AN ACT

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," in casualty insurance, providing for contraceptive coverage.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is amended by adding a section to read:

Section 635.8. Contraceptive Coverage.--(a) The General Assembly hereby finds that:

(1) Each year, approximately two million eight hundred thousand women face an unintended pregnancy, representing nearly half of all pregnancies in the United States. In 2014, forty
percent of all pregnancies in Pennsylvania were unintended.

(2) By reducing rates of unintended pregnancy, contraception improves women's health and well-being, reduces infant morbidity and mortality and reduces the need for abortion.

(3) Research shows that dispensing of contraceptive drugs to a twelve-month supply at one time has numerous benefits, including, but not limited to, reducing the rate of unintended pregnancy by thirty percent, increasing the rate of effective and continuous use of contraception and decreasing costs per client to insurers by reducing the number of pregnancy tests and pregnancies.

(4) Medical management techniques, including denials, step therapy or prior authorization in public and private health care coverage, can result in delays in access to or denial of the most effective contraceptive methods, which deprive women of their reproductive autonomy and increase the rate of unintended pregnancy.

(5) The Patient Protection and Affordable Care Act (Public Law 111-148, 124 Stat. 119) and subsequent Federal regulations made contraceptive coverage a national policy by requiring most private health insurance plans to provide coverage for a broad range of preventive services without cost sharing, including FDA-approved prescription contraceptives and related services. The Patient Protection and Affordable Care Act has exemptions and limits that leave gaps in coverage. By 2018, thirty states and the District of Columbia adopted laws that require state-regulated insurance plans to cover contraceptives, with a range of coverage and cost-sharing requirements and exemptions.

(6) On October 5, 2017, the Federal Government proposed new rules under the Patient Protection and Affordable Care Act that
allow private employers and educational institutions that do not agree with the use of contraception to be exempt from the contraceptive requirement and to impose religious or moral beliefs on employees or students by refusing to cover some or all contraceptive services in their health plans. The rules also eliminated an accommodation for employees of exempt entities to receive contraceptive services paid for directly by insurers through an accommodation and made it completely voluntary. In 2018, the Federal Government finalized rules that are substantially identical to the proposed regulations from October 2017.

(7) The new rules issued leave two million five hundred thousand women in Pennsylvania without equitable and affordable access to contraception and without the ability to control their reproductive futures and will adversely affect their health and well-being.

(8) On July 8, 2020, following a legal challenge by the Commonwealth of Pennsylvania and State of New Jersey, the United States Supreme Court ruled in favor of the then-administration's rules that allow virtually any employer and university to opt out of the Patient Protection and Affordable Care Act mandate to provide contraceptive coverage if the employer or university objects to birth control on religious or moral grounds.

(9) The loss of no-cost contraceptive coverage disproportionately impacts women of color who, due to long-standing structural inequalities, are more likely to hold low-wage jobs and rely on employer-sponsored health plans. Women of color are often the sole or primary breadwinners for their families and will be forced to decide between paying for their birth control or paying their rent and feeding their families.
The COVID-19 pandemic has revealed the inequitable effects of the new Federal rules on the health and economic security of women of color, who shoulder essential jobs on the front lines and face greater risk of COVID-19 infection.

The ability to manage pregnancy is critical amid the COVID-19 pandemic. Specifically, data on pregnancy and COVID-19 from the Centers for Disease Control and Prevention indicate that pregnant women with COVID-19 are at greater risk for severe illness that requires hospitalization and intensive care unit admission.

The Commonwealth has a compelling interest in ensuring that Pennsylvanians have equitable access to contraceptive services and promoting equitable insurance coverage of contraceptive services as specified in this section is the least restrictive means of furthering this compelling interest.

(b) An insurer that issues, delivers or renews a health insurance policy in this Commonwealth on or after the effective date of this section shall provide coverage for all contraceptive drugs, devices and other products.

(b.1) (1) Except as provided in paragraphs (2) and (3), an insurer subject to the coverage required under this section may not:

(i) Impose any prior authorization, utilization review, step-therapy requirements or any other restriction or delay on the coverage required.

(ii) Impose a copayment, coinsurance, deductible or any other cost-sharing requirement for coverage of a contraceptive drug, product and service.

(iii) Require a prescription to provide coverage of over-the-counter contraceptive drugs, devices or other products.
(2) (i) If the FDA has designated a therapeutic equivalent to another contraceptive drug, product or service that is available under a policy or contract, the insurer shall include either the original contraceptive drug, product or service or, at a minimum, one therapeutic equivalent. If there is no therapeutic equivalent, the insurer must cover the original contraceptive drug, product or service.

(ii) If the covered contraceptive drug, product or service is deemed medically inadvisable by the insured's health care provider, the health insurance policy shall provide coverage for a medically appropriate contraceptive drug, product or service that is prescribed by the insured's provider without a copayment, coinsurance, deductible or another cost-sharing mechanism.

