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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 38**

Session of  
2007

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INTRODUCED BY C. WILLIAMS, KITCHEN, STACK AND FERLO,  
FEBRUARY 7, 2007

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REFERRED TO BANKING AND INSURANCE, FEBRUARY 7, 2007

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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." A policy, agreement, contract,  
23 certificate, indemnity plan, suretyship or annuity issued,  
24 proposed for issuance or intended for issuance by an insurer,  
25 including endorsements, supplements or riders to an insurance  
26 policy, contract or plan, that provides health coverage to an  
27 insured and that is issued, delivered, amended or renewed in  
28 this Commonwealth on or after the effective date of this act.  
29 The term does not include short-term travel or accident-only  
30 policies, workers' compensation or short-term nonrenewable

1 policies of not more than six months' duration. A policy located  
2 or documented outside this Commonwealth is subject to the  
3 requirements of this act if it receives, processes, adjudicates,  
4 pays or denies claims for drugs, devices or medical or  
5 counseling services submitted on behalf of an insured who  
6 resides in or receives drugs, devices or services in this  
7 Commonwealth.

8 "Insured." A party named on a health insurance policy,  
9 including an individual, corporation, partnership, association,  
10 unincorporated organization or any similar entity, as the person  
11 with legal rights to the coverage provided by the health  
12 insurance policy. For group insurance, the term includes a  
13 person who is a beneficiary covered by a group health insurance  
14 policy.

15 "Insurer." An individual, corporation, association,  
16 partnership, reciprocal exchange, interinsurer, Lloyds insurer,  
17 fraternal benefit society and any other legal entity engaged in  
18 the business of insurance, including agents, brokers, adjusters  
19 and third-party administrators. The term also includes a person  
20 who contracts on a risk-assuming basis to provide, deliver,  
21 arrange for, pay for or reimburse any of the cost of health care  
22 services, including, but not limited to, health plan  
23 corporations as defined in 40 Pa.C.S. Chs. 61 (relating to  
24 hospital plan corporations) and 63 (relating to professional  
25 health services plan corporations), beneficial societies as  
26 defined in 40 Pa.C.S. Ch. 67 (relating to beneficial societies),  
27 fraternal benefit societies as defined in Article XXIV of the  
28 act of May 17, 1921 (P.L.682, No.284), known as The Insurance  
29 Company Law of 1921, health maintenance organizations as defined  
30 in the act of December 29, 1972 (P.L.1701, No.364), known as the

1 Health Maintenance Organization Act, and preferred provider  
2 organizations as defined in section 630 of The Insurance Company  
3 Law of 1921, and 31 Pa. Code § 152.2 (relating to definitions).

4 "Limitation." Any of the following:

5 (1) Any copayment, deductible or other cost-sharing  
6 mechanism, or premium differential, rules or regulations that  
7 establish the type of professionals that may prescribe  
8 prescription drugs or devices, utilization review provisions  
9 and limits on the volume of prescription drugs or devices  
10 that may be obtained on the basis of a single consultation  
11 with a professional.

12 (2) Requirements or procedures relating to timing of  
13 payments or reimbursement by insurers.

14 (3) Requirements relating to second opinions or  
15 preauthorizations prior to coverage.

16 "Outpatient medical or counseling services necessary for the  
17 effective use of contraception." The term includes, but is not  
18 limited to, examinations, procedures and medical and counseling  
19 services provided on an outpatient basis, and services for  
20 initial and periodic comprehensive physical examinations,  
21 medical, laboratory and radiology services warranted by the  
22 initial and periodic examinations or by the history, physical  
23 findings or risk factors, including medical services necessary  
24 for the insertion and removal of any contraceptive drug or  
25 device and individual or group family planning counseling.  
26 Coverage for the comprehensive health examination shall be  
27 consistent with the recommendations of the appropriate medical  
28 specialty organizations and shall be made under terms and  
29 conditions applicable to other coverage.

30 "Prescription contraceptive drug or device approved by the

1 Food and Drug Administration." Any regime of a prescription  
2 contraceptive drug and any regime of a prescription  
3 contraceptive device approved by the Food and Drug  
4 Administration, as well as any generic equivalent approved as  
5 substitutable by the Food and Drug Administration.

6 Section 4. Requirements for coverage.

7 A health insurance policy shall not:

8 (1) Exclude or restrict coverage for any prescription  
9 contraceptive drug approved by the Food and Drug  
10 Administration, if the policy provides coverage for other  
11 prescription drugs.

12 (2) Exclude or restrict coverage for a prescription  
13 contraceptive device approved by the Food and Drug  
14 Administration, if the policy provides coverage for other  
15 prescription devices.

