

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 353 Session of 2021

INTRODUCED BY SCHWANK, COLLETT, FONTANA, HUGHES, KEARNEY,  
STREET, SANTARSIERO, TARTAGLIONE, COSTA, CAPPELLETTI, KANE  
AND MUTH, MARCH 10, 2021

REFERRED TO BANKING AND INSURANCE, MARCH 10, 2021

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 contraceptive coverage.

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

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

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

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

1 percent of all pregnancies in Pennsylvania were unintended.

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

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

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

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

29 (6) On October 5, 2017, the Federal Government proposed new  
30 rules under the Patient Protection and Affordable Care Act that

1 allow private employers and educational institutions that do not  
2 agree with the use of contraception to be exempt from the  
3 contraceptive requirement and to impose religious or moral  
4 beliefs on employes or students by refusing to cover some or all  
5 contraceptive services in their health plans. The rules also  
6 eliminated an accommodation for employes of exempt entities to  
7 receive contraceptive services paid for directly by insurers  
8 through an accommodation and made it completely voluntary. In  
9 2018, the Federal Government finalized rules that are  
10 substantially identical to the proposed regulations from October  
11 2017.

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

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

24 (9) The loss of no-cost contraceptive coverage  
25 disproportionately impacts women of color who, due to long-  
26 standing structural inequalities, are more likely to hold low-  
27 wage jobs and rely on employer-sponsored health plans. Women of  
28 color are often the sole or primary breadwinners for their  
29 families and will be forced to decide between paying for their  
30 birth control or paying their rent and feeding their families.

1 (10) The COVID-19 pandemic has revealed the inequitable  
2 effects of the new Federal rules on the health and economic  
3 security of women of color, who shoulder essential jobs on the  
4 front lines and face greater risk of COVID-19 infection.

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

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

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

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

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

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

29 (iii) Require a prescription to provide coverage of over-  
30 the-counter contraceptive drugs, devices or other products.

1 (2) (i) If the FDA has designated a therapeutic equivalent  
2 to another contraceptive drug, product or service that is  
3 available under a policy or contract, the insurer shall include  
4 either the original contraceptive drug, product or service or,  
5 at a minimum, one therapeutic equivalent. If there is no  
6 therapeutic equivalent, the insurer must cover the original  
7 contraceptive drug, product or service.

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

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

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

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

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

28 (d) Nothing in this section shall be construed to exclude  
29 coverage for contraceptive drugs, devices or other products  
30 prescribed by a provider, acting within the provider's scope of

1 practice, for reasons other than contraceptive purposes,  
2 including decreasing the risk of ovarian cancer or eliminating  
3 symptoms of menstruation, including, but not limited to, heavy  
4 menstrual bleeding, irregular bleeding, menstrual cramps,  
5 perimenstrual headaches, difficulty with hygiene and quality of  
6 life among patients with cognitive or physical limitations and  
7 prevention of heavy menstrual bleeding among patients with  
8 cancer undergoing treatments that may increase menstrual flow  
9 and anemia, ovarian cysts, endometriosis, menopause, polycystic  
10 ovarian syndrome, amenorrhea, gender dysphoria or chronic  
11 medical problems that worsen during menses, including, but not  
12 limited to, inflammatory bowel disease, gastroparesis and  
13 migraines, that is necessary to preserve the life or health of  
14 an insured.

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

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

26 (g) The following shall apply to dispensing:

27 (1) Except as provided in paragraph (2), an insurer shall  
28 provide coverage for a single dispensing to an insured of a  
29 supply of contraceptive drugs, devices or other products for up  
30 to a twelve-month period.

1 (2) An insurer may provide coverage for a supply of  
2 contraceptive drugs, devices or other products that is for less  
3 than a twelve-month period if:

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

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

9 (h) An insurer:

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

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

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

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

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

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

29 (2) The Insurance Department shall develop a timely and  
30 efficient process for responding to requests submitted under

1 this subsection.

2 (3) A religious employer granted an exclusion under this  
3 subsection shall provide written notice to prospective insureds  
4 prior to their enrollment in the health insurance policy,  
5 listing the contraceptive drugs, devices or other products that  
6 the employer refuses to cover for religious reasons.

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

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

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

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

23 (j) The following shall apply regarding enforcement:

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

28 (i) A complaint with the Insurance Commissioner, who shall  
29 handle the complaint consistent with 2 Pa.C.S. (relating to  
30 administrative law and procedure) and address a violation

1 through means appropriate to the nature and extent of the  
2 violation, which may include a cease and desist order,  
3 injunctive relief, restitution, suspension or revocation of a  
4 certificate of authority or license, civil penalties,  
5 reimbursement of costs or reasonable attorney fees incurred by  
6 the aggrieved individual in bringing the complaint, or any  
7 combination of these.

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

19 (2) (Reserved).

20 (k) As used in this section:

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

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

24 (i) Medical and counseling services.

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

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

30 (iv) Tubal ligation.

- 1 (v) Voluntary sterilization implant for women.  
2 (vi) Voluntary sterilization surgery for men.  
3 (vii) Copper intrauterine device.  
4 (viii) Intrauterine device with progestin.  
5 (ix) Implantable rod.  
6 (x) Contraceptive shot or injection.  
7 (xi) Combined oral contraceptives.  
8 (xii) Extended or continuous use oral contraceptives.  
9 (xiii) Progestin-only oral contraceptives.  
10 (xiv) Patch.  
11 (xv) Vaginal ring.  
12 (xvi) Diaphragm with spermicide.  
13 (xvii) Sponge with spermicide.  
14 (xviii) Cervical cap with spermicide.  
15 (xix) Male and female condoms.  
16 (xx) Spermicide alone.  
17 (xxi) Vasectomy.  
18 (xxii) Ulipristal acetate.  
19 (xxiii) Levonorgestrel emergency contraception.  
20 (xxiv) Any additional contraceptive drugs, products or  
21 services approved by the FDA.

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

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

26 "Health care provider" means a person who is licensed,  
27 certified or otherwise lawfully authorized to provide health  
28 care in the ordinary course of business.

29 "Health insurance policy" means the following:

30 (1) An individual or group health insurance policy,

1 subscriber contract, certificate or plan which provides medical  
2 or health care coverage by a health care facility or licensed  
3 health care provider which is offered by or is governed under  
4 this act or any of the following:

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

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

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

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

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

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

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

23 (A) Accident only.

24 (B) Fixed indemnity.

25 (C) Limited benefit.

26 (D) Credit.

27 (E) Dental.

28 (F) Vision.

29 (G) Specified disease.

30 (H) Medicare supplement.

1 (I) Civilian Health and Medical Program of the Uniformed  
2 Services (CHAMPUS) supplement.

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

4 (K) Workers' compensation.

5 (L) Automobile medical payment.

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

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

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

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

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

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

30 (1) Can be expected to have the same clinical effect and

1 safety profile when administered to a patient under the  
2 conditions specified in the labeling.

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

4 (3) Is a pharmaceutical equivalent which:

5 (i) contains identical amounts of the same active drug  
6 ingredient in the same dosage form and route of administration;  
7 and

8 (ii) meets compendial standards or other applicable  
9 standards of strength, quality, purity and identity.

10 (4) Is bioequivalent, which:

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

13 (ii) is shown to meet an appropriate bioequivalence standard  
14 if it does present a known or potential bioequivalence problem.

15 (5) Is adequately labeled.

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

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