
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1228 Session of
2005

INTRODUCED BY LEACH, BEBKO-JONES, BISHOP, CALTAGIRONE, CRUZ,
CURRY, DeWEESE, FREEMAN, JAMES, JOSEPHS, KIRKLAND, LEVDANSKY,
MANN, MUNDY, WALKO, WHEATLEY AND YOUNGBLOOD, MARCH 30, 2005

REFERRED TO COMMITTEE ON INSURANCE, MARCH 30, 2005

AN ACT

1 To ensure equitable coverage of prescription contraceptive drugs
2 and devices and the medical and counseling services necessary
3 for their effective use.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Prescription
8 Contraception Equity Act.

9 Section 2. Findings.

10 The General Assembly finds and declares as follows:

11 (1) Each year, more than 3,000,000 women face an
12 unintended pregnancy, representing nearly half of all
13 pregnancies in the United States.

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

18 (3) The cost of adding insurance coverage for all FDA-

1 approved contraception and related medical and counseling
2 services has been estimated at less than \$2 per employee per
3 month.

4 (4) Most insurance policies cover prescription drugs and
5 devices and outpatient medical and counseling services but do
6 not cover all methods of FDA-approved contraception and the
7 medical and counseling services necessary for their effective
8 use. Many policies cover no reversible methods of
9 contraception at all.

10 (5) Health insurance policies that fail to cover
11 prescription contraception and related medical and counseling
12 services discriminate against women and place effective forms
13 of contraception beyond the financial reach of many families.
14 Women of reproductive age spend 68% more than men on out-of-
15 pocket health care costs. Contraceptive drugs, devices and
16 related medical and counseling services account for much of
17 this difference.

18 (6) At least 20 states have enacted laws to address the
19 inequity in prescription coverage caused by exclusion of
20 contraceptives. Women in this Commonwealth also deserve this
21 protection.

22 (7) The Equal Employment Opportunity Commission ruled in
23 2000 that employers may not discriminate against women in
24 their health insurance plans by denying benefits for
25 prescription contraceptives if they provide benefits for
26 drugs, devices, and services used to prevent other medical
27 conditions. On June 12, 2001, a Federal district court ruled
28 in Erickson v. Bartell Drug Company that an employer's
29 exclusion of prescription contraception from a health plan
30 that covers other prescription drugs and devices is illegal

1 sex discrimination in violation of Title VII of the Civil
2 Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), as
3 amended by the act of October 31, 1978 (Public Law 95-555, 92
4 Stat. 2076), referred to as the Pregnancy Discrimination Act.

5 (8) Following the inclusion of contraceptive coverage in
6 the Federal Employees Health Benefits Program in 1999, the
7 United States Office of Personnel Management reported that no
8 increased cost had been incurred as a result of the added
9 coverage.

10 (9) This act affects the business of insurance. The
11 requirements of this act govern entities within the insurance
12 industry that provide health insurance policies as defined by
13 this act. The provisions of this act transfer and spread an
14 insured's risk and are an integral part of the policy
15 relationship between the insurer and the insured.

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Commissioner." The Insurance Commissioner of the
21 Commonwealth.

22 "Health insurance policy."

23 (1) A policy, agreement, contract, certificate,
24 indemnity plan, suretyship or annuity issued, proposed for
25 issuance or intended for issuance by an insurer, including
26 endorsements, supplements or riders to an insurance policy,
27 contract or plan, that provides health coverage to an insured
28 and that is issued, delivered, amended or renewed in this
29 Commonwealth on or after the effective date of this
30 definition.

1 (2) The term does not include any of the following types
2 of insurance or a combination of any of the following types
3 of insurance:

4 (i) Short-term travel.

5 (ii) Accident - only.

6 (iii) Workers' compensation.

7 (iv) Short-term nonrenewable policies of not more
8 than six months' duration.

9 (v) Hospital indemnity.

10 (vi) Specified disease.

11 (vii) Disability income.

12 (viii) Dental.

13 (ix) Vision.

14 (x) Civilian Health and Medical Program of the
15 Uniformed Services (CHAMPUS) supplement.

16 (xi) Medicare or Medicaid supplemental contract.

17 (xii) Long-term care.

