

AMENDMENT TO H.R. _____
OFFERED BY MR. NADLER OF NEW YORK
(Amendment is to ACA-REP__002)

At the end of the bill, add the following:

1 **SEC. 3. MAMMOGRAM AND MRI AVAILABILITY.**

2 (a) COVERAGE OF ANNUAL SCREENING MAMMOG-
3 RAPHY UNDER GROUP HEALTH PLANS.—

4 (1) PUBLIC HEALTH SERVICE ACT AMEND-
5 MENTS.—

6 (A) Subpart 2 of part A of title XXVII of
7 the Public Health Service Act is amended by
8 adding at the end the following new section:

9 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR**
10 **SCREENING MAMMOGRAPHY AND MAGNETIC**
11 **RESONANCE IMAGING.**

12 **“(a) REQUIREMENTS FOR COVERAGE OF ANNUAL**
13 **SCREENING MAMMOGRAPHY AND ANNUAL MAGNETIC**
14 **RESONANCE IMAGING.—**

15 **“(1) IN GENERAL.—**A group health plan, and a
16 health insurance issuer offering group health insur-
17 ance coverage, that provides coverage for diagnostic
18 mammography for any woman who is 40 years of
19 age or older shall provide coverage for annual

1 screening mammography for such a woman and di-
2 agnostic mammography, annual screening mammog-
3 raphy, and annual magnetic resonance imaging for
4 any high risk woman under terms and conditions
5 that are not less favorable than the terms and condi-
6 tions for coverage of diagnostic mammography for a
7 woman who is 40 years of age or older.

8 “(2) DEFINITIONS.—For purposes of this sec-
9 tion—

10 “(A) The term ‘diagnostic mammography’
11 means a radiologic procedure that is medically
12 necessary for the purpose of diagnosing breast
13 cancer and includes a physician’s interpretation
14 of the results of the procedure.

15 “(B) The term ‘high risk woman’ means a
16 woman who—

17 “(i) has a known BRCA1 or BRCA2
18 gene mutation;

19 “(ii) has a mother, father, brother,
20 sister, or child with such a gene mutation
21 and has not had genetic testing to deter-
22 mine the existence of such a gene muta-
23 tion;

24 “(iii) has a lifetime risk of breast can-
25 cer of 20 percent or greater, according to

1 risk assessment tools that are based main-
2 ly on family history;

3 “(iv) had radiation therapy to the
4 chest when the woman was between the
5 ages of 10 and 30 years of age;

6 “(v) has Li-Fraumeni syndrome,
7 Cowden syndrome, or Bannayan-Riley-
8 Ruvalcaba syndrome, or has a relative de-
9 scribed in clause (ii) who has one of such
10 syndromes; or

11 “(vi) has another predisposing condi-
12 tion, as determined by a physician, that
13 significantly increases the risk of the
14 woman contracting breast cancer.

15 “(C) The term ‘screening mammography’
16 means a radiologic procedure provided to a
17 woman for the purpose of early detection of
18 breast cancer and includes a physician’s inter-
19 pretation of the results of the procedure.

20 “(b) PROTECTIONS.—A group health plan, and a
21 health insurance issuer offering group health insurance
22 coverage in connection with a group health plan, may
23 not—

24 “(1) deny coverage for annual screening mam-
25 mography or annual magnetic resonance imaging on

1 the basis that the coverage is not medically nec-
2 essary or on the basis that the screening mammog-
3 raphy or magnetic resonance imaging, respectively,
4 is not pursuant to a referral, consent, or rec-
5 ommendation by any health care provider;

6 “(2) deny to a woman eligibility, or continued
7 eligibility, to enroll or to renew coverage under the
8 terms of the plan, solely for the purpose of avoiding
9 the requirements of this section;

10 “(3) provide monetary payments or rebates to
11 women to encourage such women to accept less than
12 the minimum protections available under this sec-
13 tion;

14 “(4) penalize or otherwise reduce or limit the
15 reimbursement of an attending provider because
16 such provider provided care to an individual partici-
17 pant or beneficiary in accordance with this section;
18 or

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

23 “(c) RULES OF CONSTRUCTION.—

24 “(1) Nothing in this section shall be construed
25 to require a woman who is a participant or bene-

1 ficiary to undergo annual screening mammography
2 or annual magnetic resonance imaging.

