

110TH CONGRESS
1ST SESSION

S. 1240

To provide for the provision by hospitals receiving Federal funds through the Medicare program or Medicaid program of emergency contraceptives to women who are survivors of sexual assault.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2007

Mrs. CLINTON (for herself, Mr. MENENDEZ, Mrs. BOXER, Ms. CANTWELL, Mr. KERRY, Mrs. MURRAY, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the provision by hospitals receiving Federal funds through the Medicare program or Medicaid program of emergency contraceptives to women who are survivors of sexual assault.

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 “Compassionate Assist-
5 ance for Rape Emergencies Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1 (1) It is estimated that 25,000 to 32,000
2 women become pregnant each year as a result of
3 rape or incest. Timely access to emergency contra-
4 ception could help many of these rape survivors
5 avoid the additional trauma of facing an unintended
6 pregnancy.

7 (2) A 1996 study of rape-related pregnancies
8 (published in the American Journal of Obstetrics
9 and Gynecology) found that 50 percent of the preg-
10 nancies described in paragraph (1) ended in abor-
11 tion.

12 (3) Surveys have shown that many hospitals do
13 not routinely provide emergency contraception to
14 women seeking treatment after being sexually as-
15 sailed.

16 (4) The risk of pregnancy after sexual assault
17 has been estimated to be 4.7 percent in survivors
18 who were not protected by some form of contracep-
19 tion at the time of the attack.

20 (5) The Food and Drug Administration has de-
21 clared emergency contraception to be safe and effec-
22 tive in preventing unintended pregnancy if taken in
23 the first 72 hours of sex.

24 (6) Medical research strongly indicates that the
25 sooner emergency contraception is administered, the

1 greater the likelihood of preventing unintended preg-
2 nancy.

3 (7) In light of the safety and effectiveness of
4 emergency contraceptive pills, both the American
5 Medical Association and the American College of
6 Obstetricians and Gynecologists have endorsed more
7 widespread availability of such pills to women of all
8 ages.

9 (8) The American College of Emergency Physi-
10 cians and the American College of Obstetricians and
11 Gynecologists agree that offering emergency contra-
12 ception to female patients after a sexual assault
13 should be considered the standard of care.

14 (9) Approximately one-third of women of repro-
15 ductive age remain unaware of emergency contracep-
16 tion. Therefore, women who have been sexually as-
17 sailed are unlikely to ask for emergency contracep-
18 tion.

19 (10) It is essential that all hospitals that pro-
20 vide emergency medical treatment provide emergency
21 contraception as a treatment option to any woman
22 who has been sexually assaulted, so that she may
23 prevent an unintended pregnancy.

24 (11) Victims of sexual assault are at increased
25 risk of contracting sexually transmitted diseases.

1 (12) Some sexually transmitted infections can-
2 not be reliably cured if treatment is delayed, and
3 may result in high morbidity and mortality. HIV has
4 killed over 520,000 individuals in the United States,
5 and the Centers for Disease Control and Prevention
6 currently estimates that over 1,000,000 individuals
7 in the United States are infected with the virus.
8 Even modern drug treatment has failed to cure in-
9 fected individuals. Nearly 60,000 individuals in the
10 United States are infected with hepatitis B each
11 year, with some individuals unable to fully recover.
12 An estimated 1,250,000 individuals in the United
13 States remain chronically infected with the hepatitis
14 B virus and at present, 1 in 4 of those infected indi-
15 viduals may expect to die of liver failure.

16 (13) It is possible to prevent some sexually
17 transmitted diseases by treating an exposed indi-
18 vidual promptly. The use of post-exposure prophylaxis
19 using antiretroviral drugs has been demonstrated
20 to effectively prevent the establishment of
21 HIV infection. Hepatitis B infection may also be
22 eliminated if an exposed individual receives prompt
23 treatment.

24 (14) The Centers for Disease Control and Pre-
25 vention has recommended risk evaluation and appro-

1 piate application of post-exposure treatment for vic-
2 tims of sexual assault. For such individuals, imme-
3 diate treatment is the only means to prevent a life-
4 threatening infection.

5 (15) It is essential that all hospitals that pro-
6 vide emergency medical treatment provide assess-
7 ment and treatment of sexually transmitted infec-
8 tions to minimize the harm to victims of sexual as-
9 sault.

