

106TH CONGRESS
1ST SESSION

S. 1400

To protect women’s reproductive health and constitutional right to choice,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 1999

Mrs. BOXER (for herself, Mrs. MURRAY, Mr. KENNEDY, Mr. LAUTENBERG,
and Mr. SCHUMER) introduced the following bill; which was read twice
and referred to the Committee on Health, Education, Labor, and Pen-
sions

A BILL

To protect women’s reproductive health and constitutional
right to choice, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Family Planning and Choice Protection Act of 1999”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—PREVENTION

Subtitle A—Family Planning

- Sec. 101. Family planning amendments.
 Sec. 102. Freedom of full disclosure.

Subtitle B—Prescription Equity and Contraceptive Coverage

- Sec. 111. Short title.
 Sec. 112. Findings.
 Sec. 113. Amendments to the Employee Retirement Income Security Act of 1974.
 Sec. 114. Amendments to the Public Health Service Act relating to the group market.
 Sec. 115. Amendment to the Public Health Service Act relating to the individual market.
 Sec. 116. FEHBP coverage.

Subtitle C—Emergency Contraceptives

- Sec. 121. Emergency contraceptive education.

TITLE II—CHOICE PROTECTION

- Sec. 201. Medicaid funding for abortion services.
 Sec. 202. Clinic violence.
 Sec. 203. Approval of RU-486.
 Sec. 204. Freedom of choice.
 Sec. 205. Fairness in insurance.
 Sec. 206. Reproductive rights of women in the military.
 Sec. 207. Repeal of certain State Child Health Insurance Program limitations.
 Sec. 208. Funding for certain services for women in prison.
 Sec. 209. Funding for certain services for women in the District of Columbia.
 Sec. 210. Funding for certain services for women under the FEHBP.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) Reproductive rights are central to the abil-
 4 ity of women to exercise full enjoyment of rights se-
 5 cured to women by Federal and State law.

6 (2) Abortion has been a legal and constitu-
 7 tionally protected medical procedure throughout the
 8 United States since 1973 and has become part of
 9 mainstream medical practice as is evidenced by the
 10 positions of medical institutions including the Amer-
 11 ican Medical Association, the American College of

1 Obstetricians and Gynecologists, the American Med-
2 ical Women’s Association, the American Nurses As-
3 sociation, and the American Public Health Associa-
4 tion.

5 (3) The availability of abortion services is di-
6 minishing throughout the United States, as evi-
7 denced by—

8 (A) the fact that 86 percent of counties in
9 the United States have no abortion provider;
10 and

11 (B) the fact that, between 1992 and 1996,
12 the number of abortion providers decreased by
13 14 percent.

14 (4)(A) The Department of Health and Human
15 Services and the Institute of Medicine of the Na-
16 tional Academy of Sciences have contributed to the
17 development of a report entitled “Healthy People
18 2000”, which urges that the rate of unintended
19 pregnancy in the United States be reduced by nearly
20 50 percent by the year 2000.

21 (B) Nearly 50 percent, or approximately
22 3,050,000, of all pregnancies in the United States
23 each year are unintended, resulting in 1,370,000
24 abortions in the United States each year.

1 (C) The provision of family planning services,
 2 including emergency contraception, is a cost-effective
 3 way of reducing the number of unintended preg-
 4 nancies and abortions in the United States.

5 **TITLE I—PREVENTION**

6 **Subtitle A—Family Planning**

7 **SEC. 101. FAMILY PLANNING AMENDMENTS.**

8 Section 1001(d) of the Public Health Service Act (42
 9 U.S.C. 300(d)) is amended to read as follows:

10 “(d) For the purpose of making grants and entering
 11 into contracts under this section, there are authorized to
 12 be appropriated \$500,000,000 for each of fiscal years
 13 2000 through 2004.”.

