is 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; or

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

24       whichever is earlier.

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 in  
2 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;

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); or

3 “(4) deny to a woman eligibility, or continued  
4 eligibility, to enroll or to renew coverage under the  
5 terms of the plan or coverage solely for the purpose  
6 of avoiding the requirements of this section.”.

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

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

11 (c) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendments made by  
13 this section shall apply with respect to plan years be-  
14 ginning on or after the date that is 90 days after  
15 the date of enactment of this Act.

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

1 nates (determined without regard to any extension  
 2 thereof agreed to after the date of enactment of this  
 3 Act). For purposes of this paragraph, any plan  
 4 amendment made pursuant to a collective bargaining  
 5 agreement relating to the plan which amends the  
 6 plan solely to conform to any requirement added by  
 7 this section shall not be treated as a termination of  
 8 such collective bargaining agreement.

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

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

11 (a) IN GENERAL.—Subpart 2 of part A of title  
 12 XXVII of the Public Health Service Act (42 U.S.C.  
 13 300gg–4 et seq.) is amended by adding at the end the  
 14 following:

15 **“SEC. 2707. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**

16 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**

17 **AND LYMPH NODE DISSECTIONS FOR THE**

18 **TREATMENT OF BREAST CANCER AND COV-**

19 **ERAGE FOR SECONDARY CONSULTATIONS.**

20 **“(a) INPATIENT CARE.—**

21 **“(1) IN GENERAL.—A group health plan, and a**

22 **health insurance issuer providing health insurance**

23 **coverage in connection with a group health plan,**

24 **that provides medical and surgical benefits shall en-**

25 **sure that inpatient (and in the case of a**

1 lumpectomy, outpatient) coverage and radiation  
2 therapy is provided for breast cancer treatment.

3 Such plan or coverage may not—

4 “(A) except as provided for in paragraph  
5 (2)—

6 “(i) restrict benefits for any hospital  
7 length of stay in connection with a mastec-  
8 tomy or breast conserving surgery (such as  
9 a lumpectomy) for the treatment of breast  
10 cancer to less than 48 hours; or

11 “(ii) restrict benefits for any hospital  
12 length of stay in connection with a lymph  
13 node dissection for the treatment of breast  
14 cancer to less than 24 hours; or

15 “(B) require that a provider obtain author-  
16 ization from the plan or the issuer for pre-  
17 scribing any length of stay required under sub-  
18 paragraph (A) (without regard to paragraph  
19 (2)).

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

1       “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

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

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

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

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

22 whichever is earlier.

23       “(d) SECONDARY CONSULTATIONS.—

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

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

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

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

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

20           “(3) provide financial or other incentives to a  
21 physician or specialist to induce the physician or  
22 specialist to refrain from referring a participant or  
23 beneficiary for a secondary consultation that would  
24 otherwise be covered by the plan or coverage in-  
25 volved under subsection (d); or

1           “(4) deny to a woman eligibility, or continued  
2           eligibility, to enroll or to renew coverage under the  
3           terms of the plan or coverage solely for the purpose  
4           of avoiding the requirements of this section.”.

5           (b) EFFECTIVE DATES.—

6           (1) IN GENERAL.—The amendments made by  
7           this section shall apply to group health plans for  
8           plan years beginning on or after 90 days after the  
9           date of enactment of this Act.

10          (2) SPECIAL RULE FOR COLLECTIVE BAR-  
11          GAINING AGREEMENTS.—In the case of a group  
12          health plan maintained pursuant to 1 or more collec-  
13          tive bargaining agreements between employee rep-  
14          resentatives and 1 or more employers ratified before  
15          the date of enactment of this Act, the amendments  
16          made by this section shall not apply to plan years  
17          beginning before the date on which the last collective  
18          bargaining agreements relating to the plan termi-  
19          nates (determined without regard to any extension  
20          thereof agreed to after the date of enactment of this  
21          Act). For purposes of this paragraph, any plan  
22          amendment made pursuant to a collective bargaining  
23          agreement relating to the plan which amends the  
24          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, LUMPECTOMIES,**  
11 **AND LYMPH NODE DISSECTIONS FOR THE**  
12 **TREATMENT OF BREAST CANCER AND SEC-**  
13 **ONDARY CONSULTATIONS.**

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,  
lumpectomies, and lymph node dissections for the treatment of  
breast cancer and coverage for secondary consultations.”;

9 and

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

12 **“SEC. 9813. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**  
13 **STAY FOR MASTECTOMIES, LUMPECTOMIES,**  
14 **AND LYMPH NODE DISSECTIONS FOR THE**  
15 **TREATMENT OF BREAST CANCER AND COV-**  
16 **ERAGE FOR SECONDARY CONSULTATIONS.**

17 “(a) INPATIENT CARE.—

18 “(1) IN GENERAL.—A group health plan that  
19 provides medical and surgical benefits shall ensure  
20 that inpatient (and in the case of a lumpectomy,  
21 outpatient) coverage and radiation therapy is pro-  
22 vided for breast cancer treatment. Such plan may  
23 not—

1 “(A) except as provided for in paragraph

2 (2)—

3 “(i) restrict benefits for any hospital  
4 length of stay in connection with a mastec-  
5 tomy or breast conserving surgery (such as  
6 a lumpectomy) for the treatment of breast  
7 cancer to less than 48 hours; or

8 “(ii) restrict benefits for any hospital  
9 length of stay in connection with a lymph  
10 node dissection for the treatment of breast  
11 cancer to less than 24 hours; or

12 “(B) require that a provider obtain author-  
13 ization from the plan for prescribing any length  
14 of stay required under subparagraph (A) (with-  
15 out regard to paragraph (2)).

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

21 “(b) PROHIBITION ON CERTAIN MODIFICATIONS.—

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

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

15       “(d) SECONDARY CONSULTATIONS.—

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

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

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

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

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



1       ginning on or after the date of enactment of this  
2       Act.

3               (2) SPECIAL RULE FOR COLLECTIVE BAR-  
4       GAINING AGREEMENTS.—In the case of a group  
5       health plan maintained pursuant to 1 or more collec-  
6       tive bargaining agreements between employee rep-  
7       resentatives and 1 or more employers ratified before  
8       the date of enactment of this Act, the amendments  
9       made by this section shall not apply to plan years  
10      beginning before the date on which the last collective  
11      bargaining agreements relating to the plan termi-  
12      nates (determined without regard to any extension  
13      thereof agreed to after the date of enactment of this  
14      Act). For purposes of this paragraph, any plan  
15      amendment made pursuant to a collective bargaining  
16      agreement relating to the plan which amends the  
17      plan solely to conform to any requirement added by  
18      this section shall not be treated as a termination of  
19      such collective bargaining agreement.

○