SPONSOR: Sen. Henry & Sen. Townsend & Rep. Heffernan
Sens. Cloutier, Hansen, Poore, Sokola; Reps. Baumbach, Bentz, Bolden, J. Johnson, Keeley, Kowalko, Lynn, Paradee, Viola

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 151

AN ACT TO AMEND TITLE 18, TITLE 29, AND TITLE 31 OF THE DELAWARE CODE RELATING TO INSURANCE COVERAGE OF CONTRACEPTIVES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 33, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3342A. Contraceptive coverage.

(a) For purposes of this section:

(1) "Carrier" means any entity that provides health insurance in this State. "Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with health benefit plans.

(2) “FDA” means the Food and Drug Administration.

(3)a. "Health benefit plan" means any hospital or medical policy or certificate, major medical expense insurance, health service corporation subscriber contract, or health maintenance organization subscriber contract. “Health benefit plan” does not include accident-only, credit, dental, vision, Medicaid plans, long-term care or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance.

b. "Health benefit plan" does not include policies or certificates of specified disease, hospital confinement indemnity, or limited benefit health insurance, if the carrier offering such policies or certificates has done the following:

1. Filed on or before March 1 of each year a certification with the Commissioner that contains the following statement and information:

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A. A statement from the carrier certifying that policies or certificates described in this paragraph are being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance.

B. A summary description of each policy or certificate described in this paragraph, including the average annual premium rates or range of premium rates in cases where premiums vary by age, gender, or other factors charged for such policies and certificates in this State.

2. In the case of a policy or certificate that is described in paragraph b. of this paragraph and that is offered for the first time in this State on or after January 1, 1999, the carrier files with the Commissioner the information and statement required in subparagraph b. of this paragraph at least 30 days prior to the date such a policy or certificate is issued or delivered in this State.

(4) "Therapeutic equivalent" means a contraceptive drug, device, or product that is all of the following:

a. Approved as safe and effective.

b. Pharmaceutically equivalent to another contraceptive drug, device, or product in that it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity, and identity.

c. Assigned, by the FDA, the same therapeutic equivalence code as another contraceptive drug, device, or product.

(b) Carriers shall provide coverage for contraceptive methods in all health benefit plans delivered or issued for delivery in this State. Coverage for contraceptive methods must include all of the following:

(1) All FDA-approved contraceptive drugs, devices, and other products as follows:

a. If the FDA has approved 1 or more therapeutic equivalents of a contraceptive drug, device, or product, the health benefit plan is not required to include all such therapeutically equivalent versions in its formulary as long as at least 1 is included and covered without cost-sharing and in accordance with this section.

b. If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, the health benefit plan may provide coverage for more than 1 drug, device, or other product and may impose cost-sharing requirements as long as at least 1 drug, device, or other product for that method is available without cost-sharing. If, however, an individual's attending provider recommends a particular FDA-approved contraceptive based on a medical determination with respect to that

individual, regardless of whether the contraceptive has a therapeutic equivalent, the health benefit plan shall provide coverage for the prescribed contraceptive drug, device, or product without cost-sharing.

c. The health benefit plan is not required to provide coverage for male condoms.

(2) FDA-approved emergency contraception available over-the-counter, whether with a prescription or dispensed consistent with the requirements of Chapter 25 of Title 24.

(3) A prescription for contraceptives intended to last for no more than a 12-month period which may be dispensed all at once or over the course of the 12-month period, regardless of whether the covered individual was enrolled in the health benefit plan under this chapter at the time the prescription contraceptive was first dispensed.

(4) Voluntary female sterilization procedures.

(5) Patient education and counseling on contraception.

(6) Follow-up services related to the drugs, devices, products, and procedures covered under this subsection, including management of side effects, counseling for continued adherence, and device insertion and removal.

(c)(1) Coverage provided under this section is not subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement, except under paragraph (b)(1) of this section or as otherwise required under federal law. Coverage offered under this section may not impose unreasonable restrictions or delays in the coverage, except that reasonable medical management techniques may be applied to coverage within a method category, as defined by the FDA, but not across types of methods.

(2) Coverage provided to a covered individual under this section shall be the same for the covered individual's covered spouse and covered dependents.

(d) This section does not preclude coverage for contraceptive drugs, devices, products, and procedures as prescribed by a provider for reasons other than contraceptive purposes, including decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or providing contraception that is necessary to preserve the life or health of the covered individual.

(e) The plan is not required under this section to cover experimental or investigational treatments.

Section 2. Amend § 3559, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignate accordingly as follows:

§ 3559. ~~Reversible contraceptives~~ Contraceptive coverage.

