

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1140 Session of 2023

INTRODUCED BY KRUEGER, SMITH-WADE-EL, BOROWSKI, SCHLOSSBERG, KINSEY, ISAACSON, MADDEN, PROBST, BRENNAN, T. DAVIS, HILL-EVANS, SANCHEZ, DELLOSO, MAYES, GUENST, GALLOWAY, D. WILLIAMS, HOHENSTEIN, CERRATO, O'MARA AND STURLA, MAY 18, 2023

REFERRED TO COMMITTEE ON INSURANCE, MAY 18, 2023

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 635.9. Contraceptive Coverage.--(a) An insurer that
 19 issues, delivers or renews a health insurance policy in this
 20 Commonwealth on or after the effective date of this section
 21 shall provide coverage for all contraceptive drugs, devices or

1 other products.

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

5 (i) Impose prior authorization, utilization review or step-
6 therapy requirements that unduly restrict or delay coverage or
7 limit a person's freedom of choice of contraceptive drugs,
8 devices or other products.

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

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

14 (2) (i) If the FDA has designated a therapeutic equivalent
15 to another contraceptive drug, product or service that is
16 available under a policy or contract, the insurer shall include
17 either the original contraceptive drug, product or service or,
18 at a minimum, one therapeutic equivalent. If there is no
19 therapeutic equivalent, the insurer must cover the original
20 contraceptive drug, product or service.

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

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

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

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

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

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

28 (e) An insurer that limits coverage of contraceptive drugs,
29 devices or other products in a formulary shall provide for
30 coverage for a contraceptive drug, product and service that is

1 not in the formulary if, in the judgment of the health care
2 provider, the formulary does not include a contraceptive drug,
3 device or other product that is medically necessary.

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

9 (g) The insurer shall recognize a spouse as an insured
10 dependent who may obtain health care without the consent or
11 knowledge of the spouse who is the policyholder.

12 (h) The following apply:

13 (1) Upon the written request of an insured dependent who may
14 obtain health care without the consent of a parent or legal
15 guardian pursuant to Federal or State law to obtain
16 contraceptive drugs, devices or other products, an insurer shall
17 not disclose protected personal health information concerning
18 the insured dependent's receipt of such drugs, devices or other
19 products to the policyholder or any other insured, including
20 calling the shared home to confirm an appointment or sending a
21 paper or electronic communication, an appointment notice, a bill
22 or explanation of benefits, a claim denial, a request for
23 additional information about a claim, a notice of a contested
24 claim, the name and address of a provider, a description of
25 services provided and other visit information unless explicitly
26 authorized by the insured dependent.

27 (2) An insurer who has received a request for confidential
28 communications shall not require the insured dependent to obtain
29 the policyholder's or other covered person's authorization to
30 receive health care services or to submit a claim as to health

1 care which the insured dependent may obtain without parental
2 consent under Federal or State law.

3 (3) Insurers shall promptly inform insured dependents upon
4 their enrollment of the right to choose their preferred method
5 of communications, including to the insured dependent's address,
6 electronic address, alternate address or telephone number, or to
7 withhold such communications.

8 (4) The Insurance Department shall prepare a standard, easy-
9 to-understand form for insurers to provide to insured dependents
10 to notify insured dependents of their right to request
11 confidential communications and their preferred method of
12 insurer communications and allow them to request confidential
13 communications through use of the standard form, other written,
14 electronic or oral communication in person or by telephone.

15 (5) Insurers shall implement requests for confidential
16 communications within three business days of receipt of a
17 request and thereafter make all communications to the dependent
18 insured's election unless the insured issues a revocation of the
19 request.

20 (i) The following shall apply to dispensing:

21 (1) Except as provided in paragraph (2), an insurer shall
22 provide coverage for a single dispensing to an insured of a
23 supply of contraceptive drugs, devices or other products for up
24 to a one-year period.

25 (2) An insurer may provide coverage for a supply of
26 contraceptive drugs, devices or other products that is for less
27 than a one-year period if:

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

30 (ii) the prescribing provider instructs that the insured

1 receive a lesser dispensing of the contraceptive drugs, devices
2 or other products at one time.

3 (3) A provider may not impose a limitation under paragraph
4 (2) without the insured's consent.

5 (j) An insurer:

6 (1) Shall provide coverage without a prescription for
7 dispensation of contraceptives, devices or other products
8 intended to last the insured for a twelve-month duration once it
9 is determined that the chosen contraceptive works for the
10 person, unless the insured requests a lesser dispensing of the
11 contraceptive drugs, devices or other products.

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

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

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

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

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

26 (2) The Insurance Department shall develop a timely and
27 efficient process for responding to requests submitted under
28 this subsection.

29 (3) A religious employer granted an exclusion under this
30 subsection shall provide written notice to prospective insureds

1 prior to their enrollment in the health insurance policy,
2 listing the contraceptive drugs, devices or other products that
3 the employer refuses to cover for religious reasons.

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

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

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

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

20 (1) The following shall apply regarding enforcement:

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

25 (i) A complaint with the Insurance Commissioner, who shall
26 handle the complaint consistent with 2 Pa.C.S. (relating to
27 administrative law and procedure) and address a violation
28 through means appropriate to the nature and extent of the
29 violation, which may include a cease and desist order,
30 injunctive relief, restitution, suspension or revocation of a

1 certificate of authority or license, civil penalties,
2 reimbursement of costs or reasonable attorney fees incurred by
3 the aggrieved individual in bringing the complaint, or any
4 combination of these.

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

16 (2) (Reserved).

17 (m) As used in this section:

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

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

21 (i) Medical and counseling services.

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

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

27 (iv) Tubal ligation.

28 (v) Voluntary sterilization implant.

29 (vi) Voluntary sterilization surgery.

30 (vii) Copper intrauterine device.

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

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

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

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

26 "Health insurance policy" means the following:

27 (1) An individual or group health insurance policy,
28 subscriber contract, certificate or plan which provides medical
29 or health care coverage by a health care facility or licensed
30 health care provider which is offered by or is governed under

1 this act or any of the following:

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

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

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

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

13 (2) Does not include any of the following:

14 (i) A health benefit plan that is a grandfathered health
15 plan, as defined in 42 U.S.C. § 18011 (relating to preservation
16 of right to maintain existing coverage) and any rules,
17 regulations or guidance issued under that act.

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

20 (A) Accident only.

21 (B) Fixed indemnity.

22 (C) Limited benefit.

23 (D) Credit.

24 (E) Dental.

25 (F) Vision.

26 (G) Specified disease.

27 (H) Medicare supplement.

28 (I) Civilian Health and Medical Program of the Uniformed
29 Services (CHAMPUS) supplement.

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

1 (K) Workers' compensation.

2 (L) Automobile medical payment.

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

5 "Medical or counseling service" includes, but is not limited
6 to:

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

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

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

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

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

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

1 (3) Is a pharmaceutical equivalent which:
2 (i) contains identical amounts of the same active drug
3 ingredient in the same dosage form and route of administration;
4 and

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

7 (4) Is bioequivalent which:

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

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

12 (5) Is adequately labeled.

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

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