

109TH CONGRESS  
1ST SESSION

# H. R. 4651

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 22, 2005

Mrs. LOWEY introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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 2005”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

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

4           (2) 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 under  
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 healthcare  
14          and medical care for newborns;

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

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 exclude coverage for  
8           prescription contraceptives;

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

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

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

23          (12) the Institute of Medicine Committee on  
24          Unintended Pregnancy recommended that "financial  
25          barriers to contraception be reduced by increasing

1 the proportion of all health insurance policies that  
2 cover contraceptive services and supplies”;

3 (13) in 1998, Congress agreed to provide con-  
4 traceptive coverage to the 2,000,000 women of re-  
5 productive age who are participating in the Federal  
6 Employees Health Benefits Program, the largest  
7 employer-sponsored health insurance plan in the  
8 world, and, in 2001, the Office of Personnel Man-  
9 agement reported that it did not raise premiums as  
10 a result of such coverage because there was “no cost  
11 increase due to contraceptive coverage”;

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

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

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

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 (29 U.S.C. 1185 et seq.) is amended by add-  
6 ing at the end the following new section:

7 **“SEC. 714. STANDARDS RELATING TO BENEFITS FOR CON-**  
8 **TRACEPTIVES.**

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

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

20 “(2) exclude or restrict benefits for outpatient  
21 contraceptive services if such plan or coverage pro-  
22 vides benefits for other outpatient services provided  
23 by a health care professional (referred to in this sec-  
24 tion as ‘outpatient 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 or coverage because of the in-  
7 dividual’s or enrollee’s use or potential use of items  
8 or services that are covered in accordance with the  
9 requirements 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 or coverage, except that  
11 such a deductible, coinsurance, or other  
12 cost-sharing or limitation for any such  
13 drug shall be consistent with those imposed  
14 for any outpatient prescription drug other-  
15 wise covered under the plan or coverage;

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

24           “(iii) benefits for outpatient contra-  
25 ceptive services under the plan or coverage,

1           except that such a deductible, coinsurance,  
2           or other cost-sharing or limitation for any  
3           such service shall be consistent with those  
4           imposed for any outpatient health care  
5           service otherwise covered under the plan or  
6           coverage;

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

19          “(C) as modifying, diminishing, or limiting  
20          the rights and protections of an individual  
21          under any other Federal law.

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 coverage or protections for participants or beneficiaries  
 4 that are greater than the coverage or protections provided  
 5 under this section.

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

12 (b) CLERICAL AMENDMENT.—The table of contents  
 13 in section 1 of the Employee Retirement Income Security  
 14 Act of 1974 (29 U.S.C. 1001 note) is amended by insert-  
 15 ing after the item relating to section 713 the following  
 16 new item:

“714. 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, 2007.

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 (42 U.S.C.  
 24 300gg–4 et seq.) is amended by adding at the end the  
 25 following new section:

1   **“SEC. 2707. 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 or coverage because of the in-  
25 dividual’s or enrollee’s use or potential use of items

1 or services that are covered in accordance with the  
2 requirements 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 covered individual contracep-  
15 tive drugs or devices, or contraceptive services, de-  
16 scribed 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 any outpatient prescription drug other-  
7 wise 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 any outpatient prescription device oth-  
14 erwise covered under the plan or coverage;  
15 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 any outpatient health care  
22 service otherwise covered under the plan or  
23 coverage;

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

1 insurance 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 and protections of an individual  
13 under 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.—A group health plan under this part  
7           shall comply with the notice requirement under section  
8           714(d) of the Employee Retirement Income Security Act  
9           of 1974 with respect to the requirements of this section  
10          as if such section applied to such plan.

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

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

23          (b) EFFECTIVE DATE.—The amendments made by  
24          this section shall apply with respect to group health plans  
25          for plan years beginning on or after January 1, 2007.

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 new section:

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, 2007.

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