3 “(2) This section shall not apply with respect to
4 any group health plan, or any group health insur-
5 ance coverage offered by a health insurance issuer,
6 which does not provide benefits for diagnostic mam-
7 mography.

8 “(3) Nothing in this section shall be construed
9 as preventing a group health plan or issuer from im-
10 posing deductibles, coinsurance, or other cost-shar-
11 ing in relation to benefits for screening mammog-
12 raphy or magnetic resonance imaging under the plan
13 (or under health insurance coverage offered in con-
14 nection with a group health plan), except that such
15 coinsurance or other cost-sharing for any portion of
16 such benefits may not be greater than such coinsur-
17 ance or cost-sharing that is otherwise applicable with
18 respect to benefits for diagnostic mammography.

19 “(4) Women should (but are not required to)
20 consult with appropriate health care practitioners
21 before undergoing screening mammography or mag-
22 netic resonance imaging, but nothing in this section
23 shall be construed as requiring the approval of a
24 health care practitioner before a woman undergoes

1 an annual screening mammography or annual mag-
2 netic resonance imaging.

3 “(d) NOTICE.—A group health plan under this part
4 shall comply with the notice requirement under section
5 715(d) of the Employee Retirement Income Security Act
6 of 1974 with respect to the requirements of this section
7 as if such section applied to such plan.

8 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
9 Nothing in this section shall be construed to prevent a
10 group health plan or a health insurance issuer offering
11 group health insurance coverage from negotiating the level
12 and type of reimbursement with a provider for care pro-
13 vided in accordance with this section.

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

16 “(1) SCREENING MAMMOGRAPHY.—The re-
17 quirements of this section, with respect to annual
18 screening mammography, shall not apply with re-
19 spect to health insurance coverage for women who
20 are 40 years of age or older or who are high risk
21 women if there is a State law (as defined in section
22 2723(d)(1)) for a State that regulates such cov-
23 erage, that requires coverage to be provided for an-
24 nual screening mammography for women who are 40
25 years of age or older or who are high risk women

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

4 “(2) MAGNETIC RESONANCE IMAGING.—The re-
5 quirements of this section, with respect to annual
6 magnetic resonance imaging, shall not apply with re-
7 spect to health insurance coverage if there is a State
8 law (as defined in section 2723(d)(1)) for a State
9 that regulates such coverage, that requires coverage
10 to be provided for annual magnetic resonance imag-
11 ing for high risk women (as defined in subsection
12 (a)(2)(B)), and that provides at least the protections
13 described in subsection (b).

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

17 (B) Section 2723(c) of such Act (42
18 U.S.C. 300gg–23(c)) is amended by striking
19 “section 2704” and inserting “sections 2704
20 and 2708”.

21 (2) ERISA AMENDMENTS.—

22 (A) Subpart B of part 7 of subtitle B of
23 title I of the Employee Retirement Income Se-
24 curity Act of 1974 is amended by adding at the
25 end the following new section:

1 **“SEC. 715. 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 health insur-
9 ance coverage, that provides coverage for diagnostic
10 mammography for any woman who is 40 years of
11 age or older shall provide coverage for annual
12 screening mammography for such a woman and di-
13 agnostic mammography, annual screening mammog-
14 raphy, and annual magnetic resonance imaging for
15 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 health insurance
8 coverage in connection with a group health plan, may
9 not—

10 “(1) deny coverage described in subsection
11 (a)(1) on the basis that the coverage is not medically
12 necessary or on the basis that the screening mam-
13 mography or magnetic resonance imaging is not pur-
14 suant to a referral, consent, or recommendation by
15 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 health insur-
15 ance coverage offered by a health insurance issuer,
16 which does not provide benefits for diagnostic mam-
17 mography.

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

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

1 and type of reimbursement with a provider for care pro-
2 vided 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 for women who are 40
8 years of age or older or for high risk women, shall
9 not apply with respect to health insurance coverage
10 if there is a State law (as defined in section
11 731(d)(1)) for a State that regulates such coverage,
12 that requires coverage to be provided for annual
13 screening mammography for women who are 40
14 years of age or older or for high risk women (as de-
15 fined in subsection (a)(2)(B)), respectively, and that
16 provides at least the protections described in sub-
17 section (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 731(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 731(a)(1) shall
4 not be construed as superseding a State law de-
5 scribed in paragraph (1) or (2).”.

