

108TH CONGRESS  
1ST SESSION

# S. 1396

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

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## IN THE SENATE OF THE UNITED STATES

JULY 11, 2003

Ms. SNOWE (for herself, Mr. REID, Ms. MIKULSKI, Mr. LEAHY, Mr. LAUTENBERG, Mr. KENNEDY, Mrs. MURRAY, Mr. SMITH, Mr. CORZINE, Mr. BIDEN, Mr. SARBANES, Mr. KERRY, Mr. WARNER, Mr. INOUE, Mrs. LINCOLN, Ms. STABENOW, Mr. DURBIN, Mr. CHAFEE, Ms. COLLINS, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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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 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1) each year, 3,000,000 pregnancies, or one  
2 half of all pregnancies, in the United States are un-  
3 intended;

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: for every \$1 of public funds invested in fam-  
12 ily planning, \$4 to \$14 of public funds is saved in  
13 pregnancy and health-related costs;

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

16          (5) unintended pregnancies lead to higher rates  
17 of infant mortality, low-birth weight, and maternal  
18 morbidity, and threaten the economic viability of  
19 families;

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

24          (7) most women in the United States, including  
25 three-quarters of women of childbearing age, rely on

1 some form of private insurance (through their own  
2 employer, a family member’s employer, or the indi-  
3 vidual market) to defray their medical expenses;

4 (8) the vast majority of private insurers cover  
5 prescription drugs, but many exclude coverage for  
6 prescription contraceptives;

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

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

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

21 (12) the Institute of Medicine Committee on  
22 Unintended Pregnancy recommended that “financial  
23 barriers to contraception be reduced by increasing  
24 the proportion of all health insurance policies that  
25 cover contraceptive services and supplies”;

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

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

15           (15) eight in 10 privately insured adults sup-  
16           port contraceptive coverage; and

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

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

23           (a) IN GENERAL.—Subpart B of part 7 of subtitle  
24 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:

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 or coverage provides bene-  
14 fits for other outpatient prescription drugs or de-  
15 vices; or

16 “(2) exclude or restrict benefits for outpatient  
17 contraceptive services if such plan or coverage pro-  
18 vides benefits for other outpatient services provided  
19 by a health care professional (referred to in this sec-  
20 tion as ‘outpatient health care services’).

21 “(b) PROHIBITIONS.—A group health plan, and a  
22 health insurance issuer providing health insurance cov-  
23 erage in connection with a group health plan, may not—

24 “(1) deny to an individual eligibility, or contin-  
25 ued eligibility, to enroll or to renew coverage under

1 the terms of the plan because of the individual's or  
2 enrollee's use or potential use of items or services  
3 that are covered in accordance with the requirements  
4 of this section;

5 “(2) provide monetary payments or rebates to  
6 a covered individual to encourage such individual to  
7 accept less than the minimum protections available  
8 under this section;

9 “(3) penalize or otherwise reduce or limit the  
10 reimbursement of a health care professional because  
11 such professional prescribed contraceptive drugs or  
12 devices, or provided contraceptive services, described  
13 in subsection (a), in accordance with this section; or

14 “(4) provide incentives (monetary or otherwise)  
15 to a health care professional to induce such profes-  
16 sional to withhold from a covered individual contra-  
17 ceptive drugs or devices, or contraceptive services,  
18 described in subsection (a).

19 “(c) RULES OF CONSTRUCTION.—

20 “(1) IN GENERAL.—Nothing in this section  
21 shall be construed—

22 “(A) as preventing a group health plan  
23 and a health insurance issuer providing health  
24 insurance coverage in connection with a group  
25 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 or coverage, except that  
5                   such a deductible, coinsurance, or other  
6                   cost-sharing or limitation for any such  
7                   drug shall be consistent with those imposed  
8                   for other outpatient prescription drugs oth-  
9                   erwise covered under the plan or coverage;

10                   “(ii) benefits for contraceptive devices  
11                   under the plan or coverage, except that  
12                   such a deductible, coinsurance, or other  
13                   cost-sharing or limitation for any such de-  
14                   vice shall be consistent with those imposed  
15                   for other outpatient prescription devices  
16                   otherwise covered under the plan or cov-  
17                   erage; and

18                   “(iii) benefits for outpatient contra-  
19                   ceptive services under the plan or coverage,  
20                   except that such a deductible, coinsurance,  
21                   or other cost-sharing or limitation for any  
22                   such service shall be consistent with those  
23                   imposed for other outpatient health care  
24                   services otherwise covered under the plan  
25                   or coverage;

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

13           “(C) as modifying, diminishing, or limiting  
14          the rights or protections of an individual under  
15          any other Federal law.

