

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2813 Session of 2020

INTRODUCED BY KRUEGER, BOYLE, T. DAVIS, McCARTER, HILL-EVANS, WEBSTER, MADDEN, SHUSTERMAN, ZABEL, DALEY, A. DAVIS, HOHENSTEIN, DONATUCCI, SANCHEZ, YOUNGBLOOD, CIRESI, LEE, FRANKEL, BURGOS, KENYATTA, HANBIDGE, WILLIAMS, McCLINTON, FIEDLER, INNAMORATO AND HOWARD, AUGUST 21, 2020

REFERRED TO COMMITTEE ON INSURANCE, AUGUST 21, 2020

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

1 half of all pregnancies in the United States. In 2014, forty
2 percent of all pregnancies in Pennsylvania were unintended.

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

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

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

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

30 (6) On October 5, 2017, the Federal Government proposed new

1 rules under the Patient Protection and Affordable Care Act that
2 allow private employers and educational institutions that do not
3 agree with the use of contraception to be exempt from the
4 contraceptive requirement and to impose religious or moral
5 beliefs on employees or students by refusing to cover some or
6 all contraceptive services in their health plans. The rules also
7 eliminated an accommodation for employees of exempt entities to
8 receive contraceptive services paid for directly by insurers
9 through an accommodation and made it completely voluntary. In
10 2018, the Federal Government finalized rules that are
11 substantially identical to the proposed regulations from October
12 2017.

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

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

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

1 families and will be forced to decide between paying for their
2 birth control or paying their rent and feeding their families.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (d) Nothing in this section shall be construed to exclude

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

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

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

28 (g) The following shall apply to dispensing:

29 (1) Except as provided in paragraph (2), an insurer shall
30 provide coverage for a single dispensing to an insured of a

1 supply of contraceptive drugs, devices or other products for up
2 to a twelve-month period.

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

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

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

11 (h) An insurer:

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

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

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

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

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

30 "Health insurance policy" means the following:

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

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

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

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

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

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

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

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

24 (A) Accident only.

25 (B) Fixed indemnity.

26 (C) Limited benefit.

27 (D) Credit.

28 (E) Dental.

29 (F) Vision.

30 (G) Specified disease.

1 (H) Medicare supplement.

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

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

5 (K) Workers' compensation.

6 (L) Automobile medical payment.

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

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

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

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

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

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

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

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

5 (3) Is a pharmaceutical equivalent which:

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

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

11 (4) Is bioequivalent which:

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

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

16 (5) Is adequately labeled.

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

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