

105TH CONGRESS  
1ST SESSION

# S. 766

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 20, 1997

Ms. SNOWE (for herself, Mr. REID, Mr. WARNER, Ms. MIKULSKI, Mr. CHAFEE, Mr. DURBIN, Ms. COLLINS, Mrs. MURRAY, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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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 1997”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) each year, approximately 3,600,000 preg-  
2           nancies, or nearly 60 percent of all pregnancies, in  
3           this country are unintended;

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          two-thirds of women of childbearing age, rely on  
24          some form of private employment-related insurance

1 (through either their own employer or a family mem-  
2 ber's employer) 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; and

20 (12) the Institute of Medicine Committee on  
21 Unintended Pregnancy recently recommended that  
22 "financial barriers to contraception be reduced by  
23 increasing the proportion of all health insurance  
24 policies that cover contraceptive services and sup-  
25 plies".

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

3 (a) IN GENERAL.—Subpart B of part 7 of subtitle  
 4 B of title I of the Employee Retirement Income Security  
 5 Act of 1974 (as added by section 603(a) of the Newborns’  
 6 and Mothers’ Health Protection Act of 1996 and amended  
 7 by section 702(a) of the Mental Health Parity Act of  
 8 1996) is further amended by adding at the end the follow-  
 9 ing new section:

10 **“SEC. 713. STANDARDS RELATING TO BENEFITS FOR CON-**  
 11 **TRACEPTIVES.**

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

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

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

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

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

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

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

19          “(4) provide incentives (monetary or otherwise)  
 20 to a health care professional to induce such profes-  
 21 sional to withhold from a covered individual contra-  
 22 ceptive drugs or devices, or contraceptive services,  
 23 described in subsection (a).

24       “(c) RULES OF CONSTRUCTION.—

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

3           “(A) as preventing a group health plan  
4 and a health insurance issuer providing health  
5 insurance coverage in connection with a group  
6 health plan from imposing deductibles, coinsur-  
7 ance, or other cost-sharing or limitations in re-  
8 lation to—

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

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

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

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

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

24 “(A) in the case of a contraceptive drug or  
25 device, restricting the type of health care pro-

1           professionals that may prescribe such drugs or de-  
 2           vices, utilization review provisions, and limits on  
 3           the volume of prescription drugs or devices that  
 4           may be obtained on the basis of a single con-  
 5           sultation with a professional; or

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

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

24          “(e) PREEMPTION.—Nothing in this section shall be  
 25          construed to preempt any provision of State law to the



1 extent that such State law establishes, implements, or con-  
 2 tinues in effect any standard or requirement that provides  
 3 protections for enrollees that are greater than the protec-  
 4 tions provided under this section.

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

11 (b) CLERICAL AMENDMENT.—The table of contents  
 12 in section 1 of such Act, as amended by section 603 of  
 13 the Newborns’ and Mothers’ Health Protection Act of  
 14 1996 and section 702 of the Mental Health Parity Act  
 15 of 1996, is amended by inserting after the item relating  
 16 to section 712 the following new item:

“Sec. 713. Standards relating to benefits for contraceptives.”.

17 (c) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply with respect to plan years begin-  
 19 ning on or after January 1, 1998.

20 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
 21 **ACT RELATING TO THE GROUP MARKET.**

22 (a) IN GENERAL.—Subpart 2 of part A of title  
 23 XXVII of the Public Health Service Act (as added by sec-  
 24 tion 604(a) of the Newborns’ and Mothers’ Health Protec-  
 25 tion Act of 1996 and amended by section 703(a) of the

1 Mental Health Parity Act of 1996) is further amended  
 2 by adding at the end the following new section:

3 **“SEC. 2706. 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 provides benefits for other  
 14 outpatient prescription drugs or devices; or

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

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

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

1 enrollee’s use or potential use of items or services  
 2 that are covered in accordance with the requirements  
 3 of this section;

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

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

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

18 “(c) RULES OF CONSTRUCTION.—

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

21 “(A) as preventing a group health plan  
 22 and a health insurance issuer providing health  
 23 insurance coverage in connection with a group  
 24 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, except that such a deduct-  
5                   ible, coinsurance, or other cost-sharing or  
6                   limitation for any such drug may not be  
7                   greater than such a deductible, coinsur-  
8                   ance, or cost-sharing or limitation for any  
9                   outpatient prescription drug otherwise cov-  
10                  ered under the plan;

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

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

1 service otherwise covered under the plan;  
2 and

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

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

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

24 “(B) in the case of an outpatient contra-  
25 ceptive service, restricting the type of health

1 care professionals that may provide such serv-  
2 ices, utilization review provisions, requirements  
3 relating to second opinions prior to the coverage  
4 of such services, and requirements relating to  
5 preauthorizations prior to the coverage of such  
6 services.

7 “(d) NOTICE.—A group health plan under this part  
8 shall comply with the notice requirement under section  
9 713(d) of the Employee Retirement Income Security Act  
10 of 1974 with respect to the requirements of this section  
11 as if such section applied to such plan.

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

18 “(f) DEFINITION.—In this section, the term ‘out-  
19 patient contraceptive services’ means consultations, exami-  
20 nations, procedures, and medical services, provided on an  
21 outpatient basis and related to the use of contraceptive  
22 methods (including natural family planning) to prevent an  
23 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, 1998.

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

6 (a) IN GENERAL.—Subpart 3 of part B of title  
 7 XXVII of the Public Health Service Act (as added by sec-  
 8 tion 605(a) of the Newborn’s and Mother’s Health Protec-  
 9 tion Act of 1996) is amended by adding at the end the  
 10 following new section:

11 **“SEC. 2752. STANDARDS RELATING TO BENEFITS FOR CON-**  
 12 **TRACEPTIVES.**

13 “The provisions of section 2706 shall apply to health  
 14 insurance coverage offered by a health insurance issuer  
 15 in the individual market in the same manner as they apply  
 16 to health insurance coverage offered by a health insurance  
 17 issuer in connection with a group health plan in the small  
 18 or large group market.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
 20 this section shall apply with respect to health insurance  
 21 coverage offered, sold, issued, renewed, in effect, or oper-  
 22 ated in the individual market on or after January 1, 1998.

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