
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2679 Session of
2018

INTRODUCED BY BOYLE, KRUEGER-BRANEKY, DAVIS, DEAN, SCHLOSSBERG,
THOMAS, SIMS, HILL-EVANS, GALLOWAY, RABB, McCARTER, FRANKEL,
DAVIDSON, DALEY, KINSEY, STURLA, BRIGGS, SOLOMON, ROZZI,
BULLOCK, TAI AND ROEBUCK, SEPTEMBER 26, 2018

REFERRED TO COMMITTEE ON INSURANCE, SEPTEMBER 26, 2018

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," in casualty insurance, providing
12 for prior authorization, copayment, coinsurance and
13 dispensing requirements for contraceptive drugs, devices,
14 products and related medical or counseling services, for
15 coverage for voluntary male sterilization and for drug
16 formularies.

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

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

22 Section 635.8. Prior Authorization, Copayment, Coinsurance
23 and Dispensing Requirements for Contraceptive Drugs, Devices,
24 Products and Related Medical or Counseling Services.--(a) The

1 following shall apply regarding coverage:

2 (1) Subject to paragraphs (2) and (3), an insurer that
3 issues, delivers or renews a health insurance policy in this
4 Commonwealth on or after the effective date of this section
5 shall provide coverage for all FDA-approved contraceptive drugs,
6 devices, products and related medical or counseling services,
7 including those prescribed by the insured's provider or as
8 otherwise authorized under Federal or State law.

9 (2) This subsection does not apply to an organization that
10 requests and receives an exclusion from coverage under paragraph
11 (3).

12 (3) The following shall apply to a religious employer:

13 (i) Subject to subparagraph (iii), a religious employer may
14 request and an insurer shall grant the request for an exclusion
15 from coverage under a health insurance policy for coverage of an
16 FDA-approved contraceptive drug, device, product or related
17 medical or counseling service which is contrary to the
18 employer's religious tenets if the employer:

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

21 (B) primarily employs individuals who share the religious
22 tenets of the employer; and

23 (C) primarily serves individuals who share the religious
24 tenets of the employer.

25 (ii) A religious employer granted an exclusion under
26 subparagraph (i) shall provide written notice to prospective
27 insureds prior to their enrollment in the health insurance
28 policy, listing the contraceptive drugs, devices, products and
29 related medical or counseling services which the employer
30 refuses to cover for religious reasons.

1 (iii) The exclusion from coverage under this paragraph shall
2 not apply to an FDA-approved contraceptive drug, device, product
3 or related medical or counseling service which is used for
4 purposes other than birth control.

5 (b) An insurer may not impose any restriction or delay on
6 the coverage required under this section, including, but not
7 limited to, a prior authorization requirement for a
8 contraceptive drug, device, product or related medical or
9 counseling service that is:

10 (1) approved by the FDA; and

11 (2) either:

12 (i) obtained under a prescription written by an authorized
13 prescriber, including for purposes other than birth control or
14 which are necessary to preserve the life or health of an
15 insured; or

16 (ii) for medical or counseling services which are necessary
17 for the effective use of contraception.

18 (c) The following shall apply regarding a cost-sharing
19 mechanism requirement:

20 (1) Except as provided in paragraph (2), an insurer may not
21 apply a copayment, coinsurance, deductible or another cost-
22 sharing mechanism requirement for a contraceptive drug, device
23 or product that is:

24 (i) approved by the FDA; and

25 (ii) either:

26 (A) obtained under a prescription written by an authorized
27 prescriber, including for purposes other than birth control; or

28 (B) for medical or counseling services which are necessary
29 for the effective use of contraception.

30 (2) An insurer may apply a copayment, coinsurance,

1 deductible or another cost-sharing mechanism requirement for a
2 contraceptive drug, device or product that, according to the
3 FDA, is a therapeutic equivalent to another contraceptive drug,
4 device or product that is available under the same policy or
5 contract without a copayment, coinsurance or deductible, if the
6 copayment, coinsurance or deductible is not greater than it
7 would be for another prescription contraceptive drug, device or
8 product covered under the same policy. If the insured's
9 provider, acting within the provider's scope of practice,
10 determines that none of the methods designated by the health
11 insurance policy are medically appropriate for the insured's
12 medical or personal history, the health insurance policy shall
13 also provide coverage for another FDA-approved, medically
14 appropriate prescription contraceptive method prescribed by the
15 insured's provider without a copayment, coinsurance, deductible
16 or another cost-sharing mechanism.

17 (d) The following shall apply regarding dispensing:

18 (1) Except as provided in paragraph (2), an insurer shall
19 provide coverage for a single dispensing to an insured of a
20 supply of prescription contraceptives for up to a twelve-month
21 period.

22 (2) An insurer shall provide coverage for a supply of
23 prescription contraceptives that is for less than a twelve-month
24 period if:

25 (i) the insured requests a lesser dispensing of the
26 contraceptive drug, device or product at one time; or

27 (ii) the prescribing provider instructs that the insured
28 receive a lesser dispensing of the contraceptive drug, device or
29 product at one time.

