

110TH CONGRESS
2D SESSION

S. 3068

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

IN THE SENATE OF THE UNITED STATES

MAY 22, 2008

Ms. SNOWE (for herself, Mr. REID, Ms. COLLINS, Mr. DURBIN, Mr. WARNER,
Mr. KERRY, Mrs. BOXER, Mr. DODD, Mr. LAUTENBERG, Mrs. LINCOLN,
and Mr. MENENDEZ) introduced the following bill; which was read twice
and referred to the Committee on Health, Education, Labor, and Pen-
sions

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, over 3,000,000 pregnancies, or
2 one-half of all pregnancies, in the United States are
3 unintended;

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 on
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 health care
14 and medical care for newborns;

15 (4) by reducing rates of unintended pregnancy,
16 contraceptives help reduce abortions;

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 continue to exclude
8 coverage for prescription contraceptives;

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

13 (10) the lack of contraceptive coverage in health
14 insurance places many effective forms of contracep-
15 tives beyond the financial reach of many women,
16 leading to unintended pregnancies;

17 (11) the Institute of Medicine Committee on
18 Unintended Pregnancy recommended that "financial
19 barriers to contraception be reduced by increasing
20 the proportion of all health insurance policies that
21 cover contraceptive services and supplies";

22 (12) in 1998, Congress agreed to provide con-
23 traceptive coverage to women of reproductive age
24 who are participating in the Federal Employees
25 Health Benefits Program, the largest employer-spon-

1 sored health insurance plan in the world, and in
 2 2001, the Office of Personnel Management reported
 3 that it did not raise premiums as a result of such
 4 coverage because there was “no cost increase due to
 5 contraceptive coverage”;

6 (13) contraceptive coverage saves employers
 7 money: the Washington Business Group on Health
 8 estimates that not covering contraceptives in em-
 9 ployee health plans costs employers 15 to 17 percent
 10 more than providing such coverage;

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

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

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

19 (a) IN GENERAL.—Subpart B of part 7 of subtitle
 20 B of title I of the Employee Retirement Income Security
 21 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
 22 ing at the end the following:

1 **“SEC. 714. 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 because of the individual’s or
25 enrollee’s use or potential use of items or services

1 that are covered in accordance with the requirements
2 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 a covered individual contra-
15 ceptive drugs or devices, or contraceptive services,
16 described 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 other outpatient prescription drugs oth-
7 erwise 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 other outpatient prescription devices
14 otherwise covered under the plan or cov-
15 erage; 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 other outpatient health care
22 services otherwise covered under the plan
23 or coverage;

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

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

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

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

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply with respect to plan years begin-
 10 ning on or after January 1, 2008.

11 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

12 **ACT RELATING TO THE GROUP MARKET.**

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

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

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

23 “(1) exclude or restrict benefits for prescription
 24 contraceptive drugs or devices approved by the Food
 25 and Drug Administration, or generic equivalents ap-

1 proved as substitutable by the Food and Drug Ad-
2 ministration, if such plan or coverage provides bene-
3 fits for other outpatient prescription drugs or de-
4 vices; or

5 “(2) exclude or restrict benefits for outpatient
6 contraceptive services if such plan or coverage pro-
7 vides benefits for other outpatient services provided
8 by a health care professional (referred to in this sec-
9 tion as ‘outpatient 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 or coverage, except that
 19 such a deductible, coinsurance, or other
 20 cost-sharing or limitation for any such
 21 drug shall be consistent with those imposed
 22 for other outpatient prescription drugs oth-
 23 erwise covered under the plan or coverage;

24 “(ii) benefits for contraceptive devices
 25 under the plan or coverage, except that

1 such a deductible, coinsurance, or other
2 cost-sharing or limitation for any such de-
3 vice shall be consistent with those imposed
4 for other outpatient prescription devices
5 otherwise covered under the plan or cov-
6 erage; and

7 “(iii) benefits for outpatient contra-
8 ceptive services under the plan or coverage,
9 except that such a deductible, coinsurance,
10 or other cost-sharing or limitation for any
11 such service shall be consistent with those
12 imposed for other outpatient health care
13 services otherwise covered under the plan
14 or coverage;

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

1 or investigational outpatient health care serv-
 2 ices; or

3 “(C) as modifying, diminishing, or limiting
 4 the rights or protections of an individual under
 5 any other Federal law.

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

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

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

23 “(d) NOTICE.—A group health plan under this part
 24 shall comply with the notice requirement under section
 25 714(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 coverage or protections for enrollees that are greater than
 8 the coverage or protections 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, 2008.

18 **SEC. 5. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT**

19 **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:

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, 2008.

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