

108TH CONGRESS
1ST SESSION

S. 1396

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

IN THE SENATE OF THE UNITED STATES

JULY 11, 2003

Ms. SNOWE (for herself, Mr. REID, Ms. MIKULSKI, Mr. LEAHY, Mr. LAUTENBERG, Mr. KENNEDY, Mrs. MURRAY, Mr. SMITH, Mr. CORZINE, Mr. BIDEN, Mr. SARBANES, Mr. KERRY, Mr. WARNER, Mr. INOUE, Mrs. LINCOLN, Ms. STABENOW, Mr. DURBIN, Mr. CHAFEE, Ms. COLLINS, and Mrs. BOXER) 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 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) each year, 3,000,000 pregnancies, or one
2 half of all pregnancies, in the United States are un-
3 intended;

4 (2) contraceptives and contraceptive services
5 are part of basic health care, allowing families to
6 both adequately space desired pregnancies and avoid
7 unintended pregnancy, and should be provided on
8 the same terms and conditions as other basic health
9 care;

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

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

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

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

24 (7) most women in the United States, including
25 three-quarters of women of childbearing age, rely on

1 some form of private insurance (through their own
2 employer, a family member’s employer, or the indi-
3 vidual market) to defray their medical expenses;

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

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

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

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

21 (12) the Institute of Medicine Committee on
22 Unintended Pregnancy recommended that “financial
23 barriers to contraception be reduced by increasing
24 the proportion of all health insurance policies that
25 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 in 2001, the Office of Personnel Manage-
7 ment reported that it did not raise premiums as a
8 result of such coverage because there was “no cost
9 increase due to contraceptive coverage”;

10 (14) contraceptive coverage saves employers
11 money: the Washington Business Group on Health
12 estimates that not covering contraceptives in em-
13 ployee health plans costs employers 15 to 17 percent
14 more than providing such coverage;

15 (15) eight in 10 privately insured adults sup-
16 port contraceptive coverage; and

17 (16) Healthy People 2010, published by the Of-
18 fice of the Surgeon General, has established a 10-
19 year national public health goal to increase the per-
20 centage of health plans that cover contraceptives.

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

23 (a) IN GENERAL.—Subpart B of part 7 of subtitle
24 B of title I of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
2 ing at the end the following:

3 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CON-**
4 **TRACEPTIVES.**

5 “(a) REQUIREMENTS FOR COVERAGE.—A group
6 health plan, and a health insurance issuer providing health
7 insurance coverage in connection with a group health plan,
8 may not—

9 “(1) exclude or restrict benefits for prescription
10 contraceptive drugs or devices approved by the Food
11 and Drug Administration, or generic equivalents ap-
12 proved as substitutable by the Food and Drug Ad-
13 ministration, if such plan or coverage provides bene-
14 fits for other outpatient prescription drugs or de-
15 vices; or

16 “(2) exclude or restrict benefits for outpatient
17 contraceptive services if such plan or coverage pro-
18 vides benefits for other outpatient services provided
19 by a health care professional (referred to in this sec-
20 tion as ‘outpatient health care services’).

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

24 “(1) deny to an individual eligibility, or contin-
25 ued eligibility, to enroll or to renew coverage under

1 the terms of the plan because of the individual's or
2 enrollee's use or potential use of items or services
3 that are covered in accordance with the requirements
4 of this section;

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

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

14 “(4) provide incentives (monetary or otherwise)
15 to a health care professional to induce such profes-
16 sional to withhold from a covered individual contra-
17 ceptive drugs or devices, or contraceptive services,
18 described in subsection (a).

19 “(c) RULES OF CONSTRUCTION.—

20 “(1) IN GENERAL.—Nothing in this section
21 shall be construed—

22 “(A) as preventing a group health plan
23 and a health insurance issuer providing health
24 insurance coverage in connection with a group
25 health plan from imposing deductibles, coinsur-

1 ance, or other cost-sharing or limitations in re-
2 lation to—

3 “(i) benefits for contraceptive drugs
4 under the plan or coverage, except that
5 such a deductible, coinsurance, or other
6 cost-sharing or limitation for any such
7 drug shall be consistent with those imposed
8 for other outpatient prescription drugs oth-
9 erwise covered under the plan or coverage;

10 “(ii) benefits for contraceptive devices
11 under the plan or coverage, except that
12 such a deductible, coinsurance, or other
13 cost-sharing or limitation for any such de-
14 vice shall be consistent with those imposed
15 for other outpatient prescription devices
16 otherwise covered under the plan or cov-
17 erage; and

18 “(iii) benefits for outpatient contra-
19 ceptive services under the plan or coverage,
20 except that such a deductible, coinsurance,
21 or other cost-sharing or limitation for any
22 such service shall be consistent with those
23 imposed for other outpatient health care
24 services otherwise covered under the plan
25 or coverage;

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

13 “(C) as modifying, diminishing, or limiting
14 the rights or protections of an individual under
15 any other Federal law.

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

18 “(A) in the case of a contraceptive drug or
19 device, restricting the type of health care pro-
20 fessionals that may prescribe such drugs or de-
21 vices, utilization review provisions, and limits on
22 the volume of prescription drugs or devices that
23 may be obtained on the basis of a single con-
24 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 UNDER GROUP HEALTH PLAN.—The
10 imposition of the requirements of this section shall be
11 treated as a material modification in the terms of the plan
12 described in section 102(a)(1), for purposes of assuring
13 notice of such requirements under the plan, except that
14 the summary description required to be provided under the
15 last sentence of section 104(b)(1) with respect to such
16 modification shall be provided by not later than 60 days
17 after the first day of the first plan year in which such
18 requirements apply.