14 **SEC. 102. FREEDOM OF FULL DISCLOSURE.**

15 Title XI of the Civil Rights Act of 1964 (42 U.S.C.
 16 2000h et seq.) is amended by adding at the end the fol-
 17 lowing:

18 **“SEC. 1107. INFORMATION ABOUT AVAILABILITY OF REPRO-** 19 **DUCTIVE HEALTH CARE SERVICES.**

20 “(a) DEFINITION.—As used in this section, the term
 21 ‘governmental authority’ means any authority of the
 22 United States.

23 “(b) GENERAL AUTHORITY.—Notwithstanding any
 24 other provision of law, no governmental authority shall,
 25 in or through any program or activity that is administered

1 or assisted by such authority and that provides health care
 2 services or information, limit the right of any person to
 3 provide, or the right of any person to receive, nonfraudu-
 4 lent information about the availability of reproductive
 5 health care services, including family planning, prenatal
 6 care, adoption, and abortion services.”.

7 **Subtitle B—Prescription Equity** 8 **and Contraceptive Coverage**

9 **SEC. 111. SHORT TITLE.**

10 This subtitle may be cited as the “Equity in Prescrip-
 11 tion Insurance and Contraceptive Coverage Act of 1999”.

12 **SEC. 112. FINDINGS.**

13 Congress finds that—

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

17 (2) contraceptive services are part of basic
 18 health care, allowing families to both adequately
 19 space desired pregnancies and avoid unintended
 20 pregnancy;

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

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

3 (5) unintended pregnancies lead to higher rates
4 of infant mortality, low-birth weight, and maternal
5 morbidity, and threaten the economic viability of
6 families;

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

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

16 (8) the vast majority of private insurers cover
17 prescription drugs, but many exclude coverage for
18 prescription contraceptives;

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

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

5 (11) the lack of contraceptive coverage in health
 6 insurance places many effective forms of contracep-
 7 tives beyond the financial reach of many women,
 8 leading to unintended pregnancies;

9 (12) the Institute of Medicine Committee on
 10 Unintended Pregnancy recommended that “financial
 11 barriers to contraception be reduced by increasing
 12 the proportion of all health insurance policies that
 13 cover contraceptive services and supplies”;

14 (13) in 1998, Congress agreed to provide con-
 15 traceptive coverage to the 2,000,000 women of re-
 16 productive age who are participating in the Federal
 17 Employees Health Benefits Program, the largest
 18 employer-sponsored health insurance plan in the
 19 world; and

20 (14) eight in 10 privately insured adults sup-
 21 port contraceptive coverage.

22 **SEC. 113. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
 23 **INCOME SECURITY ACT OF 1974.**

24 (a) IN GENERAL.—Subpart B of part 7 of subtitle
 25 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 new section:

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

17 “(e) PREEMPTION.—Nothing in this section shall be
18 construed to preempt any provision of State law to the
19 extent that such State law establishes, implements, or con-
20 tinues in effect any standard or requirement that provides
21 protections for enrollees that are greater than the protec-
22 tions provided 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 note) is amended by insert-
 7 ing after the item relating to section 713 the following
 8 new item:

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

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply with respect to plan years begin-
 11 ning on or after January 1, 2000.

12 **SEC. 114. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
 13 **ACT RELATING TO THE GROUP MARKET.**

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

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

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

24 “(1) exclude or restrict benefits for prescription
 25 contraceptive drugs or devices approved by the Food

1 and Drug Administration, or generic equivalents ap-
2 proved as substitutable by the Food and Drug Ad-
3 ministration, if such plan provides benefits for other
4 outpatient prescription drugs or devices; or

5 “(2) exclude or restrict benefits for outpatient
6 contraceptive services if such plan provides benefits
7 for other outpatient services provided by a health
8 care professional (referred to in this section as ‘out-
9 patient 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, except that such a deduct-
 19 ible, coinsurance, or other cost-sharing or
 20 limitation for any such drug may not be
 21 greater than such a deductible, coinsur-
 22 ance, or cost-sharing or limitation for any
 23 outpatient prescription drug otherwise cov-
 24 ered under the plan;

1 “(ii) benefits for contraceptive devices
2 under the plan, except that such a deduct-
3 ible, coinsurance, or other cost-sharing or
4 limitation for any such device may not be
5 greater than such a deductible, coinsur-
6 ance, or cost-sharing or limitation for any
7 outpatient prescription device otherwise
8 covered under the plan; and

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

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

1 other experimental or investigational outpatient
2 prescription drugs or devices, or experimental
3 or investigational outpatient health care serv-
4 ices.