30 (e) An insurer:

1 (1) Shall provide coverage without a prescription for all
2 contraceptive drugs, devices and products approved by the FDA
3 and available by prescription and over the counter.

4 (2) May not apply a copayment, coinsurance, deductible or
5 another cost-sharing requirement for a contraceptive drug
6 dispensed without a prescription under paragraph (1) that
7 exceeds the copayment or coinsurance requirement for the
8 contraceptive drug dispensed under a prescription.

9 (f) The following shall apply regarding enforcement:

10 (1) An applicant or insured who believes that the applicant
11 or insured has been adversely affected by an act or practice of
12 an insurer in violation of this act may file any of the
13 following:

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

24 (ii) A civil action against the insurer in a State court of
25 original jurisdiction, which, upon proof of the violation of
26 this section by a preponderance of the evidence, shall award
27 appropriate relief, including temporary, preliminary or
28 permanent injunctive relief, compensatory or punitive damages,
29 the costs of suit, reasonable attorney fees and reasonable fees
30 for the aggrieved individual's expert witnesses. At any time

1 prior to the rendering of final judgment, the aggrieved
2 individual may elect to recover, in lieu of actual damages, an
3 award of statutory damages in the amount of five thousand
4 dollars (\$5,000) for each violation.

5 (g) As used in this section:

6 "Authorized prescriber" means a person who is licensed,
7 registered or otherwise lawfully authorized to distribute,
8 dispense or administer a controlled substance, other drug,
9 device or product in the course of professional practice or
10 research in this Commonwealth, excluding veterinarians.

11 "FDA" means the United States Food and Drug Administration.

12 "Health insurance policy" means:

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

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

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

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

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

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

29 (i) A health benefit plan that is a grandfathered health
30 plan, as defined in section 1251 of the Patient Protection and

1 Affordable Care Act (Public Law 111-148, 42 U.S.C. § 18011).

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

4 (A) Accident only.

5 (B) Fixed indemnity.

6 (C) Limited benefit.

7 (D) Credit.

8 (E) Dental.

9 (F) Vision.

10 (G) Specified disease.

11 (H) Medicare supplement.

12 (I) Civilian Health and Medical Program of the Uniformed
13 Services (CHAMPUS) supplement.

14 (J) Long-term care or disability income.

15 (K) Workers' compensation.

16 (L) Automobile medical payment.

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

19 "Medical or counseling services" include, but are not limited
20 to:

21 (1) Examinations, procedures and medical and counseling
22 services which are provided on an inpatient or outpatient basis.

23 (2) Services for initial and periodic comprehensive physical
24 examinations. Coverage for the examinations shall be consistent
25 with the recommendations of the appropriate medical specialty
26 organizations and shall be made under terms and conditions
27 applicable to other coverage.

28 (3) Medical, laboratory and radiology services warranted by
29 initial and periodic comprehensive physical examinations or by
30 the history, physical findings or risk factors, including

1 medical services necessary for the insertion and removal of any
2 contraceptive drug, device or product and individual or group
3 family planning counseling.

4 "Prescription contraceptive drug, device or product" includes
5 all regimes of over-the-counter and prescription contraceptive
6 drugs and all regimes of prescription contraceptive devices
7 approved by the FDA and any generic equivalent approved as
8 substitutable by the FDA. The term excludes male condoms.

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

11 (1) can be expected to have the same clinical effect and
12 safety profile when administered to a patient under the
13 conditions specified in the labeling;

14 (2) is FDA-approved as safe and effective;

15 (3) is a pharmaceutical equivalent in that it:

16 (i) contains identical amounts of the same active drug
17 ingredient in the same dosage form and route of administration;
18 and

19 (ii) meets compendial or other applicable standards of
20 strength, quality, purity and identity;

21 (4) is bioequivalent in that it:

22 (i) does not present a known or potential bioequivalence
23 problem and meets an acceptable in vitro standard; or

24 (ii) is shown to meet an appropriate bioequivalence standard
25 if it does present a known or potential bioequivalence problem;

26 (5) is adequately labeled; and

27 (6) is manufactured in compliance with current good
28 manufacturing practice regulations.

29 Section 635.9. Coverage for Voluntary Male Sterilization.--

30 (a) The following shall apply regarding coverage:

1 (1) Subject to paragraphs (2) and (3), an insurer that
2 issues, delivers or renews a health insurance policy in this
3 Commonwealth on or after the effective date of this section
4 shall provide coverage for voluntary male sterilization in
5 accordance with the provisions of this section.

6 (2) This subsection does not apply to an organization that
7 requests and receives an exclusion from coverage under paragraph
8 (3).

9 (3) The following shall apply to a religious employer:

10 (i) A religious employer may request and an insurer shall
11 grant the request for an exclusion from coverage under a health
12 insurance policy for coverage of an FDA-approved contraceptive
13 drug, device, product or related medical or counseling service
14 which is contrary to the employer's religious tenets if the
15 employer:

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

18 (B) primarily employs individuals who share the religious
19 tenets of the employer; and

20 (C) primarily serves individuals who share the religious
21 tenets of the employer.