(3) If a contraceptive drug, product or service is provided by an out-of-network provider, the insurer must provide coverage without imposing any cost-sharing requirement on the insurer if:

(i) there is no in-network provider to furnish the contraceptive drug, product or service that is geographically accessible or accessible in a reasonable amount of time, as set forth in 28 Pa. Code Ch. 9 Subch. H (relating to availability and access); or

(ii) an in-network provider is unable or unwilling to provide the service in a timely manner.

(c) Coverage requirements for an insured under this section must also be provided to an insured's covered spouse or domestic partner and covered non-spouse dependents.

(d) Nothing in this section shall be construed to exclude coverage for contraceptive drugs, devices or other products prescribed by a provider, acting within the provider's scope of
practice, for reasons other than contraceptive purposes, including decreasing the risk of ovarian cancer or eliminating symptoms of menstruation, including, but not limited to, heavy menstrual bleeding, irregular bleeding, menstrual cramps, perimenstrual headaches, difficulty with hygiene and quality of life among patients with cognitive or physical limitations and prevention of heavy menstrual bleeding among patients with cancer undergoing treatments that may increase menstrual flow and anemia, ovarian cysts, endometriosis, menopause, polycystic ovarian syndrome, amenorrhea, gender dysphoria or chronic medical problems that worsen during menses, including, but not limited to, inflammatory bowel disease, gastroparesis and migraines, that is necessary to preserve the life or health of an insured.

(e) An insurer that limits coverage of contraceptive drugs, devices or other products in a formulary shall provide for coverage for a contraceptive drug, product and service that is not in the formulary if, in the judgment of the health care provider, the formulary does not include a contraceptive drug, device or other product that is medically necessary.

(f) The insurer shall establish and implement an easily accessible, transparent and sufficiently expedient process by which an insured may receive a contraceptive drug, product and service not in the insurer's formulary in accordance with this section.

(g) The following shall apply to dispensing:

(1) Except as provided in paragraph (2), an insurer shall provide coverage for a single dispensing to an insured of a supply of contraceptive drugs, devices or other products for up to a twelve-month period.
(2) An insurer may provide coverage for a supply of contraceptive drugs, devices or other products that is for less than a twelve-month period if:

(i) the insured requests a lesser dispensing of the contraceptive drugs, devices or other products at one time; or

(ii) the prescribing provider instructs that the insured receive a lesser dispensing of the contraceptive drugs, devices or other products at one time.

(h) An insurer:

(1) Shall provide coverage without a prescription for dispensation of a minimum of a three-month supply of the contraceptive drugs, devices or other products, unless the patient requests a lesser dispensing of the contraceptive drugs, devices or other products.

(2) May not discriminate in the delivery or coverage of contraceptive drugs, devices or other products based on the covered person's actual or perceived race, color, national origin, sex, sexual orientation, gender identity or expression, age or disability.

   (i) (1) A religious employer may request an exclusion from the coverage requirement under this section by submitting a written request to the Insurance Department if the employer:

   (i) is a not-for-profit organization that has the purpose of inculcating religious values;

   (ii) primarily employs individuals who share the religious tenets of the employer;

   (iii) primarily serves individuals who share the religious tenets of the employer.

(2) The Insurance Department shall develop a timely and efficient process for responding to requests submitted under 20210SB0353PN0354.
(3) A religious employer granted an exclusion under this subsection shall provide written notice to prospective insureds prior to their enrollment in the health insurance policy, listing the contraceptive drugs, devices or other products that the employer refuses to cover for religious reasons.

(4) The exclusion from coverage under this subsection shall not apply to a contraceptive drug, device or other product which is used for purposes other than contraception.

(5) If a religious employer is granted an exclusion under this subsection:

(i) Each insured covered under the health insurance policy shall have the right to directly purchase coverage for the cost of contraceptive drugs, devices or other products from the insurer which issued the policy at the prevailing small group community rate whether the insured is part of a small group.

(ii) The insurer that provides the coverage shall provide written notice to insureds upon enrollment with the insurer of their right to directly purchase coverage for the cost of contraceptive drugs, devices or other products. The notice shall also advise the enrollees of the additional premium for coverage of contraceptive drugs, devices or other products.

(j) The following shall apply regarding enforcement:

(1) A prospective insured or insured who believes that the prospective insured or insured has been adversely affected by an act or practice of an insurer in violation of this section may file any of the following:

(i) A complaint with the Insurance Commissioner, who shall handle the complaint consistent with 2 Pa.C.S. (relating to administrative law and procedure) and address a violation.
through means appropriate to the nature and extent of the violation, which may include a cease and desist order, injunctive relief, restitution, suspension or revocation of a certificate of authority or license, civil penalties, reimbursement of costs or reasonable attorney fees incurred by the aggrieved individual in bringing the complaint, or any combination of these.