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

18           “(A) in the case of a contraceptive drug or  
19           device, restricting the type of health care pro-  
20           fessionals that may prescribe such drugs or de-  
21           vices, utilization review provisions, and limits on  
22           the volume of prescription drugs or devices that  
23           may be obtained on the basis of a single con-  
24           sultation with a professional; or

1           “(B) in the case of an outpatient contra-  
2           ceptive service, restricting the type of health  
3           care professionals that may provide such serv-  
4           ices, utilization review provisions, requirements  
5           relating to second opinions prior to the coverage  
6           of such services, and requirements relating to  
7           preauthorizations prior to the coverage of such  
8           services.

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

19          “(e) PREEMPTION.—Nothing in this section shall be  
20          construed to preempt any provision of State law to the  
21          extent that such State law establishes, implements, or con-  
22          tinues in effect any standard or requirement that provides  
23          coverage or protections for participants or beneficiaries  
24          that are greater than the coverage or protections provided  
25          under this section.

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

7       (b) CLERICAL AMENDMENT.—The table of contents  
 8 in section 1 of the Employee Retirement Income Security  
 9 Act of 1974 (29 U.S.C. 1001) is amended by inserting  
 10 after the item relating to section 713 the following:

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

11       (c) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply with respect to plan years begin-  
 13 ning on or after \_\_\_\_\_.

14 **SEC. 4. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
 15 **ACT RELATING TO THE GROUP MARKET.**

16       (a) IN GENERAL.—Subpart 2 of part A of title  
 17 XXVII of the Public Health Service Act (42 U.S.C.  
 18 300gg–4 et seq.) is amended by adding at the end the  
 19 following:

20 **“SEC. 2707. STANDARDS RELATING TO BENEFITS FOR CON-**  
 21 **TRACEPTIVES.**

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

1           “(1) exclude or restrict benefits for prescription  
2           contraceptive drugs or devices approved by the Food  
3           and Drug Administration, or generic equivalents ap-  
4           proved as substitutable by the Food and Drug Ad-  
5           ministration, if such plan or coverage provides bene-  
6           fits for other outpatient prescription drugs or de-  
7           vices; or

8           “(2) exclude or restrict benefits for outpatient  
9           contraceptive services if such plan or coverage pro-  
10          vides benefits for other outpatient services provided  
11          by a health care professional (referred to in this sec-  
12          tion as ‘outpatient health care services’).

13          “(b) PROHIBITIONS.—A group health plan, and a  
14          health insurance issuer providing health insurance cov-  
15          erage in connection with a group health plan, may not—

16               “(1) deny to an individual eligibility, or contin-  
17               ued eligibility, to enroll or to renew coverage under  
18               the terms of the plan because of the individual’s or  
19               enrollee’s use or potential use of items or services  
20               that are covered in accordance with the requirements  
21               of this section;

22               “(2) provide monetary payments or rebates to  
23               a covered individual to encourage such individual to  
24               accept less than the minimum protections available  
25               under this section;

1           “(3) penalize or otherwise reduce or limit the  
2 reimbursement of a health care professional because  
3 such professional prescribed contraceptive drugs or  
4 devices, or provided contraceptive services, described  
5 in subsection (a), in accordance with this section; or

6           “(4) provide incentives (monetary or otherwise)  
7 to a health care professional to induce such profes-  
8 sional to withhold from covered individual contracep-  
9 tive drugs or devices, or contraceptive services, de-  
10 scribed in subsection (a).

11       “(c) RULES OF CONSTRUCTION.—

12           “(1) IN GENERAL.—Nothing in this section  
13 shall be construed—

14           “(A) as preventing a group health plan  
15 and a health insurance issuer providing health  
16 insurance coverage in connection with a group  
17 health plan from imposing deductibles, coinsur-  
18 ance, or other cost-sharing or limitations in re-  
19 lation to—

20           “(i) benefits for contraceptive drugs  
21 under the plan or coverage, except that  
22 such a deductible, coinsurance, or other  
23 cost-sharing or limitation for any such  
24 drug shall be consistent with those imposed

1 for other outpatient prescription drugs oth-  
2 erwise covered under the plan or coverage;

3 “(ii) benefits for contraceptive devices  
4 under the plan or coverage, except that  
5 such a deductible, coinsurance, or other  
6 cost-sharing or limitation for any such de-  
7 vice shall be consistent with those imposed  
8 for other outpatient prescription devices  
9 otherwise covered under the plan or cov-  
10 erage; and

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

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

1 that the plan or issuer provides coverage for  
2 other experimental or investigational outpatient  
3 prescription drugs or devices, or experimental  
4 or investigational outpatient health care serv-  
5 ices; or

6 “(C) as modifying, diminishing, or limiting  
7 the rights or protections of an individual under  
8 any other Federal law.

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

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

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

1       “(d) NOTICE.—A group health plan under this part  
2 shall comply with the notice requirement under section  
3 714(d) of the Employee Retirement Income Security Act  
4 of 1974 with respect to the requirements of this section  
5 as if such section applied to such plan.

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

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

18       (b) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply with respect to group health plans  
20 for plan years beginning on or after  
21 \_\_\_\_\_.

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:

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, 2005.

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