

112TH CONGRESS
1ST SESSION

H. R. 1784

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older and for such screening and annual magnetic resonance imaging for women at high risk for breast cancer if the coverage or plans include coverage for diagnostic mammography for women 40 years of age or older.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2011

Mr. NADLER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, 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 amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older and for such screening and annual magnetic resonance imaging for women at high risk for breast cancer if the coverage or plans include coverage for diagnostic mammography for women 40 years of age or older.

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Mammogram and MRI Availability Act of 2011”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) An estimated 207,000 women were diag-
8 nosed with invasive breast cancer and an estimated
9 40,000 women died from breast cancer during 2010.

10 (2) Breast Cancer is the second leading cause
11 of cancer death for women in the United States and
12 is the leading cause of death for women between the
13 ages of 40 and 49 in the United States.

14 (3) Due to earlier detection through screening,
15 increased awareness, and improved treatment proto-
16 cols, breast cancer death rates were reduced by 24
17 percent from 1990 to 2000 and continue to de-
18 crease.

19 (4) A study sponsored by the National Cancer
20 Institute and published on October 27, 2005, con-
21 cluded that up to 65 percent of the reduction in the
22 number of breast cancer deaths was directly attrib-
23 utable to screening mammography.

24 (5) An expert panel convened by the National
25 Institutes of Health’s National Cancer Institute rec-

1 ommended on February 21, 2002, that women be-
2 tween the ages of 40 and 49 should be screened
3 every one to two years with mammography.

4 (6) The American Cancer Society recommends
5 that women over the age of 40 receive an annual
6 mammogram.

7 (7) The American Cancer Society urges that
8 women at high risk for breast cancer receive annual
9 magnetic resonance imaging in addition to a mam-
10 mogram because such imaging may detect small tu-
11 mors not found by a mammogram.

12 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**
13 **RAPHY UNDER GROUP HEALTH PLANS.**

14 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

15 (1) Title XXVII of the Public Health Service
16 Act is amended by inserting after section 2728 of
17 such Act (42 U.S.C. 300gg–28), as redesignated by
18 section 1001(2) of the Patient Protection and Af-
19 fordable Care Act (Public Law 111–148), the fol-
20 lowing new section:

1 **“SEC. 2729. STANDARDS RELATING TO BENEFITS FOR**
2 **SCREENING MAMMOGRAPHY AND MAGNETIC**
3 **RESONANCE IMAGING.**

4 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
5 SCREENING MAMMOGRAPHY AND ANNUAL MAGNETIC
6 RESONANCE IMAGING.—

7 “(1) IN GENERAL.—A group health plan, and a
8 health insurance issuer offering group or individual
9 health insurance coverage, that provides coverage for
10 diagnostic mammography for any woman who is 40
11 years of age or older shall provide coverage for an-
12 nual screening mammography for such a woman and
13 diagnostic mammography, annual screening mam-
14 mography, and annual magnetic resonance imaging
15 for any high risk woman under terms and conditions
16 that are not less favorable than the terms and condi-
17 tions for coverage of diagnostic mammography for a
18 woman who is 40 years of age or older.

19 “(2) DEFINITIONS.—For purposes of this sec-
20 tion—

21 “(A) The term ‘diagnostic mammography’
22 means a radiologic procedure that is medically
23 necessary for the purpose of diagnosing breast
24 cancer and includes a physician’s interpretation
25 of the results of the procedure.

1 “(B) The term ‘high risk woman’ means a
2 woman who—

3 “(i) has a known BRCA1 or BRCA2
4 gene mutation;

5 “(ii) has a mother, father, brother,
6 sister, or child with such a gene mutation
7 and has not had genetic testing to deter-
8 mine the existence of such a gene muta-
9 tion;

10 “(iii) has a lifetime risk of breast can-
11 cer of 20 percent or greater, according to
12 risk assessment tools that are based main-
13 ly on family history;

14 “(iv) had radiation therapy to the
15 chest when the woman was between the
16 ages of 10 and 30 years of age;

17 “(v) has Li-Fraumeni syndrome,
18 Cowden syndrome, or Bannayan-Riley-
19 Ruvalcaba syndrome, or has a relative de-
20 scribed in clause (ii) who has one of such
21 syndromes; or

22 “(vi) has another predisposing condi-
23 tion, as determined by a physician, that
24 significantly increases the risk of the
25 woman contracting breast cancer.