(ii) A civil action against the insurer in a State court of original jurisdiction, which, upon proof of the violation of this section by a preponderance of the evidence, shall award appropriate relief, including temporary, preliminary or permanent injunctive relief, compensatory or punitive damages, the costs of suit, reasonable attorney fees and reasonable fees for the aggrieved individual's expert witnesses. At any time prior to the rendering of final judgment, the aggrieved individual may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of five thousand dollars for each violation.

(2) (Reserved).

(k) As used in this section:

"Contraceptive drugs, devices or other products" means the following:

(1) The term includes, but is not limited to:

(i) Medical and counseling services.

(ii) All regimens of over-the-counter and prescription contraceptive drugs approved by the FDA.

(iii) All regimens of prescription contraceptive devices approved by the FDA and any generic equivalent approved as substitutable by the FDA.

(iv) Tubal ligation.
(v) Voluntary sterilization implant for women.
(vi) Voluntary sterilization surgery for men.
(vii) Copper intrauterine device.
(viii) Intrauterine device with progestin.
(ix) Implantable rod.
(x) Contraceptive shot or injection.
(xi) Combined oral contraceptives.
(xii) Extended or continuous use oral contraceptives.
(xiii) Progestin-only oral contraceptives.
(xiv) Patch.
(xv) Vaginal ring.
(xvi) Diaphragm with spermicide.
(xvii) Sponge with spermicide.
(xviii) Cervical cap with spermicide.
(xix) Male and female condoms.
(xx) Spermicide alone.
(xxi) Vasectomy.
(xxii) Ulipristal acetate.
(xxiii) Levonorgestrel emergency contraception.
(xxiv) Any additional contraceptive drugs, products or services approved by the FDA.

(2) The term does not include a drug, device or other product that has been recalled for safety reasons or withdrawn from the market.

"FDA" means the United States Food and Drug Administration.
"Health care provider" means a person who is licensed, certified or otherwise lawfully authorized to provide health care in the ordinary course of business.

"Health insurance policy" means the following:

(1) An individual or group health insurance policy,
subscriber contract, certificate or plan which provides medical
or health care coverage by a health care facility or licensed
health care provider which is offered by or is governed under
this act or any of the following:

(i) Subarticle (f) of Article IV of the act of June 13, 1967
(P.L.31, No.21), known as the "Human Services Code," and Article
XXIII of this act.

(ii) The act of December 29, 1972 (P.L.1701, No.364), known
as the "Health Maintenance Organization Act."

(iii) The act of May 18, 1976 (P.L.123, No.54), known as the
"Individual Accident and Sickness Insurance Minimum Standards
Act."

(iv) A nonprofit corporation subject to 40 Pa.C.S. Ch. 61
(relation to hospital plan corporations) or 63 (relation to
professional health services plan corporations).

(2) The term does not include any of the following:

(i) A health benefit plan that is a grandfathered health
plan, as defined in section 1251 of the Patient Protection and
Affordable Care Act (Public Law 111-148, 42 U.S.C. § 18011) and
any rules, regulations or guidance issued under that act.

(ii) Any of the following types of insurance or a
combination of any of the following types of insurance:

(A) Accident only.

(B) Fixed indemnity.

(C) Limited benefit.

(D) Credit.

(E) Dental.

(F) Vision.

(G) Specified disease.

(H) Medicare supplement.
Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement.

Long-term care or disability income.

Workers' compensation.

Automobile medical payment.

"Insurer" means an entity that issues an individual or group health insurance policy.

"Medical or counseling services" includes, but is not limited to:

1. Examinations, procedures and medical and counseling services related to the provision or use of contraception which are provided on an inpatient or outpatient basis, including consultations.

2. Services for initial and periodic comprehensive physical examinations, procedures, ultrasound, anesthesia, patient education, individual counseling, group family counseling, device insertions and removal, follow-up care and side-effect management. Coverage for the examinations shall be consistent with the recommendations of the appropriate medical specialty organizations and shall be made under terms and conditions applicable to other coverage.

3. Medical, laboratory and radiology services warranted by initial and periodic comprehensive physical examinations or by the history, physical findings or risk factors, including medical services necessary for the insertion and removal of any contraceptive drug, product or service and individual or group family planning counseling.

"Therapeutic equivalent" means a drug, device or other product which:

1. Can be expected to have the same clinical effect and
safety profile when administered to a patient under the
conditions specified in the labeling.

(2) Is FDA-approved as safe and effective.

(3) Is a pharmaceutical equivalent which:
   (i) contains identical amounts of the same active drug
   ingredient in the same dosage form and route of administration;
   and
   (ii) meets compendial standards or other applicable
   standards of strength, quality, purity and identity.

(4) Is bioequivalent, which:
   (i) does not present a known or potential bioequivalence
   problem and meets an acceptable in vitro standard; or
   (ii) is shown to meet an appropriate bioequivalence standard
   if it does present a known or potential bioequivalence problem.

(5) Is adequately labeled.

(6) Is manufactured in compliance with current good
    manufacturing practice regulations.

Section 2. This act shall take effect in 180 days.