

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1683

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 qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2001

Mrs. MALONEY of New York (for herself, Mrs. MORELLA, Mr. PASCRELL, Mrs. KELLY, Mr. FROST, Mr. RANGEL, Ms. PELOSI, Mr. LANGEVIN, Mrs. THURMAN, Mr. McNULTY, Ms. JACKSON-LEE of Texas, and Mr. TIERNEY) 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 qualified individuals for bone mass measurement (bone density testing) to prevent fractures associated with osteoporosis and to help women make informed choices about their reproductive and post-menopausal health care.

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 “Osteoporosis Early Detection and Prevention Act of  
6 2001”.

7       (b) FINDINGS.—Congress makes the following find-  
8 ings:

9           (1) NATURE OF OSTEOPOROSIS.—

10           (A) Osteoporosis is a disease characterized  
11 by low bone mass and structural deterioration  
12 of bone tissue leading to bone fragility and in-  
13 creased susceptibility to fractures of the hip,  
14 spine, and wrist.

15           (B) Osteoporosis has no symptoms and  
16 typically remains undiagnosed until a fracture  
17 occurs.

18           (C) Once a fracture occurs, the condition  
19 has usually advanced to the stage where the  
20 likelihood is high that another fracture will  
21 occur.

22           (D) There is no cure for osteoporosis, but  
23 drug therapy has been shown to reduce new hip  
24 and spine fractures by 50 percent and other

1 treatments, such as nutrition therapy, have also  
2 proven effective.

3 (2) INCIDENCE OF OSTEOPOROSIS.—

4 Osteoporosis is a common condition:

5 (A) Of the 28 million Americans who have  
6 (or are at risk for) osteoporosis, 80 percent are  
7 women.

8 (B) Annually there are 1.5 million bone  
9 fractures attributable to osteoporosis.

10 (C) Half of all women, and one-eighth of  
11 all men, age 50 or older will have a bone frac-  
12 ture due to osteoporosis.

13 (3) IMPACT OF OSTEOPOROSIS.—The cost of  
14 treating osteoporosis is significant:

15 (A) The annual cost of osteoporosis in the  
16 United States is \$13.8 billion.

17 (B) The average cost in the United States  
18 of repairing a hip fracture due to osteoporosis  
19 is \$32,000, while the average cost of an  
20 osteoporosis screening test is \$250.

21 (C) Fractures due to osteoporosis fre-  
22 quently result in disability and institutionaliza-  
23 tion of individuals.

24 (D) Because osteoporosis is a progressive  
25 condition causing fractures primarily in aging

1 individuals, preventing fractures particularly in  
2 post menopausal women before they become eli-  
3 gible for medicare, has a significant potential of  
4 reducing osteoporosis-related costs under the  
5 medicare program.

6 (4) USE OF BONE MASS MEASUREMENT.—

7 (A) Bone mass measurement is a non-  
8 invasive, painless, and reliable way to diagnose  
9 osteoporosis before costly fractures occur.

10 (B) Low bone mass is as predictive of fu-  
11 ture fractures as is high cholesterol or high  
12 blood pressure of heart disease or stroke.

13 (C) Bone mass measurement is the only  
14 reliable method of detecting osteoporosis at an  
15 early stage.

16 (D) Under section 4106 of the Balanced  
17 Budget Act of 1997, medicare provides cov-  
18 erage, effective July 1, 1998, for bone mass  
19 measurement for qualified individuals who are  
20 at risk of developing osteoporosis.

21 **SEC. 2. REQUIRING COVERAGE OF BONE MASS MEASURE-**  
22 **MENT UNDER HEALTH PLANS.**

23 (a) GROUP HEALTH PLANS.—

24 (1) PUBLIC HEALTH SERVICE ACT AMEND-  
25 MENTS.—(A) Subpart 2 of part A of title XXVII of

1 the Public Health Service Act is amended by adding  
2 at the end the following new section:

3 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR BONE**  
4 **MASS MEASUREMENT.**

5 “(a) REQUIREMENTS FOR COVERAGE OF BONE MASS  
6 MEASUREMENT.—A group health plan, and a health in-  
7 surance issuer offering group health insurance coverage,  
8 shall include (consistent with this section) coverage for  
9 bone mass measurement for beneficiaries and participants  
10 who are qualified individuals.

11 “(b) DEFINITIONS RELATING TO COVERAGE.—In  
12 this section:

13 “(1) BONE MASS MEASUREMENT.—The term  
14 ‘bone mass measurement’ means a radiologic or  
15 radioisotopic procedure or other procedure approved  
16 by the Food and Drug Administration performed on  
17 an individual for the purpose of identifying bone  
18 mass or detecting bone loss or determining bone  
19 quality, and includes a physician’s interpretation of  
20 the results of the procedure. Nothing in this para-  
21 graph shall be construed as requiring a bone mass  
22 measurement to be conducted in a particular type of  
23 facility or to prevent such a measurement from  
24 being conducted through the use of mobile facilities  
25 that are otherwise qualified.

