

# STATE OF NEW YORK

3668

2017-2018 Regular Sessions

## IN SENATE

January 25, 2017

Introduced by Sens. BONACIC, AVELLA -- (at request of the Attorney General) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, the social services law, the education law and the public health law, in relation to requiring health insurance policies to include coverage of all FDA-approved contraceptive drugs, devices, and products, as well as voluntary sterilization procedures, contraceptive education and counseling, and related follow up services and prohibiting a health insurance policy from imposing any cost-sharing requirements or other restrictions or delays with respect to this coverage

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "comprehensive contraception coverage act".

2  
3 § 2. Paragraph 16 of subsection (1) of section 3221 of the insurance  
4 law, as added by chapter 554 of the laws of 2002, is amended to read as  
5 follows:

6 (16) ~~(A) Every group or blanket policy [which provides coverage for  
7 prescription drugs shall include coverage for the cost of contraceptive  
8 drugs or devices approved by the federal food and drug administration or  
9 generic equivalents approved as substitutes by such food and drug admin-  
10 istration under the prescription of a health care provider legally  
11 authorized to prescribe under title eight of the education law. The  
12 coverage required by this section shall be included in policies and  
13 certificates only through the addition of a rider.~~

14 ~~(A)]~~ that is issued, amended, renewed, effective or delivered on or  
15 after January first, two thousand eighteen, shall provide coverage for  
16 all of the following services and contraceptive methods:

17 (1) All FDA-approved contraceptive drugs, devices, and other products.  
18 This includes all FDA-approved over-the-counter contraceptive drugs,

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 devices, and products as prescribed or as otherwise authorized under  
2 state or federal law. The following applies to this coverage:

3 (a) where the FDA has approved one or more therapeutic and pharmaceu-  
4 tical equivalent, as defined by the FDA, versions of a contraceptive  
5 drug, device, or product, a group or blanket policy is not required to  
6 include all such therapeutic and pharmaceutical equivalent versions in  
7 its formulary, so long as at least one is included and covered without  
8 cost-sharing and in accordance with this paragraph;

9 (b) if the covered therapeutic and pharmaceutical equivalent versions  
10 of a drug, device, or product are not available or are deemed medically  
11 inadvisable a group or blanket policy shall provide coverage for an  
12 alternate therapeutic and pharmaceutical equivalent version of the  
13 contraceptive drug, device, or product without cost-sharing;

14 (c) this coverage shall include emergency contraception without cost-  
15 sharing when provided pursuant to an ordinary prescription, non-patient  
16 specific regimen order, or order under section sixty-eight hundred thir-  
17 ty-one of the education law and when lawfully provided other than  
18 through a prescription or order; and

19 (d) this coverage must allow for the dispensing of twelve months worth  
20 of a contraceptive at one time;

21 (2) Voluntary sterilization procedures;

22 (3) Patient education and counseling on contraception; and

23 (4) Follow-up services related to the drugs, devices, products, and  
24 procedures covered under this paragraph, including, but not limited to,  
25 management of side effects, counseling for continued adherence, and  
26 device insertion and removal.

27 (B) A group or blanket policy subject to this paragraph shall not  
28 impose a deductible, coinsurance, copayment, or any other cost-sharing  
29 requirement on the coverage provided pursuant to this paragraph.

30 (C) Except as otherwise authorized under this paragraph, a group or  
31 blanket policy shall not impose any restrictions or delays on the cover-  
32 age required under this paragraph.

33 (D) Benefits for an enrollee under this paragraph shall be the same  
34 for an enrollee's covered spouse or domestic partner and covered  
35 nonspouse dependents.

36 (E) Notwithstanding any other provision of this subsection, a reli-  
37 gious employer may request a contract without coverage for federal food  
38 and drug administration approved contraceptive methods that are contrary  
39 to the religious employer's religious tenets. If so requested, such  
40 contract shall be provided without coverage for contraceptive methods.  
41 This paragraph shall not be construed to deny an enrollee coverage of,  
42 and timely access to, contraceptive methods.

43 (1) For purposes of this subsection, a "religious employer" is an  
44 entity for which each of the following is true:

45 (a) The inculcation of religious values is the purpose of the entity.

46 (b) The entity primarily employs persons who share the religious  
47 tenets of the entity.

48 (c) The entity serves primarily persons who share the religious tenets  
49 of the entity.

50 (d) The entity is a nonprofit organization as described in Section  
51 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

52 (2) Every religious employer that invokes the exemption provided under  
53 this paragraph shall provide written notice to prospective enrollees  
54 prior to enrollment with the plan, listing the contraceptive health care  
55 services the employer refuses to cover for religious reasons.