1 “(C) The term ‘screening mammography’
2 means a radiologic procedure provided to a
3 woman for the purpose of early detection of
4 breast cancer and includes a physician’s inter-
5 pretation of the results of the procedure.

6 “(b) PROTECTIONS.—A group health plan, and a
7 health insurance issuer offering group or individual health
8 insurance coverage, may not—

9 “(1) deny coverage for annual screening mam-
10 mography or annual magnetic resonance imaging on
11 the basis that the coverage is not medically nec-
12 essary or on the basis that the screening mammog-
13 raphy or magnetic resonance imaging, respectively,
14 is not pursuant to a referral, consent, or rec-
15 ommendation by any health care provider;

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

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

24 “(4) penalize or otherwise reduce or limit the
25 reimbursement of an attending provider because

1 such provider provided care to an individual partici-
2 pant or beneficiary in accordance with this section;
3 or

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

8 “(c) RULES OF CONSTRUCTION.—

9 “(1) Nothing in this section shall be construed
10 to require a woman who is a participant or bene-
11 ficiary to undergo annual screening mammography
12 or annual magnetic resonance imaging.

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

18 “(3) Nothing in this section shall be construed
19 as preventing a group health plan or issuer from im-
20 posing deductibles, coinsurance, or other cost-shar-
21 ing in relation to benefits for screening mammog-
22 raphy or magnetic resonance imaging under the plan
23 (or under health insurance coverage offered in con-
24 nection with a group health plan), except that such
25 coinsurance or other cost-sharing for any portion of

1 such benefits may not be greater than such coinsur-
2 ance or cost-sharing that is otherwise applicable with
3 respect to benefits for diagnostic mammography.

4 “(4) Women should (but are not required to)
5 consult with appropriate health care practitioners
6 before undergoing screening mammography or mag-
7 netic resonance imaging, but nothing in this section
8 shall be construed as requiring the approval of a
9 health care practitioner before a woman undergoes
10 an annual screening mammography or annual mag-
11 netic resonance imaging.

12 “(d) NOTICE.—A group health plan under this part
13 shall comply with the notice requirement under section
14 716(d) of the Employee Retirement Income Security Act
15 of 1974 with respect to the requirements of this section
16 as if such section applied to such plan. A health insurance
17 issuer shall comply with the notice requirement under such
18 section with respect to the requirements of this section as
19 if such section 716(d) applied to such issuer and such
20 issuer were a group health plan.

21 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
22 Nothing in this section shall be construed to prevent a
23 group health plan or a health insurance issuer offering
24 group or individual health insurance coverage from negoti-

1 ating the level and type of reimbursement with a provider
2 for care provided in accordance with this section.

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

5 “(1) SCREENING MAMMOGRAPHY.—The re-
6 quirements of this section, with respect to annual
7 screening mammography, shall not apply with re-
8 spect to health insurance coverage for women who
9 are 40 years of age or older or who are high risk
10 women if there is a State law (as defined in section
11 2723(d)(1)) for a State that regulates such cov-
12 erage, that requires coverage to be provided for an-
13 nual screening mammography for women who are 40
14 years of age or older or who are high risk women
15 (as defined in subsection (a)(2)(B)), respectively,
16 and that provides at least the protections described
17 in subsection (b).

18 “(2) MAGNETIC RESONANCE IMAGING.—The re-
19 quirements of this section, with respect to annual
20 magnetic resonance imaging, shall not apply with re-
21 spect to health insurance coverage if there is a State
22 law (as defined in section 2723(d)(1)) for a State
23 that regulates such coverage, that requires coverage
24 to be provided for annual magnetic resonance imag-
25 ing for high risk women (as defined in subsection

1 (a)(2)(B)), and that provides at least the protections
2 described in subsection (b).

3 “(3) CONSTRUCTION.—Section 2723(a)(1) shall
4 not be construed as superseding a State law de-
5 scribed in paragraph (1) or (2).

