

# STATE OF NEW YORK

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S. 659--A

A. 585--A

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

(Prefiled)

January 9, 2019

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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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law and the social services 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:

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

LBD06618-04-9

1 Section 1. This act shall be known and may be cited as the "comprehen-  
2 sive contraception coverage act".

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 twenty, shall provide coverage for all  
16 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,  
19 devices, and products as prescribed or as otherwise authorized under  
20 state or federal law. The following applies to this coverage:

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

27 (b) if the covered therapeutic and pharmaceutical equivalent versions  
28 of a drug, device, or product are not available or are deemed medically  
29 inadvisable a group or blanket policy shall provide coverage for an  
30 alternate therapeutic and pharmaceutical equivalent version of the  
31 contraceptive drug, device, or product without cost-sharing. If the  
32 attending health care provider, in his or her reasonable professional  
33 judgment, determines that the use of a non-covered therapeutic or phar-  
34 maceutical equivalent of a drug, device, or product is warranted, the  
35 health care provider's determination shall be final. The superintendent  
36 shall promulgate regulations establishing a process, including time-  
37 frames, for an insured, an insured's designee or an insured's health  
38 care provider to request coverage of a non-covered contraceptive drug,  
39 device, or product. Such regulations shall include a requirement that  
40 insurers use an exception form that shall meet criteria established by  
41 the superintendent;

42 (c) this coverage shall include emergency contraception without cost-  
43 sharing when provided pursuant to a prescription or order under section  
44 sixty-eight hundred thirty-one of the education law or when lawfully  
45 provided over the counter; and

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

48 (2) Voluntary sterilization procedures;

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

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

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

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

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

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

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

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

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

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

21 (d) The entity is a nonprofit organization as described in Section  
22 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

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

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

35 ~~[(i-i)]~~ (2) Where a group policyholder makes an election not to  
36 purchase coverage for contraceptive drugs or devices in accordance with  
37 subparagraph ~~[(A)]~~ (E) of this paragraph, the insurer that provides such  
38 coverage shall provide written notice to certificateholders upon enroll-  
39 ment with the insurer of their right to directly purchase a rider for  
40 coverage for the cost of contraceptive drugs or devices. The notice  
41 shall also advise the certificateholders of the additional premium for  
42 such coverage.

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

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

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

53 (cc) (1) Every contract ~~[which provides coverage for prescription~~  
54 ~~drugs shall include coverage for the cost of contraceptive drugs or~~  
55 ~~devices approved by the federal food and drug administration or generic~~  
56 ~~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. If the attending health care provider, in his or her reasonable professional judgment, determines that the use of a non-covered therapeutic or pharmaceutical equivalent of a drug, device, or product is warranted, the health care provider's determination shall be final. The superintendent shall promulgate regulations establishing a process, including timeframes, for an insured, an insured's designee or an insured's health care provider to request coverage of a non-covered contraceptive drug, device, or product. Such regulations shall include a requirement that insurers use an exception form that shall meet criteria established by the superintendent;

(iii) this coverage shall include emergency contraception without cost-sharing when provided pursuant to a prescription or order under section sixty-eight hundred thirty-one of the education law or when lawfully provided over the counter; and

(iv) this coverage must allow for the dispensing of up to 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

1 contract shall be provided without coverage for contraceptive methods.  
2 This paragraph shall not be construed to deny an enrollee coverage of,  
3 and timely access to, contraceptive methods.

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

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

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

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

11 (iv) The entity is a nonprofit organization as described in Section  
12 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

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

17 ~~[(2)]~~ (6) (A) Where a group contractholder makes an election not to  
18 purchase coverage for contraceptive drugs or devices in accordance with  
19 paragraph ~~[one]~~ five of this subsection, each enrollee covered under the  
20 contract issued to that group contractholder shall have the right to  
21 directly purchase the rider required by this subsection from the insurer  
22 or health maintenance organization which issued the group contract at  
23 the prevailing small group community rate for such rider whether or not  
24 the employee is part of a small group.

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

33 ~~[(3)]~~ (7) Nothing in this subsection shall be construed as authorizing  
34 a contract which provides coverage for prescription drugs to exclude  
35 coverage for prescription drugs prescribed for reasons other than  
36 contraceptive purposes.

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

41 § 4. Subparagraph (E) of paragraph 17 of subsection (i) of section  
42 3216 of the insurance law is amended by adding a new clause (v) to read  
43 as follows:

44 (v) all FDA-approved contraceptive drugs, devices, and other products,  
45 including all over-the-counter contraceptive drugs, devices, and  
46 products as prescribed or as otherwise authorized under state or federal  
47 law; voluntary sterilization procedures; patient education and coun-  
48 seling on contraception; and follow-up services related to the drugs,  
49 devices, products, and procedures covered under this clause, including,  
50 but not limited to, management of side effects, counseling for continued  
51 adherence, and device insertion and removal. Except as otherwise author-  
52 ized under this clause, a contract shall not impose any restrictions or  
53 delays on the coverage required under this clause. However, where the  
54 FDA has approved one or more therapeutic and pharmaceutical equivalent,  
55 as defined by the FDA, versions of a contraceptive drug, device, or  
56 product, a contract is not required to include all such therapeutic and

1 pharmaceutical equivalent versions in its formulary, so long as at least  
2 one is included and covered without cost-sharing and in accordance with  
3 this clause. If the covered therapeutic and pharmaceutical equivalent  
4 versions of a drug, device, or product are not available or are deemed  
5 medically inadvisable a contract shall provide coverage for an alternate  
6 therapeutic and pharmaceutical equivalent version of the contraceptive  
7 drug, device, or product without cost-sharing. (a) This coverage shall  
8 include emergency contraception without cost sharing when provided  
9 pursuant to a prescription, or order under section sixty-eight hundred  
10 thirty-one of the education law or when lawfully provided over-the-coun-  
11 ter. (b) If the attending health care provider, in his or her reason-  
12 able professional judgment, determines that the use of a non-covered  
13 therapeutic or pharmaceutical equivalent of a drug, device, or product  
14 is warranted, the health care provider's determination shall be final.  
15 The superintendent shall promulgate regulations establishing a process,  
16 including timeframes, for an insured, an insured's designee or an  
17 insured's health care provider to request coverage of a non-covered  
18 contraceptive drug, device, or product. Such regulations shall include a  
19 requirement that insurers use an exception form that shall meet criteria  
20 established by the superintendent. (c) This coverage must allow for the  
21 dispensing of up to twelve months worth of a contraceptive at one time.

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

26 (d) family planning services and twelve months of supplies for eligi-  
27 ble persons of childbearing age, including children under twenty-one  
28 years of age who can be considered sexually active, who desire such  
29 services and supplies, in accordance with the requirements of federal  
30 law and regulations and the regulations of the department. Coverage of  
31 prescription contraceptives shall include a twelve-month supply that may  
32 be dispensed at one time or up to twelve times within one year from the  
33 date of the prescription. No person shall be compelled or coerced to  
34 accept such services or supplies.

35 § 6. This act shall take effect January 1, 2020.