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

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

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

22 “(d) NOTICE.—A group health plan under this part
23 shall comply with the notice requirement under section
24 714(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 protections for enrollees that are greater than the protec-
 8 tions 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, 2000.

18 **SEC. 115. AMENDMENT TO THE PUBLIC HEALTH SERVICE**

19 **ACT 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 new section:

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, 2000.

15 **SEC. 116. FEHBP COVERAGE.**

16 (a) PROHIBITION.—No Federal funds may be used
 17 to enter into or renew a contract which includes a provi-
 18 sion providing prescription drug coverage unless the con-
 19 tract also includes a provision for contraceptive coverage.

20 (b) LIMITATION.—Nothing in this section shall apply
 21 to a contract with—

- 22 (1) any of the following religious plans—
- 23 (A) SelectCare;
 - 24 (B) Personal CaresHMO;
 - 25 (C) Care Choices;

1 (D) OSF Health Plans, Inc.;

2 (E) Yellowstone Community Health Plan;

3 and

4 (2) any existing or future plan, if the plan ob-
5 jects to such coverage on the basis of religious be-
6 liefs.

7 (c) REFUSAL TO PRESCRIBE.—In implementing this
8 section, any plan that enters into or renews a contract
9 under this section may not subject any individual to dis-
10 crimination on the basis that the individual refuses to pre-
11 scribe contraceptives because such activities would be con-
12 trary to the individual’s religious beliefs or moral convic-
13 tions.

14 **Subtitle C—Emergency** 15 **Contraceptives**

16 **SEC. 121. EMERGENCY CONTRACEPTIVE EDUCATION.**

17 (a) DEFINITION.—In this section:

18 (1) EMERGENCY CONTRACEPTIVE.—The term
19 “emergency contraceptive” means a drug or device
20 (as the terms are defined in section 201 of the Fed-
21 eral Food, Drug, and Cosmetic Act (21 U.S.C. 321))
22 that is designed—

23 (A) to be used after sexual relations; and

1 (B) to prevent pregnancy, by preventing
2 ovulation, fertilization of an egg, or implanta-
3 tion of an egg in a uterus.

4 (2) HEALTH CARE PROVIDER.—The term
5 “health care provider” means anyone licensed or cer-
6 tified under State law to provide health care services
7 who is operating within the scope of such license.

8 (3) INSTITUTION OF HIGHER EDUCATION.—The
9 term “institution of higher education” has the
10 meaning given the term in section 1201(a) of the
11 Higher Education Act of 1965 (20 U.S.C. 1141(a)).

12 (b) EMERGENCY CONTRACEPTIVE PUBLIC EDU-
13 CATION PROGRAM.—

14 (1) IN GENERAL.—The Secretary of Health and
15 Human Services, acting through the Director of the
16 Centers for Disease Control, shall develop and dis-
17 seminate to the public information on emergency
18 contraceptives.

19 (2) DEVELOPMENT AND DISSEMINATION.—The
20 Secretary may develop and disseminate the informa-
21 tion directly or through arrangements with nonprofit
22 organizations, consumer groups, institutions of high-
23 er education, Federal, State, or local agencies, and
24 clinics.

1 (3) INFORMATION.—The information shall in-
 2 clude, at a minimum, information describing emer-
 3 gency contraceptives, and explaining the use, effects,
 4 efficacy, and availability of the contraceptives.

5 (c) EMERGENCY CONTRACEPTIVE INFORMATION
 6 PROGRAM FOR HEALTH CARE PROVIDERS.—

7 (1) IN GENERAL.—The Secretary of Health and
 8 Human Services, acting through the Administrator
 9 of the Health Resources and Services Administra-
 10 tion, shall develop and disseminate to health care
 11 providers information on emergency contraceptives.

