

110TH CONGRESS
1ST SESSION

H. R. 2412

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

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2007

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 Labor, 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

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, 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, 2009.

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, 2009.

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, 2009.

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