19 “(e) PREEMPTION.—Nothing in this section shall be
20 construed to preempt any provision of State law to the
21 extent that such State law establishes, implements, or con-
22 tinues in effect any standard or requirement that provides
23 coverage or protections for participants or beneficiaries
24 that are greater than the coverage or protections provided
25 under this section.

1 “(f) DEFINITION.—In this section, the term ‘out-
 2 patient contraceptive services’ means consultations, exami-
 3 nations, procedures, and medical services, provided on an
 4 outpatient basis and related to the use of contraceptive
 5 methods (including natural family planning) to prevent an
 6 unintended pregnancy.”.

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

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

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply with respect to plan years begin-
 13 ning on or after _____.

14 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 15 **ACT RELATING TO THE GROUP MARKET.**

16 (a) IN GENERAL.—Subpart 2 of part A of title
 17 XXVII of the Public Health Service Act (42 U.S.C.
 18 300gg–4 et seq.) is amended by adding at the end the
 19 following:

20 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CON-**
 21 **TRACEPTIVES.**

22 “(a) REQUIREMENTS FOR COVERAGE.—A group
 23 health plan, and a health insurance issuer providing health
 24 insurance coverage in connection with a group health plan,
 25 may not—

1 “(1) exclude or restrict benefits for prescription
2 contraceptive drugs or devices approved by the Food
3 and Drug Administration, or generic equivalents ap-
4 proved as substitutable by the Food and Drug Ad-
5 ministration, if such plan or coverage provides bene-
6 fits for other outpatient prescription drugs or de-
7 vices; or

8 “(2) exclude or restrict benefits for outpatient
9 contraceptive services if such plan or coverage pro-
10 vides benefits for other outpatient services provided
11 by a health care professional (referred to in this sec-
12 tion as ‘outpatient health care services’).

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

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

22 “(2) provide monetary payments or rebates to
23 a covered individual to encourage such individual to
24 accept less than the minimum protections available
25 under this section;

1 “(3) penalize or otherwise reduce or limit the
2 reimbursement of a health care professional because
3 such professional prescribed contraceptive drugs or
4 devices, or provided contraceptive services, described
5 in subsection (a), in accordance with this section; or

6 “(4) provide incentives (monetary or otherwise)
7 to a health care professional to induce such profes-
8 sional to withhold from covered individual contracep-
9 tive drugs or devices, or contraceptive services, de-
10 scribed in subsection (a).

11 “(c) RULES OF CONSTRUCTION.—

12 “(1) IN GENERAL.—Nothing in this section
13 shall be construed—

14 “(A) as preventing a group health plan
15 and a health insurance issuer providing health
16 insurance coverage in connection with a group
17 health plan from imposing deductibles, coinsur-
18 ance, or other cost-sharing or limitations in re-
19 lation to—

20 “(i) benefits for contraceptive drugs
21 under the plan or coverage, except that
22 such a deductible, coinsurance, or other
23 cost-sharing or limitation for any such
24 drug shall be consistent with those imposed

1 for other outpatient prescription drugs oth-
2 erwise covered under the plan or coverage;

3 “(ii) benefits for contraceptive devices
4 under the plan or coverage, except that
5 such a deductible, coinsurance, or other
6 cost-sharing or limitation for any such de-
7 vice shall be consistent with those imposed
8 for other outpatient prescription devices
9 otherwise covered under the plan or cov-
10 erage; and

11 “(iii) benefits for outpatient contra-
12 ceptive services under the plan or coverage,
13 except that such a deductible, coinsurance,
14 or other cost-sharing or limitation for any
15 such service shall be consistent with those
16 imposed for other outpatient health care
17 services otherwise covered under the plan
18 or coverage;

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

1 that the plan or issuer provides coverage for
2 other experimental or investigational outpatient
3 prescription drugs or devices, or experimental
4 or investigational outpatient health care serv-
5 ices; or

6 “(C) as modifying, diminishing, or limiting
7 the rights or protections of an individual under
8 any other Federal law.

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

11 “(A) in the case of a contraceptive drug or
12 device, restricting the type of health care pro-
13 fessionals that may prescribe such drugs or de-
14 vices, utilization review provisions, and limits on
15 the volume of prescription drugs or devices that
16 may be obtained on the basis of a single con-
17 sultation with a professional; or

18 “(B) in the case of an outpatient contra-
19 ceptive service, restricting the type of health
20 care professionals that may provide such serv-
21 ices, utilization review provisions, requirements
22 relating to second opinions prior to the coverage
23 of such services, and requirements relating to
24 preauthorizations prior to the coverage of such
25 services.

1 “(d) NOTICE.—A group health plan under this part
2 shall comply with the notice requirement under section
3 714(d) of the Employee Retirement Income Security Act
4 of 1974 with respect to the requirements of this section
5 as if such section applied to such plan.

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

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

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to group health plans
20 for plan years beginning on or after
21 _____.

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

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

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

8 (2) by adding at the end of subpart 2 the fol-
 9 lowing:

10 **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CON-**
 11 **TRACEPTIVES.**

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

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply with respect to health insurance
 20 coverage offered, sold, issued, renewed, in effect, or oper-
 21 ated in the individual market on or after January 1, 2005.

○