

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 law, as added by chapter 554 of the laws of 2002, is amended to read as follows:

4
5
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-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 ~~(i)]~~ 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, ~~to~~ 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.