1     ~~[(B)-(i)]~~ (F) (1) Where a group policyholder makes an election not to  
2 purchase coverage for contraceptive drugs or devices in accordance with  
3 subparagraph ~~[(A)]~~ (E) of this paragraph each certificateholder covered  
4 under the policy issued to that group policyholder shall have the right  
5 to directly purchase the rider required by this paragraph from the  
6 insurer which issued the group policy at the prevailing small group  
7 community rate for such rider whether or not the employee is part of a  
8 small group.

9     ~~[(i)]~~ (2) Where a group policyholder makes an election not to  
10 purchase coverage for contraceptive drugs or devices in accordance with  
11 subparagraph ~~[(A)]~~ (E) of this paragraph, the insurer that provides such  
12 coverage shall provide written notice to certificateholders upon enroll-  
13 ment with the insurer of their right to directly purchase a rider for  
14 coverage for the cost of contraceptive drugs or devices. The notice  
15 shall also advise the certificateholders of the additional premium for  
16 such coverage.

17     ~~[(C)]~~ (G) Nothing in this paragraph shall be construed as authorizing  
18 a group or blanket policy which provides coverage for prescription drugs  
19 to exclude coverage for prescription drugs prescribed for reasons other  
20 than contraceptive purposes.

21     ~~[(D) Such coverage may be subject to reasonable annual deductibles and  
22 coinsurance as may be deemed appropriate by the superintendent and as  
23 are consistent with those established for other drugs or devices covered  
24 under the policy.]~~

25     § 3. Subsection (cc) of section 4303 of the insurance law, as added by  
26 chapter 554 of the laws of 2002, is amended to read as follows:

27     (cc) (1) Every contract ~~[which provides coverage for prescription  
28 drugs shall include coverage for the cost of contraceptive drugs or  
29 devices approved by the federal food and drug administration or generic  
30 equivalents approved as substitutes by such food and drug administration  
31 under the prescription of a health care provider legally authorized to  
32 prescribe under title eight of the education law. The coverage required  
33 by this section shall be included in contracts and certificates only  
34 through the addition of a rider.~~

35     ~~[(1)]~~ that is issued, amended, renewed, effective or delivered on or  
36 after January first, two thousand eighteen, shall provide coverage for  
37 all of the following services and contraceptive methods:

38     (A) All FDA-approved contraceptive drugs, devices, and other products.  
39 This includes all FDA-approved over-the-counter contraceptive drugs,  
40 devices, and products as prescribed or as otherwise authorized under  
41 state or federal law. The following applies to this coverage:

42     (i) where the FDA has approved one or more therapeutic and pharmaceu-  
43 tical equivalent, as defined by the FDA, versions of a contraceptive  
44 drug, device, or product, a contract is not required to include all such  
45 therapeutic and pharmaceutical equivalent versions in its formulary, so  
46 long as at least one is included and covered without cost-sharing and in  
47 accordance with this subsection;

48     (ii) if the covered therapeutic and pharmaceutical equivalent versions  
49 of a drug, device, or product are not available or are deemed medically  
50 inadvisable a contract shall provide coverage for an alternate therapeu-  
51 tic and pharmaceutical equivalent version of the contraceptive drug,  
52 device, or product without cost-sharing;

53     (iii) this coverage shall include emergency contraception without  
54 cost-sharing when provided pursuant to an ordinary prescription, non-pa-  
55 tient specific regimen order, or order under section sixty-eight hundred

1 thirty-one of the education law and when lawfully provided other than  
2 through a prescription or order; and

3 (iv) this coverage must allow for the dispensing of twelve months  
4 worth of a contraceptive at one time;

5 (B) Voluntary sterilization procedures;

6 (C) Patient education and counseling on contraception; and

7 (D) Follow-up services related to the drugs, devices, products, and  
8 procedures covered under this subsection, including, but not limited to,  
9 management of side effects, counseling for continued adherence, and  
10 device insertion and removal.

11 (2) A contract subject to this subsection shall not impose a deduct-  
12 ible, coinsurance, copayment, or any other cost-sharing requirement on  
13 the coverage provided pursuant to this subsection.

14 (3) Except as otherwise authorized under this subsection, a contract  
15 shall not impose any restrictions or delays on the coverage required  
16 under this subsection.

17 (4) Benefits for an enrollee under this subsection shall be the same  
18 for an enrollee's covered spouse or domestic partner and covered  
19 nonspouse dependents.

