

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.

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## 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

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## 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.

○