18 (xiii) Limited coverage accident and sickness
19 policy. This subparagraph includes cancer insurance,
20 polio insurance and any similar policy identified as
21 exempt from this section by the Insurance Commissioner.

22 (3) A policy located or documented outside this
23 Commonwealth is subject to the requirements of this act if it
24 receives, processes, adjudicates, pays or denies claims for
25 drugs, devices or medical or counseling services submitted on
26 behalf of an insured who resides in or receives drugs,
27 devices or services in this Commonwealth.

28 "Insured." A party named on a health insurance policy,
29 including an individual, corporation, partnership, association,
30 unincorporated organization or any similar entity, as the person

1 with legal rights to the coverage provided by the health
2 insurance policy. For group insurance, the term includes a
3 person who is a beneficiary covered by a group health insurance
4 policy.

5 "Insurer." An individual, corporation, association,
6 partnership, reciprocal exchange, interinsurer, Lloyds insurer,
7 fraternal benefit society and any other legal entity engaged in
8 the business of insurance, including agents, brokers, adjusters
9 and third-party administrators. The term also includes a person
10 who contracts on a risk-assuming basis to provide, deliver,
11 arrange for, pay for or reimburse any of the cost of health care
12 services, including, but not limited to, health plan
13 corporations as defined in 40 Pa.C.S. Chs. 61 (relating to
14 hospital plan corporations) and 63 (relating to professional
15 health services plan corporations), beneficial societies as
16 defined in 40 Pa.C.S. Ch. 67 (relating to beneficial societies),
17 fraternal benefit societies as defined in Article XXIV of the
18 act of May 17, 1921 (P.L.682, No.284), known as The Insurance
19 Company Law of 1921, health maintenance organizations as defined
20 in the act of December 29, 1972 (P.L.1701, No.364), known as the
21 Health Maintenance Organization Act, and preferred provider
22 organizations as defined in section 630 of The Insurance Company
23 Law of 1921, and 31 Pa. Code § 152.2 (relating to definitions).

24 "Limitation." Any of the following:

25 (1) Any copayment, deductible or other cost-sharing
26 mechanism, or premium differential, rules or regulations that
27 establish the type of professionals that may prescribe
28 prescription drugs or devices, utilization review provisions
29 and limits on the volume of prescription drugs or devices
30 that may be obtained on the basis of a single consultation

1 with a professional.

2 (2) Requirements or procedures relating to timing of
3 payments or reimbursement by insurers

4 (3) Requirements relating to second opinions or
5 preauthorizations prior to coverage.

6 "Outpatient medical or counseling services necessary for the
7 effective use of contraception." The term includes, but is not
8 limited to, examinations, procedures and medical and counseling
9 services provided on an outpatient basis, and services for
10 initial and periodic comprehensive physical examinations,
11 medical, laboratory and radiology services warranted by the
12 initial and periodic examinations or by the history, physical
13 findings or risk factors, including medical services necessary
14 for the insertion and removal of any contraceptive drug or
15 device and individual or group family planning counseling.
16 Coverage for the comprehensive health exam shall be consistent
17 with the recommendations of the appropriate medical specialty
18 organizations and shall be made under terms and conditions
19 applicable to other coverage.

20 "Prescription contraceptive drug or device approved by the
21 Food and Drug Administration." Any regime of a prescription
22 contraceptive drug and any regime of a prescription
23 contraceptive device approved by the Food and Drug
24 Administration, as well as any generic equivalent approved as
25 substitutable by the Food and Drug Administration.

26 Section 4. Requirements for coverage.

27 A health insurance policy shall not:

28 (1) Exclude or restrict coverage for any prescription
29 contraceptive drug approved by the Food and Drug
30 Administration, if the policy provides coverage for other

1 prescription drugs.

2 (2) Exclude or restrict coverage for a prescription
3 contraceptive device approved by the Food and Drug
4 Administration, if the policy provides coverage for other
5 prescription devices.

6 (3) Exclude or restrict coverage for outpatient medical
7 or counseling services necessary for the effective use of
8 contraception, if the policy provides coverage for other
9 outpatient medical or counseling services.

10 (4) Deny to any individual eligibility or continued
11 eligibility to enroll or to renew coverage under the terms of
12 the policy because of the individual's past, present or
13 future use of contraceptive drugs, devices or medical or
14 counseling services that are required by this act.