20 (5) Notwithstanding any other provision of this subsection, a reli-  
21 gious employer may request a contract without coverage for federal food  
22 and drug administration approved contraceptive methods that are contrary  
23 to the religious employer's religious tenets. If so requested, such  
24 contract shall be provided without coverage for contraceptive methods.  
25 This paragraph shall not be construed to deny an enrollee coverage of,  
26 and timely access to, contraceptive methods.

27 (A) For purposes of this subsection, a "religious employer" is an  
28 entity for which each of the following is true:

29 (i) The inculcation of religious values is the purpose of the entity.

30 (ii) The entity primarily employs persons who share the religious  
31 tenets of the entity.

32 (iii) The entity serves primarily persons who share the religious  
33 tenets of the entity.

34 (iv) The entity is a nonprofit organization as described in Section  
35 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

36 (B) Every religious employer that invokes the exemption provided under  
37 this paragraph shall provide written notice to prospective enrollees  
38 prior to enrollment with the plan, listing the contraceptive health care  
39 services the employer refuses to cover for religious reasons.

40 ~~[(2)]~~ (6) (A) Where a group contractholder makes an election not to  
41 purchase coverage for contraceptive drugs or devices in accordance with  
42 paragraph ~~[one]~~ five of this subsection, each enrollee covered under the  
43 contract issued to that group contractholder shall have the right to  
44 directly purchase the rider required by this subsection from the insurer  
45 or health maintenance organization which issued the group contract at  
46 the prevailing small group community rate for such rider whether or not  
47 the employee is part of a small group.

48 (B) Where a group contractholder makes an election not to purchase  
49 coverage for contraceptive drugs or devices in accordance with paragraph  
50 ~~[one]~~ five of this subsection, the insurer or health maintenance organ-  
51 ization that provides such coverage shall provide written notice to  
52 enrollees upon enrollment with the insurer or health maintenance organ-  
53 ization of their right to directly purchase a rider for coverage for the  
54 cost of contraceptive drugs or devices. The notice shall also advise the  
55 enrollees of the additional premium for such coverage.

1    ~~(3)~~(7) Nothing in this subsection shall be construed as authorizing  
2 a contract which provides coverage for prescription drugs to exclude  
3 coverage for prescription drugs prescribed for reasons other than  
4 contraceptive purposes.

5    ~~[(4) Such coverage may be subject to reasonable annual deductibles and  
6 coinsurance as may be deemed appropriate by the superintendent and as  
7 are consistent with those established for other drugs or devices covered  
8 under the policy.]~~

9    § 4. Subparagraph (E) of paragraph 17 of subsection (i) of section  
10 3216 of the insurance law is amended by adding a new clause (v) to read  
11 as follows:

12    (v) all FDA-approved contraceptive drugs, devices, and other products,  
13 including all over-the-counter contraceptive drugs, devices, and  
14 products as prescribed or as otherwise authorized under state or federal  
15 law; voluntary sterilization procedures; patient education and coun-  
16 seling on contraception; and follow-up services related to the drugs,  
17 devices, products, and procedures covered under this clause, including,  
18 but not limited to, management of side effects, counseling for continued  
19 adherence, and device insertion and removal. Except as otherwise author-  
20 ized under this clause, a contract shall not impose any restrictions or  
21 delays on the coverage required under this clause. However, where the  
22 FDA has approved one or more therapeutic and pharmaceutical equivalent,  
23 as defined by the FDA, versions of a contraceptive drug, device, or  
24 product, a contract is not required to include all such therapeutic and  
25 pharmaceutical equivalent versions in its formulary, so long as at least  
26 one is included and covered without cost-sharing and in accordance with  
27 this clause. If the covered therapeutic and pharmaceutical equivalent  
28 versions of a drug, device, or product are not available or are deemed  
29 medically inadvisable a contract shall provide coverage for an alternate  
30 therapeutic and pharmaceutical equivalent version of the contraceptive  
31 drug, device, or product without cost-sharing. This coverage shall  
32 include emergency contraception without cost-sharing when provided  
33 pursuant to an ordinary prescription, non-patient specific regimen  
34 order, or order under section sixty-eight hundred thirty-one of the  
35 education law and when lawfully provided other than through a  
36 prescription or order; and this coverage must allow for the dispensing  
37 of twelve months worth of a contraceptive at one time.