1           “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-  
2           fied individual’ means an individual who—

3                   “(A) is an estrogen-deficient woman at  
4                   clinical risk for osteoporosis;

5                   “(B) has vertebral abnormalities;

6                   “(C) is receiving chemotherapy or long-  
7                   term glucocorticoid (steroid) therapy;

8                   “(D) has primary hyperparathyroidism,  
9                   hyperthyroidism, or excess thyroid replacement;

10                  or

11                  “(E) is being monitored to assess the re-  
12                  sponse to or efficacy of approved osteoporosis  
13                  drug therapy.

14           “(e) LIMITATION ON FREQUENCY REQUIRED.—  
15           Taking into account the standards established under  
16           section 1861(rr)(3) of the Social Security Act, the  
17           Secretary shall establish standards regarding the  
18           frequency with which a qualified individual shall be  
19           eligible to be provided benefits for bone mass meas-  
20           urement under this section. The Secretary may vary  
21           such standards based on the clinical and risk-related  
22           characteristics of qualified individuals.

23           “(d) RESTRICTIONS ON COST-SHARING.—

24                   “(1) IN GENERAL.—Subject to paragraph (2),  
25                   nothing in this section shall be construed as pre-

1 venting a group health plan or issuer from imposing  
2 deductibles, coinsurance, or other cost-sharing in re-  
3 lation to bone mass measurement under the plan (or  
4 health insurance coverage offered in connection with  
5 a plan).

6 “(2) LIMITATION.—Deductibles, coinsurance,  
7 and other cost-sharing or other limitations for bone  
8 mass measurement may not be imposed under para-  
9 graph (1) to the extent they exceed the deductibles,  
10 coinsurance, and limitations that are applied to simi-  
11 lar services under the group health plan or health  
12 insurance coverage.

13 “(e) PROHIBITIONS.—A group health plan, and a  
14 health insurance issuer offering group health insurance  
15 coverage in connection with a group health plan, may  
16 not—

17 “(1) deny to an individual eligibility, or contin-  
18 ued eligibility, to enroll or to renew coverage under  
19 the terms of the plan, solely for the purpose of  
20 avoiding the requirements of this section;

21 “(2) provide incentives (monetary or otherwise)  
22 to individuals to encourage such individuals not to  
23 be provided bone mass measurements to which they  
24 are entitled under this section or to providers to in-

1       duce such providers not to provide such measure-  
2       ments to qualified individuals;

3               “(3) prohibit a provider from discussing with a  
4       patient osteoporosis preventive techniques or medical  
5       treatment options relating to this section; or

6               “(4) penalize or otherwise reduce or limit the  
7       reimbursement of a provider because such provider  
8       provided bone mass measurements to a qualified in-  
9       dividual in accordance with this section.

10       “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
11      tion shall be construed to require an individual who is a  
12      participant or beneficiary to undergo bone mass measure-  
13      ment.

14       “(g) NOTICE.—A group health plan under this part  
15      shall comply with the notice requirement under section  
16      714(g) of the Employee Retirement Income Security Act  
17      of 1974 with respect to the requirements of this section  
18      as if such section applied to such plan.

19       “(h) LEVEL AND TYPE OF REIMBURSEMENTS.—  
20      Nothing in this section shall be construed to prevent a  
21      group health plan or a health insurance issuer offering  
22      group health insurance coverage from negotiating the level  
23      and type of reimbursement with a provider for care pro-  
24      vided in accordance with this section.

25       “(i) PREEMPTION.—



1           “(1) BONE MASS MEASUREMENT.—The term  
2           ‘bone mass measurement’ means a radiologic or  
3           radioisotopic procedure or other procedure approved  
4           by the Food and Drug Administration performed on  
5           an individual for the purpose of identifying bone  
6           mass or detecting bone loss or determining bone  
7           quality, and includes a physician’s interpretation of  
8           the results of the procedure. Nothing in this para-  
9           graph shall be construed as requiring a bone mass  
10          measurement to be conducted in a particular type of  
11          facility or to prevent such a measurement from  
12          being conducted through the use of mobile facilities  
13          that are otherwise qualified.

14          “(2) QUALIFIED INDIVIDUAL.—The term ‘quali-  
15          fied individual’ means an individual who—

16                 “(A) is an estrogen-deficient woman at  
17                 clinical risk for osteoporosis;

18                 “(B) has vertebral abnormalities;

19                 “(C) is receiving chemotherapy or long-  
20                 term glucocorticoid (steroid) therapy;

21                 “(D) has primary hyperparathyroidism,  
22                 hyperthyroidism, or excess thyroid replacement;

23                 or

1           “(E) is being monitored to assess the re-  
2           sponse to or efficacy of approved osteoporosis  
3           drug therapy.

4           “(e) LIMITATION ON FREQUENCY REQUIRED.—  
5           The standards established under section 2707(e) of  
6           the Public Health Service Act shall apply to benefits  
7           provided under this section in the same manner as  
8           they apply to benefits provided under section 2707  
9           of such Act.

