

# 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

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

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

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

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

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

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

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

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

37 (2) Voluntary sterilization procedures;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 [~~(i)~~] (2) Where a group policyholder makes an election not to  
25 purchase coverage for contraceptive drugs or devices in accordance with  
26 subparagraph [~~(A)~~] (E) of this paragraph, the insurer that provides such  
27 coverage shall provide written notice to certificateholders upon enroll-  
28 ment with the insurer of their right to directly purchase a rider for  
29 coverage for the cost of contraceptive drugs or devices. The notice  
30 shall also advise the certificateholders of the additional premium for  
31 such coverage.

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

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

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

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

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

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

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

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

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

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

19 (B) Voluntary sterilization procedures;

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

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

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

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

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

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

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

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

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

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

48 (iv) The entity is a nonprofit organization as described in Section  
49 6033(a)(2)(A)i or iii, of the Internal Revenue Code of 1986, as amended.

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

54 ~~[(2)]~~ (6) (A) Where a group contractholder makes an election not to  
55 purchase coverage for contraceptive drugs or devices in accordance with  
56 paragraph ~~one~~ five of this subsection, each enrollee covered under the

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

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

14 ~~[(3)]~~ (7) Nothing in this subsection shall be construed as authorizing  
15 a contract which provides coverage for prescription drugs to exclude  
16 coverage for prescription drugs prescribed for reasons other than  
17 contraceptive purposes.

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

22 § 4. Subparagraph (E) of paragraph 17 of subsection (i) of section  
23 3216 of the insurance law is amended by adding a new clause (v) to read  
24 as follows:

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

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

55 (d) family planning services and twelve months of supplies for eligi-  
56 ble persons of childbearing age, including children under twenty-one

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

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

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

- 16 (a) a registered professional nurse for:  
17 (i) administering immunizations[-];  
18 [~~(b)~~] (ii) the emergency treatment of anaphylaxis[-];  
19 [~~(c)~~] (iii) administering purified protein derivative (PPD) tests or  
20 other tests to detect or screen for tuberculosis infections[-];  
21 [~~(d)~~] (iv) administering tests to determine the presence of the human  
22 immunodeficiency virus[-];  
23 [~~(e)~~] (v) administering tests to determine the presence of the hepatis  
24 C virus[-];  
25 [~~(f)~~] (vi) emergency contraception, to be administered to or dispensed  
26 to be self-administered by the patient, under section sixty-eight  
27 hundred thirty-two of this title;  
28 (vii) the urgent or emergency treatment of opioid related overdose or  
29 suspected opioid related overdose[-]; or  
30 [~~(g)~~] (viii) screening of persons at increased risk of syphilis,  
31 gonorrhea and chlamydia.

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

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

38 3. A pharmacist may dispense drugs and devices to a registered profes-  
39 sional nurse, and a registered professional nurse may possess and admin-  
40 ister, drugs and devices, pursuant to a non-patient specific regimen  
41 prescribed or ordered by a licensed physician, licensed midwife or  
42 certified nurse practitioner, pursuant to regulations promulgated by the  
43 commissioner and the public health law.

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

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

51 § 6832. Emergency contraception; non-patient specific prescription or  
52 order. 1. As used in this section, the following terms shall have the  
53 following meanings, unless the context requires otherwise:

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

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

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

5 2. This section applies to the administering or dispensing of emergen-  
 6 cy contraception by a registered professional nurse or the dispensing of  
 7 emergency contraception by a licensed pharmacist pursuant to a  
 8 prescription or order for a non-patient specific regimen made by a pres-  
 9 criber under section sixty-five hundred twenty-seven, sixty-nine hundred  
 10 nine or sixty-nine hundred fifty-one of this title. This section does  
 11 not apply to administering or dispensing emergency contraception when  
 12 lawfully done without such a prescription or order.

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

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

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

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

- 45 (a) a registered professional nurse for:  
 46 (i) administering immunizations[+];  
 47 [~~(b)~~] (ii) the emergency treatment of anaphylaxis[+];  
 48 [~~(c)~~] (iii) administering purified protein derivative (PPD) tests or  
 49 other tests to detect or screen for tuberculosis infections[+];  
 50 [~~(d)~~] (iv) administering tests to determine the presence of the human  
 51 immunodeficiency virus[+];  
 52 [~~(e)~~] (v) administering tests to determine the presence of the hepati-  
 53 tis C virus[+];  
 54 [~~(f)~~] (vi) emergency contraception, to be administered to or dispensed  
 55 to be self-administered by the patient, under section sixty-eight  
 56 hundred thirty-two of this title;

1 (vii) the urgent or emergency treatment of opioid related overdose or  
2 suspected opioid related overdose~~[-]; or~~  
3 [~~(g)~~] (viii) screening of persons at increased risk for syphilis,  
4 gonorrhea and chlamydia.

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

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

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

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

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

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

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

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

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

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

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