15 (5) Provide monetary payments or rebates to an insured
16 to encourage the insured to accept less than the minimum
17 coverage required by this act.

18 (6) Penalize or otherwise reduce or limit the
19 reimbursement of a health care professional because that
20 professional has in the past or will in the future prescribe
21 contraceptive drugs or devices, or provide medical or
22 counseling services that are required by this act.

23 (7) Provide monetary or other incentives to a health
24 care professional to withhold from an insured contraceptive
25 drugs or devices or medical or counseling services that are
26 required by this act.

27 Section 5. Construction.

28 Nothing in this act shall be construed as:

29 (1) Preventing a health insurance policy from imposing a
30 limitation in relation to:

1 (i) Coverage for prescription contraceptive drugs,
2 provided that the limitation for this coverage is not
3 greater than or different from limitations imposed under
4 general terms and conditions applicable to all other
5 prescription drugs covered under the policy.

6 (ii) Coverage for prescription contraceptive
7 devices, provided that the limitation for this coverage
8 is not greater than or different from limitations imposed
9 under general terms and conditions applicable to all
10 other prescription devices covered under the policy.

11 (iii) Coverage for outpatient medical or counseling
12 services necessary for the effective use of
13 contraception, provided that the limitation for this
14 coverage is not greater than or different from
15 limitations imposed under general terms and conditions
16 applicable to all other outpatient medical or counseling
17 services covered under the policy.

18 (2) Requiring a health insurance policy to cover
19 experimental prescription contraceptive drugs or devices or
20 experimental outpatient medical or counseling services
21 necessary for the effective use of contraception, except to
22 the extent that the policy provides coverage for other
23 experimental prescription drugs or devices or experimental
24 outpatient medical or counseling services.

25 (3) Requiring coverage for prescription contraceptive
26 drugs, devices or medical or counseling services required by
27 this act in any policy that does not otherwise provide
28 coverage for prescription drugs or devices or outpatient
29 medical or counseling services.

30 Section 6. Enforcement.

1 (a) Right of action.--Applicants or insureds who believe
2 that they have been adversely affected by an act or practice of
3 an insurer in violation of this act may:

4 (1) file a complaint with the commissioner, who shall
5 handle the complaint consistent with 2 Pa.C.S. Ch. 5 Subch. A
6 (relating to practice and procedure of Commonwealth agencies)
7 and Ch. 7 Subch. A (relating to judicial review of
8 Commonwealth agency action) and address any violation through
9 means appropriate to the nature and extent of the violation,
10 which may include cease-and-desist orders, injunctive relief,
11 restitution, suspension or revocation of certificates of
12 authority or licenses, civil penalties and reimbursement of
13 costs and reasonable attorney fees incurred by the aggrieved
14 individual in bringing the complaint, or any combination of
15 these; or

16 (2) file a civil action against the insurer in a court
17 of original jurisdiction, which, upon proof of the act's
18 violation by a preponderance of the evidence, shall award
19 appropriate relief, including, but not limited to, temporary,
20 preliminary or permanent injunctive relief, compensatory and
21 punitive damages, as well as the costs of suit and reasonable
22 attorney fees for the aggrieved individual's attorneys and
23 expert witnesses. The aggrieved individual may elect, at any
24 time prior to the rendering of final judgment, to recover in
25 lieu of actual damages an award of statutory damages in the
26 amount of \$5,000 for each violation.

27 (b) Civil action.--

28 (1) If an aggrieved individual elects to file a
29 complaint with the commissioner pursuant to subsection
30 (a)(1), that individual's right of action in a court of

1 original jurisdiction shall not be foreclosed.

2 (2) If the commissioner has not secured a resolution of
3 the complaint acceptable to the complainant within 180 days
4 after the filing of the complaint, the complainant may file a
5 civil action pursuant to subsection (a)(2). Upon the filing
6 of a civil action, all proceedings before the commissioner
7 shall terminate.

8 Section 7. Notice of change.

9 This act shall be construed as a material notification of a
10 change in the terms of a health insurance policy.

11 Section 8. Effective date.

12 This act shall take effect in 60 days.