

107TH CONGRESS
1ST SESSION

S. 104

To require equitable coverage of prescription contraceptive drugs and devices,
and contraceptive services under health plans.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

Ms. SNOWE (for herself, Mr. REID, Mr. WARNER, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. BOXER, Mr. SPECTER, Mrs. MURRAY, Ms. COLLINS, Mr. JOHNSON, Mr. WELLSTONE, Mr. LEAHY, Mr. DURBIN, Mr. INOUE, Mr. AKAKA, Mr. SARBANES, Mr. SCHUMER, Mr. HARKIN, Mrs. CLINTON, and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

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 “Equity in Prescription
5 Insurance and Contraceptive Coverage Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) each year, 3,000,000 pregnancies, or one
2 half of all pregnancies, in this country are unin-
3 tended;

4 (2) contraceptive services are part of basic
5 health care, allowing families to both adequately
6 space desired pregnancies and avoid unintended
7 pregnancy;

8 (3) studies show that contraceptives are cost ef-
9 fective: for every \$1 of public funds invested in fam-
10 ily planning, \$4 to \$14 of public funds is saved in
11 pregnancy and health care-related costs;

12 (4) by reducing rates of unintended pregnancy,
13 contraceptives help reduce the need for abortion;

14 (5) unintended pregnancies lead to higher rates
15 of infant mortality, low-birth weight, and maternal
16 morbidity, and threaten the economic viability of
17 families;

18 (6) the National Commission to Prevent Infant
19 Mortality determined that “infant mortality could be
20 reduced by 10 percent if all women not desiring
21 pregnancy used contraception”;

22 (7) most women in the United States, including
23 three-quarters of women of childbearing age, rely on
24 some form of private insurance (through their own

1 employer, a family member’s employer, or the indi-
2 vidual market) to defray their medical expenses;

3 (8) the vast majority of private insurers cover
4 prescription drugs, but many exclude coverage for
5 prescription contraceptives;

6 (9) private insurance provides extremely limited
7 coverage of contraceptives: half of traditional indem-
8 nity plans and preferred provider organizations, 20
9 percent of point-of-service networks, and 7 percent
10 of health maintenance organizations cover no contra-
11 ceptive methods other than sterilization;

12 (10) women of reproductive age spend 68 per-
13 cent more than men on out-of-pocket health care
14 costs, with contraceptives and reproductive health
15 care services accounting for much of the difference;

16 (11) the lack of contraceptive coverage in health
17 insurance places many effective forms of contracep-
18 tives beyond the financial reach of many women,
19 leading to unintended pregnancies;

20 (12) the Institute of Medicine Committee on
21 Unintended Pregnancy recommended that “financial
22 barriers to contraception be reduced by increasing
23 the proportion of all health insurance policies that
24 cover contraceptive services and supplies”;

1 (13) in 1998, Congress agreed to provide con-
2 traceptive coverage to the 2,000,000 women of re-
3 productive age who are participating in the Federal
4 Employees Health Benefits Program, the largest
5 employer-sponsored health insurance plan in the
6 world; and

7 (14) eight in 10 privately insured adults sup-
8 port contraceptive coverage.

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

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

15 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CON-**
16 **TRACEPTIVES.**

17 “(a) REQUIREMENTS FOR COVERAGE.—A group
18 health plan, and a health insurance issuer providing health
19 insurance coverage in connection with a group health plan,
20 may not—

21 “(1) exclude or restrict benefits for prescription
22 contraceptive drugs or devices approved by the Food
23 and Drug Administration, or generic equivalents ap-
24 proved as substitutable by the Food and Drug Ad-

1 ministration, if such plan provides benefits for other
2 outpatient prescription drugs or devices; or

3 “(2) exclude or restrict benefits for outpatient
4 contraceptive services if such plan provides benefits
5 for other outpatient services provided by a health
6 care professional (referred to in this section as ‘out-
7 patient health care services’).

8 “(b) PROHIBITIONS.—A group health plan, and a
9 health insurance issuer providing health insurance cov-
10 erage in connection with a group health plan, may not—

11 “(1) deny to an individual eligibility, or contin-
12 ued eligibility, to enroll or to renew coverage under
13 the terms of the plan because of the individual’s or
14 enrollee’s use or potential use of items or services
15 that are covered in accordance with the requirements
16 of this section;

17 “(2) provide monetary payments or rebates to
18 a covered individual to encourage such individual to
19 accept less than the minimum protections available
20 under this section;

21 “(3) penalize or otherwise reduce or limit the
22 reimbursement of a health care professional because
23 such professional prescribed contraceptive drugs or
24 devices, or provided contraceptive services, described
25 in subsection (a), in accordance with this section; or

1 “(4) provide incentives (monetary or otherwise)
2 to a health care professional to induce such profes-
3 sional to withhold from a covered individual contra-
4 ceptive drugs or devices, or contraceptive services,
5 described in subsection (a).