38    § 5. Paragraph (d) of subdivision 3 of section 365-a of the social  
39 services law, as amended by chapter 909 of the laws of 1974 and as  
40 relettered by chapter 82 of the laws of 1995, is amended to read as  
41 follows:

42    (d) family planning services and twelve months of supplies for eligi-  
43 ble persons of childbearing age, including children under twenty-one  
44 years of age who can be considered sexually active, who desire such  
45 services and supplies, in accordance with the requirements of federal  
46 law and regulations and the regulations of the department. No person  
47 shall be compelled or coerced to accept such services or supplies.

48    § 6. Subdivision 6 of section 6527 of the education law, as added by  
49 chapter 573 of the laws of 1999, paragraph (c) as amended by chapter 464  
50 of the laws of 2015, paragraph (d) as added by chapter 429 of the laws  
51 of 2005, paragraph (e) as added by chapter 352 of the laws of 2014,  
52 paragraph (f) as added by section 6 of part V of chapter 57 of the laws  
53 of 2015 and paragraph (g) as added by chapter 502 of the laws of 2016,  
54 is amended to read as follows:

55    6. A licensed physician may prescribe and order a non-patient specific  
56 regimen ~~[to a registered professional nurse]~~, pursuant to regulations

1 promulgated by the commissioner, and consistent with the public health  
2 law, ~~for~~ to:

3 (a) a registered professional nurse for:

4 (i) administering immunizations[-];

5 ~~(b)~~ (ii) the emergency treatment of anaphylaxis[-];

6 ~~(c)~~ (iii) administering purified protein derivative (PPD) tests or  
7 other tests to detect or screen for tuberculosis infections[-];

8 ~~(d)~~ (iv) administering tests to determine the presence of the human  
9 immunodeficiency virus[-];

10 ~~(e)~~ (v) administering tests to determine the presence of the hepatis  
11 C virus[-];

12 ~~(f)~~ (vi) emergency contraception, to be administered to or dispensed  
13 to be self-administered by the patient, under section sixty-eight  
14 hundred thirty-two of this title;

15 (vii) the urgent or emergency treatment of opioid related overdose or  
16 suspected opioid related overdose[-]; or

17 ~~(g)~~ (viii) screening of persons at increased risk of syphilis,  
18 gonorrhea and chlamydia.

19 (b) a licensed pharmacist, for dispensing emergency contraception, to  
20 be self-administered by the patient, under section sixty-eight hundred  
21 thirty-two of this title.

22 § 7. Subdivision 3 of section 6807 of the education law, as added by  
23 chapter 573 of the laws of 1999, is amended and a new subdivision 4 is  
24 added to read as follows:

25 3. A pharmacist may dispense drugs and devices to a registered profes-  
26 sional nurse, and a registered professional nurse may possess and admin-  
27 ister, drugs and devices, pursuant to a non-patient specific regimen  
28 prescribed or ordered by a licensed physician, licensed midwife or  
29 certified nurse practitioner, pursuant to regulations promulgated by the  
30 commissioner and the public health law.

31 4. A pharmacist may dispense a non-patient specific regimen of emer-  
32 gency contraception, to be self-administered by the patient, prescribed  
33 or ordered by a licensed physician, certified nurse practitioner, or  
34 licensed midwife, under section sixty-eight hundred thirty-two of this  
35 article.

36 § 8. The education law is amended by adding a new section 6832 to read  
37 as follows:

38 § 6832. Emergency contraception; non-patient specific prescription or  
39 order. 1. As used in this section, the following terms shall have the  
40 following meanings, unless the context requires otherwise:

41 (a) "Emergency contraception" means one or more prescription or  
42 nonprescription drugs, used separately or in combination, in a dosage  
43 and manner for preventing pregnancy when used after intercourse, found  
44 safe and effective for that use by the United States food and drug  
45 administration, and dispensed or administered for that purpose.

46 (b) "Prescriber" means a licensed physician, certified nurse practi-  
47 tioner or licensed midwife.

48 2. This section applies to the administering or dispensing of emergen-  
49 cy contraception by a registered professional nurse or the dispensing of  
50 emergency contraception by a licensed pharmacist pursuant to a  
51 prescription or order for a non-patient specific regimen made by a pres-  
52 criber under section sixty-five hundred twenty-seven, sixty-nine hundred  
53 nine or sixty-nine hundred fifty-one of this title. This section does  
54 not apply to administering or dispensing emergency contraception when  
55 lawfully done without such a prescription or order.

1 3. The administering or dispensing of emergency contraception by a  
 2 registered professional nurse or the dispensing of emergency contracep-  
 3 tion by a licensed pharmacist shall be done in accordance with profes-  
 4 sional standards of practice and in accordance with written procedures  
 5 and protocols agreed to by the registered professional nurse or licensed  
 6 pharmacist and the prescriber or a hospital (licensed under article  
 7 twenty-eight of the public health law) that provides gynecological or  
 8 family planning services.