22 (ii) A religious employer granted an exclusion under
23 subparagraph (i) shall provide written notice to prospective
24 insureds prior to their enrollment in the health insurance
25 policy, listing the contraceptive drugs, devices, products and
26 medical or counseling services which the employer refuses to
27 cover for religious reasons.

28 (b) An insurer that provides coverage for voluntary male
29 sterilization under a health insurance policy that is issued,
30 delivered or renewed in this Commonwealth on or after the

1 effective date of this section may not apply a copayment,
2 coinsurance requirement or deductible to coverage for voluntary
3 male sterilization.

4 (c) The following shall apply regarding enforcement:

5 (1) An applicant or insured who believes that the applicant
6 or insured has been adversely affected by an act or practice of
7 an insurer in violation of this act may file any of the
8 following:

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

19 (ii) A civil action against the insurer in a State court of
20 original jurisdiction, which, upon proof of the violation of
21 this section by a preponderance of the evidence, shall award
22 appropriate relief, including temporary, preliminary or
23 permanent injunctive relief, compensatory or punitive damages,
24 the costs of suit, reasonable attorney fees and reasonable fees
25 for the aggrieved individual's expert witnesses. At any time
26 prior to the rendering of final judgment, the aggrieved
27 individual may elect to recover, in lieu of actual damages, an
28 award of statutory damages in the amount of five thousand
29 dollars (\$5,000) for each violation.

30 (d) As used in this section:

1 "Health insurance policy" means "health insurance policy" as
2 that term is defined in section 635.8(g).

3 "Insurer" means "insurer" as that term is defined in section
4 635.8(g).

5 Section 635.10. Drug Formularies.--(a) An insurer that
6 issues, delivers or renews a health insurance policy in this
7 Commonwealth on or after the effective date of this section
8 shall provide coverage for prescription drugs, devices, products
9 and related medical or counseling services in accordance with
10 the provisions of this section.

11 (b) Each insurer that limits its coverage of prescription
12 drugs, devices, products or related medical or counseling
13 services to those in a formulary shall establish and implement
14 an easily accessible, transparent and sufficiently expedient
15 process by which a member may receive a prescription drug,
16 device, product or related medical or counseling services not in
17 the insurer's formulary in accordance with this section.

18 (c) The procedure shall provide for coverage for a
19 prescription drug, device or product that is not in the
20 formulary if, in the judgment of the authorized prescriber, any
21 of the following apply:

22 (1) There is no equivalent prescription drug, device or
23 product in the insurer's formulary.

24 (2) An equivalent prescription drug, device or product in
25 the insurer's formulary:

26 (i) has been ineffective in treating the disease or
27 condition of the member; or

28 (ii) has caused or is likely to cause an adverse reaction or
29 other harm to the member.

30 (3) For a contraceptive prescription drug, device or

1 product, the prescription drug, device or product that is not on
2 the formulary is medically necessary for the member to adhere to
3 the appropriate use of the prescription drug or device.

4 (d) The following shall apply regarding enforcement:

5 (1) An applicant or insured who believes that the applicant
6 or insured has been adversely affected by an act or practice of
7 an insurer in violation of this act may file any of the
8 following:

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

19 (ii) A civil action against the insurer in a State court of
20 original jurisdiction, which, upon proof of the violation of
21 this section by a preponderance of the evidence, shall award
22 appropriate relief, including temporary, preliminary or
23 permanent injunctive relief, compensatory or punitive damages,
24 the costs of suit, reasonable attorney fees and reasonable fees
25 for the aggrieved individual's expert witnesses. At any time
26 prior to the rendering of final judgment, the aggrieved
27 individual may elect to recover, in lieu of actual damages, an
28 award of statutory damages in the amount of five thousand
29 dollars (\$5,000) for each violation.

30 (e) As used in this section:

1 "Authorized prescriber" means "authorized prescriber" as that
2 term is defined in section 635.8(g).

3 "Formulary" means a list of prescription drugs, devices or
4 products that are covered by an insurer.

5 "Health insurance policy" means "health insurance policy" as
6 that term is defined in section 635.8(g), except that paragraph
7 (2)(i) of that definition shall not apply.

8 "Insurer" means "insurer" as that term is defined in section
9 635.8(g).

10 "Medical or counseling services" means "medical or counseling
11 services" as that term is defined in section 635.8(g).

12 "Member" means an individual entitled to health care benefits
13 for prescription drugs, devices or products under a health
14 insurance policy issued or delivered in this Commonwealth by an
15 insurer. The term includes a subscriber.

16 Section 2. If a provision of this act or its application to
17 any person, entity or circumstance is held invalid, the
18 invalidity shall not affect other provisions or applications of
19 this act that can be given effect without the invalid provision
20 or application, and to this end the provisions of this act shall
21 be severable.

22 Section 3. This act shall take effect in 180 days.