STATE OF NEW YORK

S. 659--A A. 585--A

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 -- 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

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

§ 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. 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;

(c) 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

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

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. (a) 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. (b) 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. (c) This coverage must allow for the dispensing of up to 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. **Coverage of prescription contraceptives shall include a twelve-month supply that may be dispensed at one time or up to twelve times within one year from the date of the prescription.** No person shall be compelled or coerced to accept such services or supplies.

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