6 (B) Section 731(c) of such Act (29 U.S.C.
7 1191(c)) is amended by striking “section 711”
8 and inserting “sections 711 and 715”.

9 (C) Section 732(a) of such Act (29 U.S.C.
10 1191a(a)) is amended by striking “section 711”
11 and inserting “sections 711 and 715”.

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

“Sec. 715. Standards relating to benefits for screening mammography and
magnetic resonance imaging.”.

15 (3) EFFECTIVE DATES.—

16 (A) Subject to subparagraph (B), the
17 amendments made by this subsection shall
18 apply with respect to group health plans (and
19 health insurance coverage offered in connection
20 with group health plans) for plan years begin-
21 ning on or after 1 year after the date of the en-
22 actment of this Act.

23 (B)(i) In the case of a group health plan
24 maintained pursuant to 1 or more collective

1 bargaining agreements between employee rep-
2 resentatives and 1 or more employers ratified
3 before the date of the enactment of this Act,
4 the amendments made by this subsection shall
5 not apply to plan years beginning before the
6 later of—

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

13 (II) 1 year after the date of the enact-
14 ment of this Act.

15 (ii) For purposes of clause (i)(I), any plan
16 amendment made pursuant to a collective bar-
17 gaining agreement relating to the plan which
18 amends the plan solely to conform to any re-
19 quirement added by this subsection shall not be
20 treated as a termination of such collective bar-
21 gaining agreement.

22 (b) COVERAGE OF ANNUAL SCREENING MAMMOG-
23 RAPHY AND ANNUAL MAGNETIC RESONANCE IMAGING
24 UNDER INDIVIDUAL HEALTH COVERAGE.—

1 (1) IN GENERAL.—Part B of title XXVII of the
2 Public Health Service Act is amended by inserting
3 after section 2753 the following new section:

4 **“SEC. 2754. STANDARDS RELATING TO BENEFITS FOR**
5 **SCREENING MAMMOGRAPHY AND MAGNETIC**
6 **RESONANCE IMAGING.**

7 “(a) IN GENERAL.—The provisions of section 2708
8 (other than subsections (d) and (f)) shall apply to health
9 insurance coverage offered by a health insurance issuer
10 in the individual market in the same manner as it applies
11 to health insurance coverage offered by a health insurance
12 issuer in connection with a group health plan in the small
13 or large group market.

14 “(b) NOTICE.—A health insurance issuer under this
15 part shall comply with the notice requirement under sec-
16 tion 715(d) of the Employee Retirement Income Security
17 Act of 1974 with respect to the requirements referred to
18 in subsection (a) as if such section applied to such issuer
19 and such issuer were a group health plan.

20 “(c) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
21 ANCE COVERAGE IN CERTAIN STATES.—

22 “(1) ANNUAL SCREENING MAMMOGRAPHY.—
23 The requirements of this section, with respect to an-
24 nual screening mammography for women who are 40
25 years of age or older or for high risk women, shall

1 not apply with respect to health insurance coverage
2 if there is a State law (as defined in section
3 2723(d)(1)) for a State that regulates such cov-
4 erage, that requires coverage in the individual health
5 insurance market to be provided for annual screen-
6 ing mammography for women who are 40 years of
7 age or older or for high risk women, respectively,
8 and that provides at least the protections described
9 in section 2708(b) (as applied under subsection (a)).

10 “(2) MAGNETIC RESONANCE IMAGING.—The re-
11 quirements of this section, with respect to annual
12 magnetic resonance imaging, shall not apply with re-
13 spect to health insurance coverage if there is a State
14 law (as defined in section 2723(d)(1)) for a State
15 that regulates such coverage, that requires coverage
16 in the individual health insurance market to be pro-
17 vided for annual magnetic resonance imaging for
18 high risk women, and that provides at least the pro-
19 tections described in section 2708(b) (as applied
20 under subsection (a)).

21 “(3) CONSTRUCTION.—Section 2762(a) shall
22 not be construed as superseding a State law de-
23 scribed in paragraph (1) or (2).”.

24 (2) CONFORMING AMENDMENT.—Section
25 2762(b)(2) of such Act (42 U.S.C. 300gg–63(b)(2))

1 is amended by striking “section 2751” and inserting
2 “sections 2751 and 2754”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply with respect to health
5 insurance coverage offered, sold, issued, or renewed
6 in the individual market on or after the date that is
7 1 year after the date of the enactment of this Act.