6 “(c) RULES OF CONSTRUCTION.—

7 “(1) IN GENERAL.—Nothing in this section
8 shall be construed—

9 “(A) as preventing a group health plan
10 and a health insurance issuer providing health
11 insurance coverage in connection with a group
12 health plan from imposing deductibles, coinsur-
13 ance, or other cost-sharing or limitations in re-
14 lation to—

15 “(i) benefits for contraceptive drugs
16 under the plan, except that such a deduct-
17 ible, coinsurance, or other cost-sharing or
18 limitation for any such drug may not be
19 greater than such a deductible, coinsur-
20 ance, or cost-sharing or limitation for any
21 outpatient prescription drug otherwise cov-
22 ered under the plan;

23 “(ii) benefits for contraceptive devices
24 under the plan, except that such a deduct-
25 ible, coinsurance, or other cost-sharing or

1 limitation for any such device may not be
2 greater than such a deductible, coinsur-
3 ance, or cost-sharing or limitation for any
4 outpatient prescription device otherwise
5 covered under the plan; and

6 “(iii) benefits for outpatient contra-
7 ceptive services under the plan, except that
8 such a deductible, coinsurance, or other
9 cost-sharing or limitation for any such
10 service may not be greater than such a de-
11 ductible, coinsurance, or cost-sharing or
12 limitation for any outpatient health care
13 service otherwise covered under the plan;
14 and

15 “(B) as requiring a group health plan and
16 a health insurance issuer providing health in-
17 surance coverage in connection with a group
18 health plan to cover experimental or investiga-
19 tional contraceptive drugs or devices, or experi-
20 mental or investigational contraceptive services,
21 described in subsection (a), except to the extent
22 that the plan or issuer provides coverage for
23 other experimental or investigational outpatient
24 prescription drugs or devices, or experimental

1 or investigational outpatient health care serv-
2 ices.

3 “(2) LIMITATIONS.—As used in paragraph (1),
4 the term ‘limitation’ includes—

5 “(A) in the case of a contraceptive drug or
6 device, restricting the type of health care pro-
7 fessionals that may prescribe such drugs or de-
8 vices, utilization review provisions, and limits on
9 the volume of prescription drugs or devices that
10 may be obtained on the basis of a single con-
11 sultation with a professional; or

12 “(B) in the case of an outpatient contra-
13 ceptive service, restricting the type of health
14 care professionals that may provide such serv-
15 ices, utilization review provisions, requirements
16 relating to second opinions prior to the coverage
17 of such services, and requirements relating to
18 preauthorizations prior to the coverage of such
19 services.

20 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
21 imposition of the requirements of this section shall be
22 treated as a material modification in the terms of the plan
23 described in section 102(a)(1), for purposes of assuring
24 notice of such requirements under the plan, except that
25 the summary description required to be provided under the

1 last sentence of section 104(b)(1) with respect to such
2 modification shall be provided by not later than 60 days
3 after the first day of the first plan year in which such
4 requirements apply.

5 “(e) PREEMPTION.—Nothing in this section shall be
6 construed to preempt any provision of State law to the
7 extent that such State law establishes, implements, or con-
8 tinues in effect any standard or requirement that provides
9 protections for enrollees that are greater than the protec-
10 tions provided under this section.

11 “(f) DEFINITION.—In this section, the term ‘out-
12 patient contraceptive services’ means consultations, exami-
13 nations, procedures, and medical services, provided on an
14 outpatient basis and related to the use of contraceptive
15 methods (including natural family planning) to prevent an
16 unintended pregnancy.”.

17 (b) CLERICAL AMENDMENT.—The table of contents
18 in section 1 of the Employee Retirement Income Security
19 Act of 1974 (29 U.S.C. 1001) is amended by inserting
20 after the item relating to section 713 the following:

“Sec. 714. Standards relating to benefits for contraceptives.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply with respect to plan years begin-
23 ning on or after January 1, 2002.

1 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 2 **ACT RELATING TO THE GROUP MARKET.**

3 (a) IN GENERAL.—Subpart 2 of part A of title
 4 XXVII of the Public Health Service Act (42 U.S.C.
 5 300gg–4 et seq.) is amended by adding at the end the
 6 following:

7 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CON-**
 8 **TRACEPTIVES.**

9 “(a) REQUIREMENTS FOR COVERAGE.—A group
 10 health plan, and a health insurance issuer providing health
 11 insurance coverage in connection with a group health plan,
 12 may not—

13 “(1) exclude or restrict benefits for prescription
 14 contraceptive drugs or devices approved by the Food
 15 and Drug Administration, or generic equivalents ap-
 16 proved as substitutable by the Food and Drug Ad-
 17 ministration, if such plan provides benefits for other
 18 outpatient prescription drugs or devices; or

19 “(2) exclude or restrict benefits for outpatient
 20 contraceptive services if such plan provides benefits
 21 for other outpatient services provided by a health
 22 care professional (referred to in this section as ‘out-
 23 patient health care services’).

