

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2454 Session of 2022

INTRODUCED BY KRUEGER, T. DAVIS, MADDEN, HOHENSTEIN,
 SCHLOSSBERG, RABB, O'MARA, HANBIDGE, N. NELSON, ISAACSON,
 KRAJEWSKI, HILL-EVANS, SANCHEZ, FIEDLER, GUENST, SIMS,
 CEPHAS, KINKEAD, INNAMORATO, KINSEY, FRANKEL, GALLOWAY,
 SHUSTERMAN, McCLINTON, McNEILL, HERRIN, A. DAVIS, PARKER,
 DELLOSO, ROZZI AND WARREN, MARCH 31, 2022

REFERRED TO COMMITTEE ON INSURANCE, MARCH 31, 2022

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 (2,800,000) people who choose to prevent pregnancy face

1 an unintended pregnancy, representing nearly half of all
2 pregnancies in the United States. In 2014, forty per centum of
3 all pregnancies in Pennsylvania were unintended.

4 (2) Under the current laws in Pennsylvania, the Commonwealth
5 is unable to provide accurate numbers for the amount of
6 unintended pregnancies by transgender men and nonbinary
7 Pennsylvanians, likely making the forty per centum estimation
8 under paragraph (1) much higher. Data and research that would
9 provide the actual number is not available. Gender identity and
10 expression should never be a barrier to access to the health
11 care that a person requires.

12 (3) By reducing rates of unintended pregnancy, contraception
13 improves women's health and well-being and reduces infant
14 morbidity and mortality.

15 (4) Research shows that dispensing contraceptives intended
16 to last the patient for a twelve-month duration at one time,
17 once it is determined the chosen contraceptive works for the
18 person, has numerous benefits, including, but not limited to,
19 reducing the rate of unintended pregnancy by thirty per centum,
20 increasing the rate of effective and continuous use of
21 contraception and decreasing costs per client to insurers by
22 reducing the number of pregnancy tests and pregnancies.

23 (5) Medical management techniques, including denials, step
24 therapy or prior authorization in public and private health care
25 coverage, can result in delays in access to or denial of the
26 most effective contraceptive methods, which deprive women of
27 their reproductive autonomy and increase the rate of unintended
28 pregnancy.

29 (6) The Patient Protection and Affordable Care Act (Public
30 Law 111-148, 124 Stat. 119) and subsequent Federal regulations

1 made contraceptive coverage a national policy by requiring most
2 private health insurance plans to provide coverage for a broad
3 range of preventive services without cost sharing, including
4 FDA-approved contraceptives and related services. The Patient
5 Protection and Affordable Care Act has exemptions and limits
6 that leave gaps in coverage. By 2018, thirty states and the
7 District of Columbia adopted laws that require state-regulated
8 insurance plans to cover contraceptives, with a range of
9 coverage and cost-sharing requirements and exemptions, even
10 though the Patient Protection and Affordable Care Act does not
11 require coverage with no cost-sharing for a vasectomy or male
12 condoms. Limiting coverage to women only creates concerns for
13 transgender and nonbinary people.

14 (7) On October 5, 2017, the Federal Government proposed new
15 rules under the Patient Protection and Affordable Care Act that
16 allow private employers and educational institutions that do not
17 agree with the use of contraception to be exempt from the
18 contraceptive requirement and to impose religious or moral
19 beliefs on employees or students by refusing to cover some or
20 all contraceptive services in their health plans. The rules also
21 effectively eliminated an accommodation for employees of exempt
22 entities to receive contraceptive services paid for directly by
23 insurers through an accommodation and made it completely
24 voluntary. In 2018, the Federal Government finalized rules that
25 are substantially identical to the proposed regulations from
26 October 2017.

27 (8) The new rules leave two million five hundred thousand
28 (2,500,000) contraceptive users, including transgender and
29 nonbinary people, in Pennsylvania without equitable and
30 affordable access to contraception and without the ability to

1 control their reproductive futures and will adversely affect
2 their health and well-being.