10          “(d) RESTRICTIONS ON COST-SHARING.—

11           “(1) IN GENERAL.—Subject to paragraph (2),  
12           nothing in this section shall be construed as pre-  
13           venting a group health plan or issuer from imposing  
14           deductibles, coinsurance, or other cost-sharing in re-  
15           lation to bone mass measurement under the plan (or  
16           health insurance coverage offered in connection with  
17           a plan).

18           “(2) LIMITATION.—Deductibles, coinsurance,  
19           and other cost-sharing or other limitations for bone  
20           mass measurement may not be imposed under para-  
21           graph (1) to the extent they exceed the deductibles,  
22           coinsurance, and limitations that are applied to simi-  
23           lar services under the group health plan or health  
24           insurance coverage.

1       “(e) PROHIBITIONS.—A group health plan, and a  
2 health insurance issuer offering group health insurance  
3 coverage in connection with a group health plan, may  
4 not—

5           “(1) deny to an individual eligibility, or contin-  
6 ued eligibility, to enroll or to renew coverage under  
7 the terms of the plan, solely for the purpose of  
8 avoiding the requirements of this section;

9           “(2) provide incentives (monetary or otherwise)  
10 to individuals to encourage such individuals not to  
11 be provided bone mass measurements to which they  
12 are entitled under this section or to providers to in-  
13 duce such providers not to provide such measure-  
14 ments to qualified individuals;

15           “(3) prohibit a provider from discussing with a  
16 patient osteoporosis preventive techniques or medical  
17 treatment options relating to this section; or

18           “(4) penalize or otherwise reduce or limit the  
19 reimbursement of a provider because such provider  
20 provided bone mass measurements to a qualified in-  
21 dividual in accordance with this section.

22       “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
23 tion shall be construed to require an individual who is a  
24 participant or beneficiary to undergo bone mass measure-  
25 ment.

1       “(g) NOTICE UNDER GROUP HEALTH PLAN.—The  
2 imposition of the requirements of this section shall be  
3 treated as a material modification in the terms of the plan  
4 described in section 102(a)(1), for purposes of assuring  
5 notice of such requirements under the plan; except that  
6 the summary description required to be provided under the  
7 last sentence of section 104(b)(1) with respect to such  
8 modification shall be provided by not later than 60 days  
9 after the first day of the first plan year in which such  
10 requirements apply.

11       “(h) PREEMPTION.—

12               “(1) IN GENERAL.—The provisions of this sec-  
13 tion do not preempt State law relating to health in-  
14 surance coverage to the extent such State law pro-  
15 vides greater benefits with respect to osteoporosis  
16 detection or prevention.

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

20               (B) Section 731(e) of such Act (29 U.S.C.  
21 1191(e)) is amended by striking “section 711” and  
22 inserting “sections 711 and 714”.

23               (C) Section 732(a) of such Act (29 U.S.C.  
24 1191a(a)) is amended by striking “section 711” and  
25 inserting “sections 711 and 714”.

1 (D) The table of contents in section 1 of such  
 2 Act is amended by inserting after the item relating  
 3 to section 712 the following new item:

“Sec. 714. Standards relating to benefits for bone mass measurement.”.

4 (b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B  
 5 of title XXVII of the Public Health Service Act is amend-  
 6 ed by inserting after section 2752 the following new sec-  
 7 tion:

8 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR BONE**  
 9 **MASS MEASUREMENT.**

10 “(a) IN GENERAL.—The provisions of section 2707  
 11 (other than subsection (g)) shall apply to health insurance  
 12 coverage offered by a health insurance issuer in the indi-  
 13 vidual market in the same manner as it applies to health  
 14 insurance coverage offered by a health insurance issuer  
 15 in connection with a group health plan in the small or  
 16 large group market.

17 “(b) NOTICE.—A health insurance issuer under this  
 18 part shall comply with the notice requirement under sec-  
 19 tion 714(g) of the Employee Retirement Income Security  
 20 Act of 1974 with respect to the requirements referred to  
 21 in subsection (a) as if such section applied to such issuer  
 22 and such issuer were a group health plan.

23 “(c) PREEMPTION.—

24 “(1) IN GENERAL.—The provisions of this sec-  
 25 tion do not preempt State law relating to health in-

1 insurance coverage to the extent such State law pro-  
2 vides greater benefits with respect to osteoporosis  
3 detection or prevention.

4 “(2) CONSTRUCTION.—Section 2762(a) shall  
5 not be construed as superseding a State law de-  
6 scribed in paragraph (1).”.

7 (2) Section 2762(b)(2) of such Act (42 U.S.C.  
8 300gg-62(b)(2)) is amended by striking “section 2751”  
9 and inserting “sections 2751 and 2753”.

10 (c) EFFECTIVE DATES.—(1) The amendments made  
11 by subsection (a) shall apply with respect to group health  
12 plans for plan years beginning on or after January 1,  
13 2002.

14 (2) The amendments made by subsection (b) shall  
15 apply with respect to health insurance coverage offered,  
16 sold, issued, renewed, in effect, or operated in the indi-  
17 vidual market on or after such date.

○