12 (2) INFORMATION.—The information shall in-
 13 clude, at a minimum—

14 (A) information describing the use, effects,
 15 efficacy and availability of the contraceptives;

16 (B) a recommendation from the Secretary
 17 regarding the use of the contraceptives in ap-
 18 propriate cases; and

19 (C) information explaining how to obtain
 20 copies of the information developed under sub-
 21 section (b), for distribution to the patients of
 22 the providers.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
 24 authorized to be appropriated to carry out this section

1 \$5,000,000 for the period consisting of fiscal years 2000
2 through 2002.

3 **TITLE II—CHOICE PROTECTION**

4 **SEC. 201. MEDICAID FUNDING FOR ABORTION SERVICES.**

5 Sections 508 and 509 of the Departments of Labor,
6 Health and Human Services, and Education, and Related
7 Agencies Appropriations Act, 1999 (Public Law 105–277)
8 are repealed.

9 **SEC. 202. CLINIC VIOLENCE.**

10 (a) FINDINGS.—Congress makes the following find-
11 ings:

12 (1) Federal resources are necessary to ensure
13 that women have safe access to reproductive health
14 facilities and that health professionals can deliver
15 services in a secure environment free from violence
16 and threats of force.

17 (2) It is necessary and appropriate to use Fed-
18 eral resources to combat the nationwide campaign of
19 violence and harassment against reproductive health
20 centers.

21 (3) The Congress should support further in-
22 creasing Federal resources to fully ensure the safety
23 of health professionals, center staff, and all women
24 using reproductive health center services and the
25 family members of such persons.

1 (b) NATIONAL TASK FORCE ON VIOLENCE AGAINST
2 HEALTH CARE PROVIDERS.—

3 (1) ESTABLISHMENT.—There is established
4 within the Department of Justice a task force to be
5 known as the “Task Force on Violence Against
6 Health Care Providers” (referred to in this sub-
7 section as the “Task Force”).

8 (2) COMPOSITION.—The Task Force shall be
9 composed of at least 1 individual to be appointed by
10 the Attorney General from each of the following:

11 (A) The Bureau of Alcohol, Tobacco and
12 Firearms.

13 (B) The Federal Bureau of Investigation.

14 (C) The United States Marshal Service.

15 (D) The United States Postal Service.

16 (E) The Civil Rights Division of the De-
17 partment of Justice.

18 (F) The Criminal Division of the Depart-
19 ment of Justice.

20 (3) POWERS AND DUTIES.—The Task Force
21 shall—

22 (A) coordinate investigative, prosecutorial
23 and enforcement efforts of Federal, State and
24 local governments in cases related to violence at

1 reproductive health care facilities and violence
2 against health care providers;

3 (B) under the direction of the Attorney
4 General, conduct security assessments for re-
5 productive health care facilities; and

6 (C) provide training for local law enforce-
7 ment to appropriately address incidences of vio-
8 lence against reproductive health care facilities
9 and provide methodologies for assessing risks
10 and promoting security at reproductive health
11 care facilities.

12 (4) AUTHORIZATION OF APPROPRIATIONS.—

13 There is authorized to be appropriated \$2,000,000
14 for each fiscal year to carry out this subsection.

15 (c) GRANTS FOR CLINIC SECURITY.—

16 (1) IN GENERAL.—The Office of Justice Pro-
17 grams within the Department of Justice shall award
18 grants to reproductive health care facilities to enable
19 such facilities to enhance security and to purchase
20 and install security devices.

21 (2) AUTHORIZATION OF APPROPRIATIONS.—

22 There is authorized to be appropriated, \$5,000,000
23 for each of fiscal years 2000 through 2004 to carry
24 out this subsection.

