

Calendar No. 459

113TH CONGRESS
2D SESSION

S. 2578

To ensure that employers cannot interfere in their employees' birth control and other health care decisions.

IN THE SENATE OF THE UNITED STATES

JULY 9, 2014

Mrs. MURRAY (for herself, Mr. UDALL of Colorado, Ms. BALDWIN, Mr. BEGICH, Mr. BENNET, Mr. BLUMENTHAL, Mr. BOOKER, Mrs. BOXER, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mrs. HAGAN, Mr. HARKIN, Mr. HEINRICH, Ms. HIRONO, Mr. JOHNSON of South Dakota, Mr. KAINE, Ms. KLOBUCHAR, Mr. LEVIN, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Ms. MIKULSKI, Mr. MURPHY, Mr. REID, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mrs. SHAHEEN, Ms. STABENOW, Mr. TESTER, Mr. UDALL of New Mexico, Mr. WALSH, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, Mr. LEAHY, Mr. COONS, and Mr. WARNER) introduced the following bill; which was read the first time

JULY 10, 2014

Read the second time and placed on the calendar

A BILL

To ensure that employers cannot interfere in their employees' birth control and other health care decisions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protect Women’s
3 Health From Corporate Interference Act of 2014”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to ensure that employers
6 that provide health benefits to their employees cannot
7 deny any specific health benefits, including contraception
8 coverage, to any of their employees or the covered depend-
9 ents of such employees entitled by Federal law to receive
10 such coverage.

11 **SEC. 3. FINDINGS.**

12 Congress finds as follows:

13 (1) Access to the full range of health benefits
14 and preventive services, as guaranteed under Fed-
15 eral law or through Federal regulations, provides all
16 Americans with the opportunity to lead healthier
17 and more productive lives.

18 (2) Birth control is a critical health care service
19 for women. Ninety-nine percent of sexually active
20 women use birth control at least once in their life-
21 times, and the Centers for Disease Control and Pre-
22 vention declared it one of the Ten Great Public
23 Health Achievements of the 20th Century. While the
24 most common reason women use contraception is to
25 prevent pregnancy, 58 percent of oral contraceptive
26 users cite noncontraceptive health benefits as rea-

1 sons for using the method. Fourteen percent of birth
2 control pill users, more than 1,500,000 women, rely
3 on birth control pills for noncontraceptive purposes
4 only.

5 (3) In addition to providing health benefits for
6 women, access to birth control has been directly con-
7 nected to women's economic success and ability to
8 participate in society equally. Women with access to
9 birth control are more likely to have higher edu-
10 cational achievement and career achievement, and to
11 be paid higher wages.

12 (4) The independent, nonprofit Institute of
13 Medicine recommends, as part of its recommended
14 preventive health measures, that women's preventive
15 health be covered by health plans with no cost-shar-
16 ing to promote optimal health of women. The Insti-
17 tute of Medicine noted that the contraceptive meth-
18 ods recommendation was one of the most important
19 recommendations for women.

20 (5) Affordability has long been a barrier to
21 women being able to use birth control and other pre-
22 ventive health services effectively. A national survey
23 of women who were currently using some form of
24 contraception found that one-third would switch to a
25 different method of contraception if they did not

1 have to worry about cost. Women citing cost con-
2 cerns were twice as likely as other women to rely on
3 less effective methods of contraception.

4 (6) Three separate studies have found that lack
5 of health coverage is significantly associated with re-
6 duced use of prescription contraceptives.

7 (7) Cost-sharing requirements can dramatically
8 reduce the use of preventive health care measures,
9 particularly among lower-income women. Studies
10 have shown that eliminating cost-sharing for the
11 most effective forms of contraception (intrauterine
12 devices, implants, and injectables) leads to sizable
13 increases in the use of these methods.

14 (8) The Patient Protection and Affordable Care
15 Act (Public Law 111–148) sought to remove the
16 barrier to care by requiring all new health plans to
17 cover recommended preventive services without cost-
18 sharing, which include women’s preventative serv-
19 ices. These services include all methods of contracep-
20 tion and sterilization approved by the Food and
21 Drug Administration and related education and
22 counseling, as prescribed by a health care provider.

23 (9) The contraceptive coverage provision has
24 been a success in increasing access to this critical
25 health service for women. As of 2013, 47,000,000

1 women were covered by this requirement. Women
2 have saved \$483,000,000 in out-of-pocket costs for
3 oral contraceptives with no copayments in 2013
4 compared to 2012.

5 (10) The Journal of the American Medical As-
6 sociation reports that 7 out of 10 people in the
7 United States support coverage of contraception,
8 with significantly higher support among women,
9 Hispanic Americans, and Black Americans.

10 (11) An estimated 76,000,000 people in the
11 United States, including 30,000,000 women, are
12 newly eligible for expanded preventive services cov-
13 erage under the Patient Protection and Affordable
14 Care Act. A total of 48,500,000 women are esti-
15 mated to benefit from preventive services coverage
16 without cost-sharing.