9 4. (a) When emergency contraception is administered or dispensed, the  
 10 registered professional nurse or licensed pharmacist shall provide to  
 11 the patient written material that includes: (i) the clinical consider-  
 12 ations and recommendations for use of the drug; (ii) the appropriate  
 13 method for using the drug; (iii) information on the importance of  
 14 follow-up health care; (iv) information on the health risks and other  
 15 dangers of unprotected intercourse; and (v) referral information relat-  
 16 ing to health care and services relating to sexual abuse and domestic  
 17 violence.

18 (b) Such written material shall be developed or approved by the  
 19 commissioner in consultation with the department of health and the Amer-  
 20 ican college of obstetricians and gynecologists.

21 § 9. Subdivision 4 of section 6909 of the education law, as added by  
 22 chapter 573 of the laws of 1999, paragraph (a) as amended by chapter 221  
 23 of the laws of 2002, paragraph (c) as amended by chapter 464 of the laws  
 24 of 2015, paragraph (d) as added by chapter 429 of the laws of 2005,  
 25 paragraph (e) as added by chapter 352 of the laws of 2014, paragraph (f)  
 26 as added by section 5 of part V of chapter 57 of the laws of 2015 and  
 27 paragraph (g) as added by chapter 502 of the laws of 2016, is amended to  
 28 read as follows:

29 4. A certified nurse practitioner may prescribe and order a non-pa-  
 30 tient specific regimen [~~to a registered professional nurse~~], pursuant to  
 31 regulations promulgated by the commissioner, consistent with subdivision  
 32 three of section [~~six thousand nine~~] sixty-nine hundred two of this  
 33 article, and consistent with the public health law, for:

34 (a) a registered professional nurse for:  
 35 (i) administering immunizations[+];  
 36 [~~(b)~~] (ii) the emergency treatment of anaphylaxis[+];  
 37 [~~(c)~~] (iii) administering purified protein derivative (PPD) tests or  
 38 other tests to detect or screen for tuberculosis infections[+];  
 39 [~~(d)~~] (iv) administering tests to determine the presence of the human  
 40 immunodeficiency virus[+];  
 41 [~~(e)~~] (v) administering tests to determine the presence of the hepati-  
 42 tis C virus[+];  
 43 [~~(f)~~] (vi) emergency contraception, to be administered to or dispensed  
 44 to be self-administered by the patient, under section sixty-eight  
 45 hundred thirty-two of this title;  
 46 (vii) the urgent or emergency treatment of opioid related overdose or  
 47 suspected opioid related overdose[+]; or  
 48 [~~(g)~~] (viii) screening of persons at increased risk for syphilis,  
 49 gonorrhea and chlamydia.

50 (b) a licensed pharmacist, for dispensing emergency contraception, to  
 51 be self-administered by the patient, under section sixty-eight hundred  
 52 thirty-two of this title.

53 § 10. Subdivision 5 of section 6909 of the education law, as added by  
 54 chapter 573 of the laws of 1999, is amended to read as follows:

55 5. A registered professional nurse may execute a non-patient specific  
 56 regimen prescribed or ordered by a licensed physician, licensed midwife

1 or certified nurse practitioner, pursuant to regulations promulgated by  
2 the commissioner.

3 § 11. Section 6951 of the education law is amended by adding a new  
4 subdivision 4 to read as follows:

5 4. A licensed midwife may prescribe and order a non-patient specific  
6 regimen pursuant to regulations promulgated by the commissioner,  
7 consistent with this section and the public health law, to:

8 (a) a registered professional nurse for emergency contraception, to be  
9 administered to or dispensed to be self-administered by the patient,  
10 under section sixty-eight hundred thirty-two of this title; or

11 (b) a licensed pharmacist, for dispensing emergency contraception, to  
12 be self-administered by the patient, under section sixty-eight hundred  
13 thirty-two of this title.

14 § 12. Subdivision 1 of section 207 of the public health law is amended  
15 by adding a new paragraph (n) to read as follows:

16 (n) Emergency contraception, including information about its safety,  
17 efficacy, appropriate use and availability.

18 § 13. This act shall take effect January 1, 2018; provided that  
19 section six of this act shall take effect January 1, 2019; provided,  
20 however, that effective immediately, the addition, amendment and/or  
21 repeal of any rule or regulation necessary for the implementation of  
22 this act on its effective date are authorized and directed to be made  
23 and completed by the commissioner of education and the board of regents  
24 on or before such effective date.