1 **SEC. 203. APPROVAL OF RU-486.**

2 The Secretary of Health and Human Services shall—

3 (1) ensure that a decision by the Food and
4 Drug Administration to approve the drug called
5 Mifepristone or RU-486 shall be made only on the
6 basis provided in law; and

7 (2) assess initiatives by which the Department
8 of Health and Human Services can promote the
9 testing, licensing, and manufacturing in the United
10 States of the drug or other antiprogestins.

11 **SEC. 204. FREEDOM OF CHOICE.**

12 (a) FINDINGS.—Congress finds the following:

13 (1) The 1973 Supreme Court decision in *Roe v.*
14 *Wade*, 410 U.S. 113 (1973) established constitu-
15 tionally based limits on the power of States to re-
16 strict the right of a woman to choose to terminate
17 a pregnancy. Under the strict scrutiny standard
18 enunciated in the *Roe v. Wade* decision, States were
19 required to demonstrate that laws restricting the
20 right of a woman to choose to terminate a pregnancy
21 were the least restrictive means available to achieve
22 a compelling State interest. Since 1992, the Su-
23 preme Court has no longer applied the strict scru-
24 tiny standard in reviewing challenges to the constitu-
25 tionality of State laws restricting such rights.

1 (2) As a result of modifications made by the
2 Supreme Court of the strict scrutiny standard enun-
3 ciated in the Roe v. Wade decision, certain States
4 have restricted the right of women to choose to ter-
5 minate a pregnancy or to utilize some forms of con-
6 traception, and the restrictions operate cumulatively
7 to—

8 (A)(i) increase the number of illegal or
9 medically less safe abortions, often resulting in
10 physical impairment, loss of reproductive capac-
11 ity, or death to the women involved;

12 (ii) burden interstate and international
13 commerce by forcing women to travel from
14 States in which legal barriers render contracep-
15 tion or abortion unavailable or unsafe to other
16 States or foreign nations;

17 (iii) interfere with freedom of travel be-
18 tween and among the various States;

19 (iv) burden the medical and economic re-
20 sources of States that continue to provide
21 women with access to safe and legal abortion;
22 and

23 (v) interfere with the ability of medical
24 professionals to provide health services;

1 (B) obstruct access to and use of contra-
2 ceptive and other medical techniques that are
3 part of interstate and international commerce;

4 (C) discriminate between women who are
5 able to afford interstate and international travel
6 and women who are not, a disproportionate
7 number of whom belong to racial or ethnic mi-
8 norities; and

9 (D) infringe on the ability of women to ex-
10 ercise full enjoyment of rights secured to
11 women by Federal and State law, both statu-
12 tory and constitutional.

13 (3) Although Congress may not by legislation
14 create constitutional rights, Congress may, where
15 authorized by a constitutional provision enumerating
16 the powers of Congress and not prohibited by a con-
17 stitutional provision, enact legislation to create and
18 secure statutory rights in areas of legitimate na-
19 tional concern.

20 (4) Congress has the affirmative power under
21 section 8 of article I of the Constitution and under
22 section 5 of the 14th amendment to the Constitution
23 to enact legislation to prohibit State interference
24 with interstate commerce, liberty, or equal protection
25 of the laws.

1 (b) PURPOSE.—The purpose of this section is to es-
 2 tablish, as a statutory matter, limitations on the power
 3 of a State to restrict the freedom of a woman to terminate
 4 a pregnancy in order to achieve the same limitations on
 5 State action as were provided, as a constitutional matter,
 6 under the strict scrutiny standard of review enunciated in
 7 the *Roe v. Wade* decision.

8 (c) DEFINITION.—As used in this section, the term
 9 “State” includes the District of Columbia, the Common-
 10 wealth of Puerto Rico, and each other territory or posses-
 11 sion of the United States.

12 (d) GENERAL AUTHORITY.—A State—

13 (1) may not restrict the freedom of a woman to
 14 choose whether or not to terminate a pregnancy be-
 15 fore fetal viability;

16 (2) may restrict the freedom of a woman to
 17 choose whether or not to terminate a pregnancy
 18 after fetal viability unless such a termination is nec-
 19 essary to preserve the life or health of the woman;
 20 and

21 (3) may impose requirements on the perform-
 22 ance of abortion procedures if such requirements are
 23 medically necessary to protect the health of women
 24 undergoing such procedures.