6 “(g) EFFECTIVE DATE.—Notwithstanding any other
7 provision of law and subject to section 2(c)(2) of the Mam-
8 mogram and MRI Availability Act of 2011, this section
9 shall apply with respect to plan years beginning on or after
10 the date that is one year after the date of such Act and
11 with respect to health insurance coverage issued on or
12 after such date.”.

13 (2) Section 2723(c) of such Act (42 U.S.C.
14 300gg–23(c)) is amended by striking “section 2704”
15 and inserting “sections 2704 and 2729”.

16 (3) For purposes of applying section 2729 of
17 the Public Health Service Act, as inserted by para-
18 graph (1), to individual health insurance coverage
19 before 2014, the provisions of such section shall be
20 treated as also included under part B of title XXVII
21 of the Public Health Service Act.

22 (b) ERISA AMENDMENTS.—

23 (1) Subpart B of part 7 of subtitle B of title
24 I of the Employee Retirement Income Security Act

1 of 1974 (29 U.S.C. 1185 et seq.) is amended by
2 adding at the end the following new section:

3 **“SEC. 716. STANDARDS RELATING TO BENEFITS FOR**
4 **SCREENING MAMMOGRAPHY AND MAGNETIC**
5 **RESONANCE IMAGING.**

6 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
7 SCREENING MAMMOGRAPHY AND ANNUAL MAGNETIC
8 RESONANCE IMAGING.—

9 “(1) IN GENERAL.—A group health plan, and a
10 health insurance issuer offering group health insur-
11 ance coverage, that provides coverage for diagnostic
12 mammography for any woman who is 40 years of
13 age or older shall provide coverage for annual
14 screening mammography for such a woman and di-
15 agnostic mammography, annual screening mammog-
16 raphy, and annual magnetic resonance imaging for
17 any high risk woman under terms and conditions
18 that are not less favorable than the terms and condi-
19 tions for coverage of diagnostic mammography for a
20 woman who is 40 years of age or older.

21 “(2) DEFINITIONS.—For purposes of this sec-
22 tion:

23 “(A) The term ‘diagnostic mammography’
24 means a radiologic procedure that is medically
25 necessary for the purpose of diagnosing breast

1 cancer and includes a physician’s interpretation
2 of the results of the procedure.

3 “(B) The term ‘high risk woman’ means a
4 woman who—

5 “(i) has a known BRCA1 or BRCA2
6 gene mutation;

7 “(ii) has a mother, father, brother,
8 sister, or child with such a gene mutation
9 and has not had genetic testing to deter-
10 mine the existence of such a gene muta-
11 tion;

12 “(iii) has a lifetime risk of breast can-
13 cer of 20 percent or greater, according to
14 risk assessment tools that are based main-
15 ly on family history;

16 “(iv) had radiation therapy to the
17 chest when the woman was between the
18 ages of 10 and 30 years of age;

19 “(v) has Li-Fraumeni syndrome,
20 Cowden syndrome, or Bannayan-Riley-
21 Ruvalcaba syndrome, or has a relative de-
22 scribed in clause (ii) who has one of such
23 syndromes; or

24 “(vi) has another predisposing condi-
25 tion, as determined by a physician, that

1 significantly increases the risk of the
2 woman contracting breast cancer.

3 “(C) The term ‘screening mammography’
4 means a radiologic procedure provided to a
5 woman for the purpose of early detection of
6 breast cancer and includes a physician’s inter-
7 pretation of the results of the procedure.

8 “(b) PROTECTIONS.—A group health plan, and a
9 health insurance issuer offering group health insurance
10 coverage in connection with a group health plan, may
11 not—

12 “(1) deny coverage described in subsection
13 (a)(1) on the basis that the coverage is not medically
14 necessary or on the basis that the screening mam-
15 mography or magnetic resonance imaging is not pur-
16 suant to a referral, consent, or recommendation by
17 any health care provider;

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

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

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

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

10 “(c) RULES OF CONSTRUCTION.—

11 “(1) Nothing in this section shall be construed
12 to require a woman who is a participant or bene-
13 ficiary to undergo annual screening mammography
14 or annual magnetic resonance imaging.