3 (9) On July 8, 2020, following a legal challenge by the
4 Commonwealth of Pennsylvania and the State of New Jersey, the
5 United States Supreme Court ruled in favor of the Trump
6 Administration's rules that allow virtually any employer and
7 university to opt-out of the Patient Protection and Affordable
8 Care Act mandate to provide contraceptive coverage if the
9 employer or university object to birth control on religious or
10 moral grounds.

11 (10) The loss of no-cost contraceptive coverage
12 disproportionately impacts low-income people, particularly women
13 of color, due to long-standing structural inequalities. Women of
14 color are often the sole or primary breadwinners for their
15 families and may be forced to decide between paying for their
16 birth control or paying for other basic needs, including rent
17 and feeding their families.

18 (11) The COVID-19 pandemic has revealed the inequitable
19 effects of the new Federal rules on the health and economic
20 security of women of color, who shoulder essential jobs on the
21 front lines and face greater risk of COVID-19 infection.

22 (12) The ability to manage pregnancy is critical amid the
23 COVID-19 pandemic. Specifically, data on pregnancy and COVID-19
24 from the Centers for Disease Control and Prevention indicate
25 that pregnant women with COVID-19 are at greater risk for severe
26 illness that requires hospitalization and intensive care unit
27 admission.

28 (13) The Commonwealth has a compelling interest in ensuring
29 that Pennsylvanians have equitable access to contraceptive
30 services and promoting equitable insurance coverage of

1 contraceptive services as specified in this section is the least
2 restrictive means of furthering this compelling interest.

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

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

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

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

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

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

26 (ii) If the covered contraceptive drug, product or service
27 is deemed medically inadvisable by the insured's health care
28 provider, the health insurance policy shall provide coverage for
29 a medically appropriate contraceptive drug, product or service
30 that is prescribed by the insured's provider without a

1 copayment, coinsurance, deductible or another cost-sharing
2 mechanism.

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

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

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

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

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

1 migraines, to contribute to the life, health or well-being of an
2 insured.

3 (e) An insurer that limits coverage of contraceptive drugs,
4 devices or other products in a formulary shall provide for
5 coverage for a contraceptive drug, product and service that is
6 not in the formulary if, in the judgment of the health care
7 provider, the formulary does not include a contraceptive drug,
8 device or other product that is medically necessary.

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

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

17 (h) The following apply:

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

1 authorized by the insured dependent.

2 (2) An insurer who has received a request for confidential
3 communications shall not require the insured dependent to obtain
4 the policyholder's or other covered person's authorization to
5 receive health care services or to submit a claim as to health
6 care which the insured dependent may obtain without parental
7 consent under Federal or State law.

8 (3) Insurers shall promptly inform insured dependents upon
9 their enrollment of the right to choose their preferred method
10 of communications, including to the insured dependent's address,
11 electronic address, alternate address or telephone number, or to
12 withhold such communications.

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

20 (5) Insurers shall implement requests for confidential
21 communications within three business days of receipt of a
22 request and thereafter make all communications to the dependent
23 insured's election unless the insured issues a revocation of the
24 request.

25 (i) The following shall apply to dispensing:

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

30 (2) An insurer may provide coverage for a supply of

1 contraceptive drugs, devices or other products that is for less
2 than a one-year period if:

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

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

8 (3) A provider may not impose a limitation under paragraph
9 (2) against the insured's wishes.

10 (j) An insurer:

11 (1) Shall provide coverage without a prescription for
12 dispensation of contraceptives, devices or other products
13 intended to last the insured for a twelve-month duration once it
14 is determined the chosen contraceptive works for the person,
15 unless the insured requests a lesser dispensing of the
16 contraceptive drugs, devices or other products.

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

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

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

27 (ii) primarily employs individuals who share the religious
28 tenets of the employer; and

29 (iii) primarily serves individuals who share the religious
30 tenets of the employer.