1 (e) RULES OF CONSTRUCTION.—Nothing in this sec-
 2 tion shall be construed to—

3 (1) prevent a State from promulgating regula-
 4 tions to protect unwilling individuals or private
 5 health care institutions from being required to par-
 6 ticipate in the performance of abortions to which the
 7 individuals or institutions are conscientiously op-
 8 posed;

9 (2) prevent a State from promulgating regula-
 10 tions to permit the State to decline to pay for the
 11 performance of abortions; or

12 (3) prevent a State from promulgating regula-
 13 tions to require a minor to involve a parent, guard-
 14 ian, or other responsible adult before terminating a
 15 pregnancy;

16 so long as such regulations meet constitutional standards.

17 **SEC. 205. FAIRNESS IN INSURANCE.**

18 Notwithstanding any other provision of law, no Fed-
 19 eral law shall be construed to prohibit a health plan from
 20 offering coverage for the full range of reproductive health
 21 care services, including abortion services.

22 **SEC. 206. REPRODUCTIVE RIGHTS OF WOMEN IN THE MILI-**
 23 **TARY.**

24 Section 1093 of title 10, United States Code, is
 25 amended—

1 (1) in subsection (a), by inserting before the pe-
 2 riod the following: “or in a case in which the preg-
 3 nancy involved is the result of an act of rape or in-
 4 cest or the abortion involved is medically necessary
 5 or appropriate”;

6 (2) by striking subsection (b); and

7 (3) by adding at the end the following:

8 “(b) ABORTIONS IN FACILITIES OVERSEAS.—Sub-
 9 section (a) does not limit the performing of an abortion
 10 in a facility of the uniformed services located outside the
 11 48 contiguous States of the United States if—

12 “(1) the cost of performing the abortion is fully
 13 paid from a source or sources other than funds
 14 available to the Department of Defense;

15 “(2) abortions are not prohibited by the laws of
 16 the jurisdiction where the facility is located; and

17 “(3) the abortion would otherwise be permitted
 18 under the laws applicable to the provision of health
 19 care to members and former members of the uni-
 20 formed services and their dependents in such facil-
 21 ity.”.

22 **SEC. 207. REPEAL OF CERTAIN STATE CHILD HEALTH IN-**
 23 **SURANCE PROGRAM LIMITATIONS.**

24 (a) IN GENERAL.—Section 2105(c) of the Social Se-
 25 curity Act (42 U.S.C. 1397ee(c)) is amended—

1 (1) in paragraph (1), by striking “, and any
2 health” and all that follows through “incest”; and
3 (2) by striking paragraph (7).

4 (b) CHILD HEALTH ASSISTANCE.—Section
5 2110(a)(16) of the Social Security Act (42 U.S.C.
6 1397jj(a)(16)) is amended by striking “only if” and all
7 that follows and inserting “services;”.

8 **SEC. 208. FUNDING FOR CERTAIN SERVICES FOR WOMEN**
9 **IN PRISON.**

10 Sections 103 and 104 of title I of the Departments
11 of Commerce, Justice, and State, the Judiciary, and Re-
12 lated Agencies Appropriations Act, 1999 (Public Law
13 105–277) are repealed.

14 **SEC. 209. FUNDING FOR CERTAIN SERVICES FOR WOMEN**
15 **IN THE DISTRICT OF COLUMBIA.**

16 Section 131 of the District of Columbia Appropria-
17 tions Act, 1999 (Public Law 105–277) is repealed.

18 **SEC. 210. FUNDING FOR CERTAIN SERVICES FOR WOMEN**
19 **UNDER THE FEHBP.**

20 Sections 509 and 510 of the Treasury and General
21 Government Appropriations Act, 1999 (Public Law 105–
22 277) are repealed.

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