16 (3) Exclude or restrict coverage for outpatient medical  
17 or counseling services necessary for the effective use of  
18 contraception, if the policy provides coverage for other  
19 outpatient medical or counseling services.

20 (4) Deny to any individual eligibility or continued  
21 eligibility to enroll or to renew coverage under the terms of  
22 the policy because of the individual's past, present or  
23 future use of contraceptive drugs, devices or medical or  
24 counseling services that are required by this act.

25 (5) Provide monetary payments or rebates to an insured  
26 to encourage the insured to accept less than the minimum  
27 coverage required by this act.

28 (6) Penalize or otherwise reduce or limit the  
29 reimbursement of a health care professional because that  
30 professional has in the past or will in the future prescribe

1       contraceptive drugs or devices, or provide medical or  
2       counseling services that are required by this act.

3           (7) Provide monetary or other incentives to a health  
4       care professional to withhold from an insured contraceptive  
5       drugs or devices or medical or counseling services that are  
6       required by this act.

7 Section 5. Construction.

8       Nothing in this act shall be construed as:

9           (1) Preventing a health insurance policy from imposing a  
10      limitation in relation to:

11           (i) Coverage for prescription contraceptive drugs,  
12      provided that the limitation for this coverage is not  
13      greater than or different from limitations imposed under  
14      general terms and conditions applicable to all other  
15      prescription drugs covered under the policy.

16           (ii) Coverage for prescription contraceptive  
17      devices, provided that the limitation for this coverage  
18      is not greater than or different from limitations imposed  
19      under general terms and conditions applicable to all  
20      other prescription devices covered under the policy.

21           (iii) Coverage for outpatient medical or counseling  
22      services necessary for the effective use of  
23      contraception, provided that the limitation for this  
24      coverage is not greater than or different from  
25      limitations imposed under general terms and conditions  
26      applicable to all other outpatient medical or counseling  
27      services covered under the policy.

28           (2) Requiring a health insurance policy to cover  
29      experimental prescription contraceptive drugs or devices or  
30      experimental outpatient medical or counseling services

1 necessary for the effective use of contraception, except to  
2 the extent that the policy provides coverage for other  
3 experimental prescription drugs or devices or experimental  
4 outpatient medical or counseling services.

5 (3) Requiring coverage for prescription contraceptive  
6 drugs, devices or medical or counseling services required by  
7 this act in any policy that does not otherwise provide  
8 coverage for prescription drugs or devices or outpatient  
9 medical or counseling services.

10 Section 6. Enforcement.

11 (a) Action by applicant.--An applicant or an insured who  
12 believes that he has been adversely affected by an act or  
13 practice of an insurer in violation of this act may:

14 (1) file a complaint with the commissioner, who shall  
15 handle the complaint consistent with 2 Pa.C.S. Chs. 5 Subch.  
16 A (relating to practice and procedure of Commonwealth  
17 agencies) and 7 Subch. A (relating to judicial review of  
18 Commonwealth agency action) and address any violation through  
19 means appropriate to the nature and extent of the violation,  
20 which may include cease-and-desist orders, injunctive relief,  
21 restitution, suspension or revocation of certificates of  
22 authority or licenses, civil penalties and reimbursement of  
23 costs and reasonable attorney fees incurred by the aggrieved  
24 individual in bringing the complaint, or any combination of  
25 these; or

26 (2) file a civil action against the insurer in a court  
27 of original jurisdiction, which, upon proof of this act's  
28 violation by a preponderance of the evidence, shall award  
29 appropriate relief, including, but not limited to, temporary,  
30 preliminary or permanent injunctive relief, compensatory and

1 punitive damages, as well as the costs of suit and reasonable  
2 attorney fees for the aggrieved individual's attorneys and  
3 expert witnesses. The aggrieved individual may elect, at any  
4 time prior to the rendering of final judgment, to recover in  
5 lieu of actual damages an award of statutory damages in the  
6 amount of \$5,000 for each violation.

7 (b) Civil action.--

8 (1) If an aggrieved individual elects to file a  
9 complaint with the commissioner pursuant to subsection  
10 (a)(1), that individual's right of action in a court of  
11 original jurisdiction shall not be foreclosed.

12 (2) If the commissioner has not secured a resolution of  
13 the complaint acceptable to the complainant within 180 days  
14 after the filing of the complaint, the complainant may file a  
15 civil action pursuant to subsection (a)(2). Upon the filing  
16 of a civil action, all proceedings before the commissioner  
17 shall terminate.

18 Section 7. Notice of change.

19 The enactment of this act shall be treated as a material  
20 notification of a change in the terms of a health insurance  
21 policy.

22 Section 20. Effective date.

23 This act shall take effect in 60 days.