17 (12) The most appropriate method of contra-
18 ception varies according to each individual woman's
19 needs and medical history. Women may have medical
20 contraindications and thus not be able to use certain
21 types of contraceptive methods. It is therefore vital
22 that the full range of contraceptive methods ap-
23 proved by the Food and Drug Administration be
24 available in order to ensure that each woman, in

1 consultation with her medical provider, can make ap-
2 propriate decisions about her health care.

3 (13) Covering proven preventative services like
4 contraception lowers health care spending as it im-
5 proves health. The Federal Government experienced
6 no increase in costs at all after it began covering
7 contraceptives for Federal employees. A study by the
8 National Business Group on Health estimated that
9 it costs employers 15 to 17 percent more to not pro-
10 vide contraceptive coverage in employee health plans,
11 accounting for the employer's direct medical costs of
12 pregnancy and indirect costs related to employee ab-
13 sence and reduced productivity.

14 (14) Dozens of cases have been filed in Federal
15 court by employers that want to take this benefit
16 away from their employees and the covered depend-
17 ents of such employees.

18 (15) On June 30, 2014, the Supreme Court
19 held, in *Burwell v. Hobby Lobby Stores, Inc.* and
20 *Conestoga Wood Specialties Corp. v. Burwell*, that
21 some for-profit corporations can take away the birth
22 control coverage guaranteed to their employees and
23 the covered dependents of such employees through
24 their group health plan.

1 (16) In a dissent in those cases, Justice Ruth
2 Bader Ginsburg states that in this “decision of star-
3 tling breadth . . . the exemption sought by Hobby
4 Lobby and Conestoga . . . would deny legions of
5 women who do not hold their employers’ beliefs ac-
6 cess to contraceptive coverage that the ACA would
7 otherwise secure.” Justice Ginsburg also notes that
8 the decision opens up the door to religiously ground-
9 ed employer objections to a whole host of health care
10 services like “blood transfusions . . .
11 antidepressants . . . medications derived from pigs,
12 including anesthesia . . . and vaccinations.”

13 (17) The Supreme Court’s decision in those
14 cases allows employers, that otherwise provide cov-
15 erage of preventive health services, to deny their em-
16 ployees and the covered dependents of such employ-
17 ees contraceptive coverage and to treat a critical
18 women’s health service differently than other com-
19 parable services. Legislation is needed to clarify that
20 employers may not discriminate against their em-
21 ployees and dependents.

22 (18) It is imperative that Congress act to rein-
23 state contraception coverage and to protect employ-
24 ees and the covered dependents of such employees
25 from other attempts to take away coverage for other

1 health benefits to which such employees and depend-
2 ents are entitled under Federal law.

3 (19) This Act is intended to be consistent with
4 the Congressional intent in enacting the Religious
5 Freedom and Restoration Act of 1993 (Public Law
6 103–141), and with the exemption for houses of
7 worship, and an accommodation for religiously-affili-
8 ated nonprofit organizations with objections to con-
9 traceptive coverage.

10 **SEC. 4. ENSURING COVERAGE OF SPECIFIC BENEFITS.**

11 (a) IN GENERAL.—An employer that establishes or
12 maintains a group health plan for its employees (and any
13 covered dependents of such employees) shall not deny cov-
14 erage of a specific health care item or service with respect
15 to such employees (or dependents) where the coverage of
16 such item or service is required under any provision of
17 Federal law or the regulations promulgated thereunder.
18 A group health plan, as defined in section 733(a) of the
19 Employee Retirement Income Security Act of 1974 (29
20 U.S.C. 1191b(a)), sponsored by an employer, employee or-
21 ganization, or both, and any health insurance coverage,
22 as defined in section 2791(b) of the Public Health Service
23 Act (42 U.S.C. 300gg–91) is required to provide coverage
24 required under the Public Health Service Act, including

1 section 2713 of such Act (42 U.S.C. 300gg–13), in addi-
2 tion to other applicable requirements.

3 (b) APPLICATION.—Subsection (a) shall apply not-
4 withstanding any other provision of Federal law, including
5 Public Law 103–141.

6 (c) REGULATIONS.—The regulations contained in
7 sections 54.9815-2713A of title 26, 2590.715-2713A of
8 title 29, and 147.131 of title 45, Code of Federal Regula-
9 tions, shall apply with respect to this section. The Depart-
10 ments of Labor, Health and Human Services, and the
11 Treasury may modify such regulations consistent with the
12 purpose and findings of this Act.

13 (d) ENFORCEMENT.—The provisions of this Act shall
14 apply to plan sponsors, group health plans, and health in-
15 surance issuers as if enacted in the Employee Retirement
16 Income Security Act of 1974 (29 U.S.C. 1001 et seq.),
17 the Public Health Service Act (42 U.S.C. 201 et seq.),
18 and the Internal Revenue Code of 1986. Any failure by
19 a plan sponsor, group health plan, or health insurance
20 issuer to comply with the provisions of this Act shall be
21 subject to enforcement through part 5 of subtitle B of title
22 I of the Employee Retirement Income Security Act of
23 1974 (29 U.S.C. 1131 et seq.), section 2723 of the Public
24 Health Service Act (42 U.S.C. 300gg–22), and section
25 4980D of the Internal Revenue Code of 1986.

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