10 **SEC. 3. SURVIVORS OF SEXUAL ASSAULT; PROVISION BY**
11 **HOSPITALS OF EMERGENCY CONTRACEP-**
12 **TIVES WITHOUT CHARGE.**

13 (a) IN GENERAL.—Federal funds may not be pro-
14 vided to a hospital under title XVIII of the Social Security
15 Act or to a State, with respect to services of a hospital,
16 under title XIX of such Act, unless the hospital meets the
17 conditions specified in subsection (b) in the case of—

18 (1) any woman who arrives at the hospital and
19 states that she is a victim of sexual assault, or is ac-
20 companied by someone who states she is a victim of
21 sexual assault; and

22 (2) any woman who arrives at the hospital
23 whom hospital personnel have reason to believe is a
24 victim of sexual assault.

1 (b) ASSISTANCE FOR VICTIMS.—The conditions spec-
2 ified in this subsection regarding a hospital and a woman
3 described in subsection (a) are as follows:

4 (1) The hospital promptly provides the woman
5 with medically and factually accurate and unbiased
6 written and oral information about emergency con-
7 traception, including information explaining that—

8 (A) emergency contraception has been ap-
9 proved by the Food and Drug Administration
10 as an over-the-counter medication for women
11 ages 18 and over and is a safe and effective
12 way to prevent pregnancy after unprotected
13 intercourse or contraceptive failure if taken in
14 a timely manner;

15 (B) emergency contraception is more effec-
16 tive the sooner it is taken; and

17 (C) emergency contraception does not
18 cause an abortion and cannot interrupt an es-
19 tablished pregnancy.

20 (2) The hospital promptly offers emergency
21 contraception to the woman, and promptly provides
22 such contraception to her at the hospital on her re-
23 quest.

24 (3) The information provided pursuant to para-
25 graph (1) is in clear and concise language, is readily

comprehensible, and meets such conditions regarding the provision of the information in languages other than English as the Secretary may establish.

(4) The services described in paragraphs (1) through (3) are not denied because of the inability of the woman or her family to pay for the services.

(c) DEFINITIONS.—For purposes of this section:

(1) EMERGENCY CONTRACEPTION.—The term “emergency contraception” means a drug, drug regimen, or device that is—

(A) approved by the Food and Drug Administration to prevent pregnancy; and

(B) is used postcoitally.

(2) HOSPITAL.—The term “hospital” has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)), and includes critical access hospitals, as defined in section 1861(mm)(1) of such Act (42 U.S.C. 1395x(mm)(1)).

(3) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(4) SEXUAL ASSAULT.—

(A) IN GENERAL.—The term “sexual assault” means a sexual act (as defined in subparagraphs (A) through (C) of section 2246(2)

1 of title 18, United States Code) where the vic-
 2 tim involved does not consent or lacks the ca-
 3 pacity to consent.

4 (B) APPLICATION OF PROVISIONS.—The
 5 definition in subparagraph (A) shall apply to all
 6 individuals.

7 (d) EFFECTIVE DATE; AGENCY CRITERIA.—This sec-
 8 tion takes effect upon the expiration of the 180-day period
 9 beginning on the date of the enactment of this Act. Not
 10 later than 30 days prior to the expiration of such period,
 11 the Secretary shall publish in the Federal Register criteria
 12 for carrying out this section.

13 **SEC. 4. PREVENTION OF SEXUALLY TRANSMITTED DIS-**
 14 **EASE.**

15 (a) DEFINITIONS.—In this section:

16 (1) HOSPITAL.—The term “hospital” has the
 17 meaning given such term in section 1861(e) of the
 18 Social Security Act (42 U.S.C. 1395x(e)), and in-
 19 cludes critical access hospitals, as defined in section
 20 1861(mm)(1) of such Act (42 U.S.C.
 21 1395x(mm)(1)).

22 (2) LICENSED MEDICAL PROFESSIONAL.—The
 23 term “licensed medical professional” means a doctor
 24 of medicine, doctor of osteopathy, registered nurse,
 25 physician assistant, or any other health care profes-

1 sional determined to be appropriate by the Sec-
 2 retary.

3 (3) SECRETARY.—The term “Secretary” means
 4 the Secretary of Health and Human Services.

5 (4) SEXUAL ASSAULT.—

6 (A) IN GENERAL.—The term “sexual as-
 7 sault” means a sexual act (as defined in sub-
 8 paragraphs (A) through (C) of section 2246(2)
 9 of title 18, United States Code) where the vic-
 10 tim involved does not consent or lacks the ca-
 11 pacity to consent.