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

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

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

12 (5) If a religious employer is granted an exclusion under
13 this subsection:

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

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

25 (1) The following shall apply regarding enforcement:

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

30 (i) A complaint with the Insurance Commissioner, who shall

1 handle the complaint consistent with 2 Pa.C.S. (relating to
2 administrative law and procedure) and address a violation
3 through means appropriate to the nature and extent of the
4 violation, which may include a cease and desist order,
5 injunctive relief, restitution, suspension or revocation of a
6 certificate of authority or license, civil penalties,
7 reimbursement of costs or reasonable attorney fees incurred by
8 the aggrieved individual in bringing the complaint, or any
9 combination of these.

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

21 (m) As used in this section:

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

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

25 (i) Medical and counseling services.

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

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

- 1 (iv) Tubal ligation.
- 2 (v) Voluntary sterilization implant for transgender and
3 nonbinary people.
- 4 (vi) Voluntary sterilization surgery for transgender and
5 nonbinary people.
- 6 (vii) Voluntary sterilization implant for women.
- 7 (viii) Voluntary sterilization surgery for men.
- 8 (ix) Copper intrauterine device.
- 9 (x) Intrauterine device with progestin.
- 10 (xi) Implantable rod.
- 11 (xii) Contraceptive shot or injection.
- 12 (xiii) Combined oral contraceptives.
- 13 (xiv) Extended or continuous use oral contraceptives.
- 14 (xv) Progestin-only oral contraceptives.
- 15 (xvi) Patch.
- 16 (xvii) Vaginal ring.
- 17 (xviii) Diaphragm with spermicide.
- 18 (xix) Sponge with spermicide.
- 19 (xx) Cervical cap with spermicide.
- 20 (xxi) External and internal condoms.
- 21 (xxii) Spermicide alone.
- 22 (xxiii) Vasectomy.
- 23 (xxiv) Ulipristal acetate.
- 24 (xxv) Levonorgestrel emergency contraception.
- 25 (xxvi) Any additional contraceptive drugs, products or
26 services approved by the FDA.
- 27 (2) The term does not include a drug, device or other
28 product that has been recalled for safety reasons or withdrawn
29 from the market.
- 30 "FDA" means the United States Food and Drug Administration.

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

4 "Health insurance policy" means the following:

5 (1) An individual or group health insurance policy,
6 subscriber contract, certificate or plan which provides medical
7 or health care coverage by a health care facility or licensed
8 health care provider which is offered by or is governed under
9 this act or any of the following:

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

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

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

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

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

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

26 (ii) Any of the following types of insurance or a
27 combination of any of the following types of insurance:

28 (A) Accident only.

29 (B) Fixed indemnity.

30 (C) Limited benefit.

- 1 (D) Credit.
- 2 (E) Dental.
- 3 (F) Vision.
- 4 (G) Specified disease.
- 5 (H) Medicare supplement.
- 6 (I) Civilian Health and Medical Program of the Uniformed
7 Services (CHAMPUS) supplement.
- 8 (J) Long-term care or disability income.
- 9 (K) Workers' compensation.
- 10 (L) Automobile medical payment.

11 "Insurer" means an entity that issues an individual or group
12 health insurance policy.

13 "Medical or counseling services" includes, but is not limited
14 to:

15 (1) Examinations, procedures and medical and counseling
16 services related to the provision or use of contraception which
17 are provided on an inpatient or outpatient basis, including
18 consultations.

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

27 (3) Medical, laboratory and radiology services warranted by
28 initial and periodic comprehensive physical examinations or by
29 the history, physical findings or risk factors, including
30 medical services necessary for the insertion and removal of any

1 contraceptive drug, product or service and individual or group
2 family planning counseling.

3 "Nonbinary" means denoting or relating to a gender identity
4 that is not defined in terms of a male or female binary.

5 "Therapeutic equivalent" means a drug, device or other
6 product which:

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

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

11 (3) Is a pharmaceutical equivalent which:

12 (i) contains identical amounts of the same active drug
13 ingredient in the same dosage form and route of administration;
14 and

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

17 (4) Is bioequivalent which:

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

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

22 (5) Is adequately labeled.

23 (6) Is manufactured in compliance with current good
24 manufacturing practice regulations.

25 "Transgender" means denoting or relating to a person whose
26 sense of gender does not correspond with their sex assigned at
27 birth.

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