24 “(b) PROHIBITIONS.—A group health plan, and a
 25 health insurance issuer providing health insurance cov-
 26 erage in connection with a group health plan, may not—

1 “(1) deny to an individual eligibility, or contin-
2 ued eligibility, to enroll or to renew coverage under
3 the terms of the plan because of the individual’s or
4 enrollee’s use or potential use of items or services
5 that are covered in accordance with the requirements
6 of this section;

7 “(2) provide monetary payments or rebates to
8 a covered individual to encourage such individual to
9 accept less than the minimum protections available
10 under this section;

11 “(3) penalize or otherwise reduce or limit the
12 reimbursement of a health care professional because
13 such professional prescribed contraceptive drugs or
14 devices, or provided contraceptive services, described
15 in subsection (a), in accordance with this section; or

16 “(4) provide incentives (monetary or otherwise)
17 to a health care professional to induce such profes-
18 sional to withhold from covered individual contracep-
19 tive drugs or devices, or contraceptive services, de-
20 scribed in subsection (a).

21 “(c) RULES OF CONSTRUCTION.—

22 “(1) IN GENERAL.—Nothing in this section
23 shall be construed—

24 “(A) as preventing a group health plan
25 and a health insurance issuer providing health

1 insurance coverage in connection with a group
2 health plan from imposing deductibles, coinsur-
3 ance, or other cost-sharing or limitations in re-
4 lation to—

5 “(i) benefits for contraceptive drugs
6 under the plan, except that such a deduct-
7 ible, coinsurance, or other cost-sharing or
8 limitation for any such drug may not be
9 greater than such a deductible, coinsur-
10 ance, or cost-sharing or limitation for any
11 outpatient prescription drug otherwise cov-
12 ered under the plan;

13 “(ii) benefits for contraceptive devices
14 under the plan, except that such a deduct-
15 ible, coinsurance, or other cost-sharing or
16 limitation for any such device may not be
17 greater than such a deductible, coinsur-
18 ance, or cost-sharing or limitation for any
19 outpatient prescription device otherwise
20 covered under the plan; and

21 “(iii) benefits for outpatient contra-
22 ceptive services under the plan, except that
23 such a deductible, coinsurance, or other
24 cost-sharing or limitation for any such
25 service may not be greater than such a de-

1 ductible, coinsurance, or cost-sharing or
2 limitation for any outpatient health care
3 service otherwise covered under the plan;
4 and

5 “(B) as requiring a group health plan and
6 a health insurance issuer providing health in-
7 surance coverage in connection with a group
8 health plan to cover experimental or investiga-
9 tional contraceptive drugs or devices, or experi-
10 mental or investigational contraceptive services,
11 described in subsection (a), except to the extent
12 that the plan or issuer provides coverage for
13 other experimental or investigational outpatient
14 prescription drugs or devices, or experimental
15 or investigational outpatient health care serv-
16 ices.

17 “(2) LIMITATIONS.—As used in paragraph (1),
18 the term ‘limitation’ includes—

19 “(A) in the case of a contraceptive drug or
20 device, restricting the type of health care pro-
21 fessionals that may prescribe such drugs or de-
22 vices, utilization review provisions, and limits on
23 the volume of prescription drugs or devices that
24 may be obtained on the basis of a single con-
25 sultation with a professional; or

1 “(B) in the case of an outpatient contra-
2 ceptive service, restricting the type of health
3 care professionals that may provide such serv-
4 ices, utilization review provisions, requirements
5 relating to second opinions prior to the coverage
6 of such services, and requirements relating to
7 preauthorizations prior to the coverage of such
8 services.

9 “(d) NOTICE.—A group health plan under this part
10 shall comply with the notice requirement under section
11 714(d) of the Employee Retirement Income Security Act
12 of 1974 with respect to the requirements of this section
13 as if such section applied to such plan.

14 “(e) PREEMPTION.—Nothing in this section shall be
15 construed to preempt any provision of State law to the
16 extent that such State law establishes, implements, or con-
17 tinues in effect any standard or requirement that provides
18 protections for enrollees that are greater than the protec-
19 tions provided under this section.

20 “(f) DEFINITION.—In this section, the term ‘out-
21 patient contraceptive services’ means consultations, exami-
22 nations, procedures, and medical services, provided on an
23 outpatient basis and related to the use of contraceptive
24 methods (including natural family planning) to prevent an
25 unintended pregnancy.”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to group health plans
 3 for plan years beginning on or after January 1, 2002.

4 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**
 5 **RELATING TO THE INDIVIDUAL MARKET.**

6 (a) IN GENERAL.—Part B of title XXVII of the Pub-
 7 lic Health Service Act (42 U.S.C. 300gg–41 et seq.) is
 8 amended—

9 (1) by redesignating the first subpart 3 (relat-
 10 ing to other requirements) as subpart 2; and

11 (2) by adding at the end of subpart 2 the fol-
 12 lowing:

13 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CON-**
 14 **TRACEPTIVES.**

15 “The provisions of section 2707 shall apply to health
 16 insurance coverage offered by a health insurance issuer
 17 in the individual market in the same manner as they apply
 18 to health insurance coverage offered by a health insurance
 19 issuer in connection with a group health plan in the small
 20 or large group market.”.

21 (b) EFFECTIVE DATE.—The amendment made by
 22 this section shall apply with respect to health insurance
 23 coverage offered, sold, issued, renewed, in effect, or oper-
 24 ated in the individual market on or after January 1, 2002.

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