12 (B) APPLICATION OF PROVISIONS.—The
 13 definition in subparagraph (A) shall apply to all
 14 individuals.

15 (b) GENERAL REQUIREMENT.—Federal funds may
 16 not be provided to a hospital under title XVIII of the So-
 17 cial Security Act (42 U.S.C. 1395 et seq.) or to a State,
 18 with respect to services of a hospital, under title XIX of
 19 such Act (42 U.S.C. 1396 et seq.), unless the hospital pro-
 20 vides risk assessment, counseling, and treatment as re-
 21 quired under this section to a survivor of sexual assault
 22 described in subsection (c).

23 (c) SURVIVORS OF SEXUAL ASSAULT.—An individual
 24 is a survivor of a sexual assault described in this sub-
 25 section if the individual—

1 (1) arrives at the hospital and states that the
2 individual is a victim of sexual assault, or is accom-
3 panied to the hospital by another individual who
4 states that the first individual is a victim of sexual
5 assault; or

6 (2) arrives at the hospital and hospital per-
7 sonnel have reason to believe the individual is a vic-
8 tim of sexual assault.

9 (d) REQUIREMENT FOR RISK ASSESSMENT, COUN-
10 SELING, AND TREATMENT.—The following shall apply
11 with respect to a hospital described in subsection (b):

12 (1) RISK ASSESSMENT.—A hospital shall
13 promptly provide a survivor of a sexual assault with
14 an assessment of the individual's risk of contracting
15 sexually transmitted infections described in para-
16 graph (2)(A), which assessment shall be conducted
17 by a licensed medical professional and be based
18 upon—

19 (A) available information regarding the as-
20 sault as well as the subsequent findings from
21 medical examination and any tests that may be
22 conducted; and

23 (B) established standards of risk assess-
24 ment, which shall include consideration of any
25 recommendations established by the Centers for

1 Disease Control and Prevention, and may also
2 incorporate consideration of findings of peer-re-
3 viewed clinical studies and appropriate research
4 utilizing in vitro and non-human primate mod-
5 els of infection.

6 (2) COUNSELING.—A hospital shall provide a
7 survivor of a sexual assault with advice, provided by
8 a licensed medical professional, concerning—

9 (A) significantly prevalent sexually trans-
10 mitted infections for which effective post-expo-
11 sure prophylaxis exists, and for which the defer-
12 ral of treatment would either significantly re-
13 duce treatment efficacy or pose substantial risk
14 to the individual's health; and

15 (B) the requirement that prophylactic
16 treatment for infections described in subpara-
17 graph (A) shall be provided to the individual
18 upon request, regardless of the ability of the in-
19 dividual or the individual's family to pay for
20 such treatment.

21 (3) TREATMENT.—A hospital shall provide a
22 survivor of a sexual assault, upon request, with pro-
23 phylactic treatment for infections described in para-
24 graph (2)(A).

1 (4) LANGUAGE.—Any information provided
2 pursuant to this subsection shall be in clear and con-
3 cise language, be readily comprehensible, and meet
4 such conditions regarding the provision of the infor-
5 mation in languages other than English as the Sec-
6 retary may establish.

7 (5) ABILITY TO PAY.—The services described in
8 paragraphs (1) through (3) shall not be denied be-
9 cause of the inability of the individual involved or
10 the individual's family to pay for the services.

11 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion shall be construed to—

13 (1) require that a hospital provide prophylactic
14 treatment for a victim of sexual assault when risk
15 assessment (according to recommendations estab-
16 lished by the Centers for Disease Control and Pre-
17 vention) clearly recommends against the application
18 of post-exposure prophylaxis;

19 (2) prohibit a hospital from seeking reimburse-
20 ment for the cost of services provided under this sec-
21 tion to the extent that health insurance may provide
22 reimbursement for such services; and

23 (3) establish a requirement that any victim of
24 sexual assault submit to diagnostic testing for the
25 presence of any infectious disease.

1 (f) EFFECTIVE DATE; AGENCY CRITERIA.—This sec-
2 tion takes effect upon the expiration of the 180-day period
3 beginning on the date of the enactment of this Act. Not
4 later than 30 days prior to the expiration of such period,
5 the Secretary shall publish in the Federal Register criteria
6 for carrying out this section.

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