STATE OF NEW YORK

S. 659 A. 585

2019-2020 Regular Sessions

SENATE - ASSEMBLY

(Prefiled)

January 9, 2019

IN SENATE -- Introduced by Sens. SALAZAR, METZGER, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MARTINEZ, MAY, MAYER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, STEWART-COUSINS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

IN ASSEMBLY -- Introduced by M. of A. CAHILL, SEAWRIGHT, HEASTIE, L. ROSENTHAL, GLICK, JAFFEE, SIMOTAS, GOTTFRIED, BARRON, BLAKE, BARRETT, MAGNARELLI, BRONSON, LAVINE, CARROLL, GALEF, OTIS, SIMON, HYNDMAN, RAMOS, D'URSO, PEOPLES-STOKES, PICHARDO, ORTIZ, WOERNER, BURKE, CRUZ, FALL, FRONTUS, GRIFFIN, JACOBSON, McMAHON, RAYNOR, ROMEO, REYES, SAYEGH -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, BUCHWALD, COOK, EPSTEIN, LIFTON, LUPARDO, MOSLEY, ROZIC, THIELE, TITUS -- read once and referred 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 "comprehen-
2 sive contraception coverage act".

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

LBD06618-01-9

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

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

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

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

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

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

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

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

(2) Voluntary sterilization procedures;

(3) Patient education and counseling on contraception; and

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

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

(C) Except as otherwise authorized under this paragraph, a group or blanket policy shall not impose any restrictions or delays on the coverage required under this paragraph.

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

(E) Notwithstanding any other provision of this subsection, a religious employer may request a contract without coverage for federal food and drug administration approved contraceptive methods that are contrary to the religious employer's religious tenets. If so requested, such contract shall be provided without coverage for contraceptive methods.

This paragraph shall not be construed to deny an enrollee coverage of, and timely access to, contraceptive methods.

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

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

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

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

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

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

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

[~~(ii)~~] **(2)** Where a group policyholder makes an election not to purchase coverage for contraceptive drugs or devices in accordance with subparagraph [~~(A)~~] **(E)** of this paragraph, the insurer that provides such coverage shall provide written notice to certificateholders upon enrollment with the insurer of their right to directly purchase a rider for coverage for the cost of contraceptive drugs or devices. The notice shall also advise the certificateholders of the additional premium for such coverage.

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

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

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

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

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

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

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

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

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

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

(B) Voluntary sterilization procedures;

(C) Patient education and counseling on contraception; and

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

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

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

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

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

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

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

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

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

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

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

[~~(2)~~](6) (A) Where a group contractholder makes an election not to purchase coverage for contraceptive drugs or devices in accordance with paragraph [~~one~~] five of this subsection, each enrollee covered under the

contract issued to that group contractholder shall have the right to directly purchase the rider required by this subsection from the insurer or health maintenance organization which issued the group contract at the prevailing small group community rate for such rider whether or not the employee is part of a small group.

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

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

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

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

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

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

(d) family planning services and **twelve months of** supplies for eligible persons of childbearing age, including children under twenty-one

years of age who can be considered sexually active, who desire such services and supplies, in accordance with the requirements of federal law and regulations and the regulations of the department. No person shall be compelled or coerced to accept such services or supplies.

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

6. A licensed physician may prescribe and order a non-patient specific regimen [~~to a registered professional nurse~~], pursuant to regulations promulgated by the commissioner, and consistent with the public health law, [~~for~~] **to**:

(a) **a registered professional nurse for:**

(i) administering immunizations[~~.~~]**;**

[~~(b)~~] **(ii)** the emergency treatment of anaphylaxis[~~.~~]**;**

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

[~~(d)~~] **(iv)** administering tests to determine the presence of the human immunodeficiency virus[~~.~~]**;**

[~~(e)~~] **(v)** administering tests to determine the presence of the hepatitis C virus[~~.~~]**;**

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

(vii) the urgent or emergency treatment of opioid related overdose or suspected opioid related overdose[~~.~~]**; or**

[~~(g)~~] **(viii)** screening of persons at increased risk of syphilis, gonorrhea and chlamydia.

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

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

3. A pharmacist may dispense drugs and devices to a registered professional nurse, and a registered professional nurse may possess and administer, drugs and devices, pursuant to a non-patient specific regimen prescribed or ordered by a licensed physician**, licensed midwife** or certified nurse practitioner, pursuant to regulations promulgated by the commissioner and the public health law.

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

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

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

(a) "Emergency contraception" means one or more prescription or nonprescription drugs, used separately or in combination, in a dosage and manner for preventing pregnancy when used after intercourse, found

safe and effective for that use by the United States food and drug administration, and dispensed or administered for that purpose.

(b) "Prescriber" means a licensed physician, certified nurse practitioner or licensed midwife.

2. This section applies to the administering or dispensing of emergency contraception by a registered professional nurse or the dispensing of emergency contraception by a licensed pharmacist pursuant to a prescription or order for a non-patient specific regimen made by a prescriber under section sixty-five hundred twenty-seven, sixty-nine hundred nine or sixty-nine hundred fifty-one of this title. This section does not apply to administering or dispensing emergency contraception when lawfully done without such a prescription or order.

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

4. When emergency contraception is administered or dispensed, the registered professional nurse or licensed pharmacist shall provide to the patient written material that includes: (i) the clinical considerations and recommendations for use of the drug; (ii) the appropriate method for using the drug; (iii) information on the importance of follow-up health care; (iv) information on the health risks and other dangers of unprotected intercourse; and (v) referral information relating to health care and services relating to sexual abuse and domestic violence. Such written material shall be developed or approved by the commissioner in consultation with the department of health and the American college of obstetricians and gynecologists.

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

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

(a) a registered professional nurse for:

(i) administering immunizations[~~.~~];

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

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

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

[~~(e)~~] (v) administering tests to determine the presence of the hepatitis C virus[~~.~~];

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

(vii) the urgent or emergency treatment of opioid related overdose or suspected opioid related overdose[~~.~~]; or

[~~(g)~~] (viii) screening of persons at increased risk for syphilis, gonorrhea and chlamydia.

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

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

5. A registered professional nurse may execute a non-patient specific regimen prescribed or ordered by a licensed physician, licensed midwife or certified nurse practitioner, pursuant to regulations promulgated by the commissioner.

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

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

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

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

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

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

§ 13. Severability clause. If any provision of this act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 14. This act shall take effect January 1, 2020; provided that section six of this act shall take effect January 1, 2021; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed by the commissioner of education and the board of regents on or before such effective date.