

110TH CONGRESS  
2D SESSION

# S. 3068

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

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## IN THE SENATE OF THE UNITED STATES

MAY 22, 2008

Ms. SNOWE (for herself, Mr. REID, Ms. COLLINS, Mr. DURBIN, Mr. WARNER,  
Mr. KERRY, Mrs. BOXER, Mr. DODD, Mr. LAUTENBERG, Mrs. LINCOLN,  
and Mr. MENENDEZ) introduced the following bill; which was read twice  
and referred to the Committee on Health, Education, Labor, and Pen-  
sions

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## 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 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

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: it is estimated that for every \$1 of public  
12          funds invested in family planning, \$3 is saved in  
13          Medicaid costs from pregnancy-related health care  
14          and medical care for newborns;

15          (4) by reducing rates of unintended pregnancy,  
16          contraceptives help reduce abortions;

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

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

1           (7) most women in the United States, including  
2 three-quarters of women of childbearing age, rely on  
3 some form of private insurance (through their own  
4 employer, a family member’s employer, or the indi-  
5 vidual market) to defray their medical expenses;

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

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

13           (10) the lack of contraceptive coverage in health  
14 insurance places many effective forms of contracep-  
15 tives beyond the financial reach of many women,  
16 leading to unintended pregnancies;

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

22           (12) in 1998, Congress agreed to provide con-  
23 traceptive coverage to women of reproductive age  
24 who are participating in the Federal Employees  
25 Health Benefits Program, the largest employer-spon-

1       sored health insurance plan in the world, and in  
2       2001, the Office of Personnel Management reported  
3       that it did not raise premiums as a result of such  
4       coverage because there was “no cost increase due to  
5       contraceptive coverage”;

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

11          (14) eight in 10 privately insured adults sup-  
12      port contraceptive coverage; and

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

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

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

1 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CON-**  
2 **TRACEPTIVES.**

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

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

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

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

22 “(1) deny to an individual eligibility, or contin-  
23 ued eligibility, to enroll or to renew coverage under  
24 the terms of the plan because of the individual’s or  
25 enrollee’s use or potential use of items or services

1 that are covered in accordance with the requirements  
2 of this section;

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

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

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

17 “(c) RULES OF CONSTRUCTION.—

18 “(1) IN GENERAL.—Nothing in this section  
19 shall be construed—

20 “(A) as preventing a group health plan  
21 and a health insurance issuer providing health  
22 insurance coverage in connection with a group  
23 health plan from imposing deductibles, coinsur-  
24 ance, or other cost-sharing or limitations in re-  
25 lation to—

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

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

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

24          “(B) as requiring a group health plan and  
25          a health insurance issuer providing health in-

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

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

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

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

23                 “(B) in the case of an outpatient contra-  
24           ceptive service, restricting the type of health  
25           care professionals that may provide such serv-



1           ices, utilization review provisions, requirements  
2           relating to second opinions prior to the coverage  
3           of such services, and requirements relating to  
4           preauthorizations prior to the coverage of such  
5           services.

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

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

23          “(f) DEFINITION.—In this section, the term ‘out-  
24          patient contraceptive services’ means consultations, exami-  
25          nations, procedures, and medical services, provided on an

1 outpatient basis and related to the use of contraceptive  
 2 methods (including natural family planning) to prevent an  
 3 unintended pregnancy.”.

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

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

8 (c) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply with respect to plan years begin-  
 10 ning on or after January 1, 2008.

11 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

12 **ACT RELATING TO THE GROUP MARKET.**

13 (a) IN GENERAL.—Subpart 2 of part A of title  
 14 XXVII of the Public Health Service Act (42 U.S.C.  
 15 300gg–4 et seq.) is amended by adding at the end the  
 16 following:

17 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CON-**  
 18 **TRACEPTIVES.**

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

23 “(1) exclude or restrict benefits for prescription  
 24 contraceptive drugs or devices approved by the Food  
 25 and Drug Administration, or generic equivalents ap-

1 proved as substitutable by the Food and Drug Ad-  
2 ministration, if such plan or coverage provides bene-  
3 fits for other outpatient prescription drugs or de-  
4 vices; or

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

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

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

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

23 “(3) penalize or otherwise reduce or limit the  
24 reimbursement of a health care professional because  
25 such professional prescribed contraceptive drugs or

1 devices, or provided contraceptive services, described  
2 in subsection (a), in accordance with this section; or

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

8 “(c) RULES OF CONSTRUCTION.—

9 “(1) IN GENERAL.—Nothing in this section  
10 shall be construed—

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

17 “(i) benefits for contraceptive drugs  
18 under the plan or coverage, except that  
19 such a deductible, coinsurance, or other  
20 cost-sharing or limitation for any such  
21 drug shall be consistent with those imposed  
22 for other outpatient prescription drugs oth-  
23 erwise covered under the plan or coverage;

24 “(ii) benefits for contraceptive devices  
25 under the plan or coverage, except that

1           such a deductible, coinsurance, or other  
2           cost-sharing or limitation for any such de-  
3           vice shall be consistent with those imposed  
4           for other outpatient prescription devices  
5           otherwise covered under the plan or cov-  
6           erage; and

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

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; or

3 “(C) as modifying, diminishing, or limiting  
4 the rights or protections of an individual under  
5 any other Federal law.

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

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

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

23 “(d) NOTICE.—A group health plan under this part  
24 shall comply with the notice requirement under section  
25 714(d) of the Employee Retirement Income Security Act

1 of 1974 with respect to the requirements of this section  
 2 as if such section applied to such plan.

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

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

15 (b) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply with respect to group health plans  
 17 for plan years beginning on or after January 1, 2008.

18 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**

19 **RELATING TO THE INDIVIDUAL MARKET.**

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

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

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

3   **“SEC. 2753. STANDARDS RELATING TO BENEFITS FOR CON-**  
4                           **TRACEPTIVES.**

5           “The provisions of section 2707 shall apply to health  
6 insurance coverage offered by a health insurance issuer  
7 in the individual market in the same manner as they apply  
8 to health insurance coverage offered by a health insurance  
9 issuer in connection with a group health plan in the small  
10 or large group market.”.

11          (b) **EFFECTIVE DATE.**—The amendment made by  
12 this section shall apply with respect to health insurance  
13 coverage offered, sold, issued, renewed, in effect, or oper-  
14 ated in the individual market on or after January 1, 2008.

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