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

20 “(3) Nothing in this section shall be construed
21 as preventing a group health plan or issuer from im-
22 posing deductibles, coinsurance, or other cost-shar-
23 ing in relation to benefits for screening mammog-
24 raphy or magnetic resonance imaging under the plan
25 (or under health insurance coverage offered in con-

1 nection with a group health plan), except that such
2 coinsurance or other cost-sharing for any portion of
3 such benefits may not be greater than such coinsur-
4 ance or cost-sharing that is otherwise applicable with
5 respect to benefits for diagnostic mammography.

6 “(4) Women should (but are not required to)
7 consult with appropriate health care practitioners
8 before undergoing screening mammography or mag-
9 netic resonance imaging, but nothing in this section
10 shall be construed as requiring the approval of a
11 health care practitioner before a woman undergoes
12 an annual screening mammography or annual mag-
13 netic resonance imaging.

14 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
15 imposition of the requirements of this section shall be
16 treated as a material modification in the terms of the sum-
17 mary plan described in section 102(a), for purposes of as-
18 suring notice of such requirements under the plan; except
19 that the summary description required to be provided
20 under the last sentence of section 104(b)(1) with respect
21 to such modification shall be provided by not later than
22 60 days after the first day of the first plan year in which
23 such requirements apply.

24 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
25 Nothing in this section shall be construed to prevent a

1 group health plan or a health insurance issuer offering
2 group health insurance coverage from negotiating the level
3 and type of reimbursement with a provider for care pro-
4 vided in accordance with this section.

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

7 “(1) SCREENING MAMMOGRAPHY.—The re-
8 quirements of this section, with respect to annual
9 screening mammography for women who are 40
10 years of age or older or for high risk women, shall
11 not apply with respect to health insurance coverage
12 if there is a State law (as defined in section
13 731(d)(1)) for a State that regulates such coverage,
14 that requires coverage to be provided for annual
15 screening mammography for women who are 40
16 years of age or older or for high risk women (as de-
17 fined in subsection (a)(2)(B)), respectively, and that
18 provides at least the protections described in sub-
19 section (b).

20 “(2) MAGNETIC RESONANCE IMAGING.—The re-
21 quirements of this section, with respect to annual
22 magnetic resonance imaging, shall not apply with re-
23 spect to health insurance coverage if there is a State
24 law (as defined in section 731(d)(1)) for a State
25 that regulates such coverage, that requires coverage

1 to be provided for annual magnetic resonance imag-
2 ing for high risk women (as defined in subsection
3 (a)(2)(B)), and that provides at least the protections
4 described in subsection (b).

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

8 (2) Section 731(c) of such Act (29 U.S.C.
9 1191(c)) is amended by striking “section 711” and
10 inserting “sections 711 and 716”.

11 (3) Section 732(a) of such Act (29 U.S.C.
12 1191a(a)) is amended by striking “section 711” and
13 inserting “sections 711 and 716”.

14 (4) The table of contents in section 1 of such
15 Act is amended by inserting after the item relating
16 to section 714 the following new item:

“Sec. 715. Additional market reforms.

“Sec. 716. Standards relating to benefits for screening mammography and
magnetic resonance imaging.”.

17 (c) EFFECTIVE DATES.—

18 (1) Subject to paragraph (2), the amendments
19 made by subsection (b) shall apply with respect to
20 group health plans (and health insurance coverage
21 offered in connection with group health plans) for
22 plan years beginning on or after 1 year after the
23 date of the enactment of this Act.

1 (2)(A) In the case of a group health plan main-
2 tained pursuant to 1 or more collective bargaining
3 agreements between employee representatives and 1
4 or more employers ratified before the date of the en-
5 actment of this Act, the amendments made by this
6 section shall not apply to plan years beginning be-
7 fore the later of—

8 (i) the date on which the last collec-
9 tive bargaining agreements relating to the
10 plan terminates (determined without re-
11 gard to any extension thereof agreed to
12 after the date of the enactment of this
13 Act); or

14 (ii) 1 year after the date of the enact-
15 ment of this Act.

16 (B) For purposes of subparagraph (A)(i), any
17 plan amendment made pursuant to a collective bar-
18 gaining agreement relating to the plan which
19 amends the plan solely to conform to any require-
20 ment added by this section shall not be treated as
21 a termination of such collective bargaining agree-
22 ment.

○