~~(a) All group and blanket health issuance policies which are delivered or issued for delivery in this State by any health insurer, health service corporation, health maintenance organization or any health services and facilities reimbursed~~

~~programs for the State, which provide coverage for outpatient prescription drugs, shall provide coverage, under terms and conditions applicable to other benefits, for prescription contraceptive drugs and devices approved by the Food and Drug Administration (FDA) and for outpatient contraceptive services including consultations, examinations, procedures and medical services related to the use of contraceptive methods to prevent unplanned pregnancy.~~

~~(b) All such entities and addressed in subsection (a) of this section shall provide coverage for the insertion and removal and medically necessary examination associated with the use of such FDA approved contraceptive drug or device. Any such policy or contract may not impose a copayment, coinsurance requirement or deductible for directly accessed gynecological services as required under this section, unless such additional cost sharing is imposed for access to health-care practitioners for other types of healthcare.~~

~~(c) Provisions of this bill shall be applied to the enrollee and all insured parties covered by the health policy.~~

(a) For purposes of this section:

(1) "Carrier" means any entity that provides health insurance in this State. "Carrier" includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third-party administrator or other entity that adjusts, administers, or settles claims in connection with health benefit plans.

(2) “FDA” means the Food and Drug Administration.

(3)a. "Health benefit plan" means any hospital or medical policy or certificate, major medical expense insurance, health service corporation subscriber contract, or health maintenance organization subscriber contract. “Health benefit plan” does not include accident-only, credit, dental, vision, Medicaid plans, long-term care or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, or automobile medical payment insurance.

b. "Health benefit plan" does not include policies or certificates of specified disease, hospital confinement indemnity, or limited benefit health insurance, if the carrier offering such policies or certificates has done the following:

1. Filed on or before March 1 of each year a certification with the Commissioner that contains the following statement:

A. A statement from the carrier certifying that policies or certificates described in this paragraph are being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance.

B. A summary description of each policy or certificate described in this paragraph, including the average annual premium rates or range of premium rates in cases where premiums vary by age, gender, or other factors charged for such policies and certificates in this State.

2. In the case of a policy or certificate that is described in paragraph b. of this paragraph and that is offered for the first time in this State on or after January 1, 1999, the carrier files with the Commissioner the information and statement required in subparagraph b. of this paragraph at least 30 days prior to the date such a policy or certificate is issued or delivered in this State.

(4) "Therapeutic equivalent" means a contraceptive drug, device, or product that is all of the following:

a. Approved as safe and effective.

b. Pharmaceutically equivalent to another contraceptive drug, device, or product in that it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity, and identity.

c. Assigned, by the FDA, the same therapeutic equivalence code as another contraceptive drug, device, or product.

(b) Carriers shall provide coverage for contraceptive methods in all health benefit plans delivered or issued for delivery in this State. Coverage for contraceptive methods must include all of the following:

(1) All FDA-approved contraceptive drugs, devices, and other products as follows:

a. If the FDA has approved 1 or more therapeutic equivalents of a contraceptive drug, device, or product, the health benefit plan is not required to include all such therapeutically equivalent versions in its formulary as long as at least 1 is included and covered without cost-sharing and in accordance with this section.

b. If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, the health benefit plan may provide coverage for more than 1 drug, device, or other product and may impose cost-sharing requirements as long as at least 1 drug, device, or other product for that method is available without cost-sharing. If, however, an individual's attending provider recommends a particular FDA-approved contraceptive based on a medical determination with respect to that individual, regardless of whether the contraceptive has a therapeutic equivalent, the health benefit plan shall provide coverage for the prescribed contraceptive drug, device, or product without cost-sharing.

c. The health benefit plan is not required to provide coverage for male condoms.

(2) FDA-approved emergency contraception available over-the-counter, whether with a prescription or dispensed consistent with the requirements of Chapter 25 of Title 24.

(3) A prescription for contraceptives intended to last for no more than a 12-month period which may be dispensed all at once or over the course of the 12-month period, regardless of whether the covered individual was enrolled in the health benefit plan under this chapter at the time the prescription contraceptive was first dispensed.

(4) Voluntary female sterilization procedures.

(5) Patient education and counseling on contraception.

(6) Follow-up services related to the drugs, devices, products, and procedures covered under this subsection, including management of side effects, counseling for continued adherence, and device insertion and removal.

(c)(1) Coverage provided under this section is not subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement, except under paragraph (b)(1) of this section or as otherwise required under federal law. Coverage offered under this section may not impose unreasonable restrictions or delays in the coverage, except that reasonable medical management techniques may be applied to coverage within a method category, as defined by the FDA, but not across types of methods.

(2) Coverage provided to a covered individual under this section shall be the same for the covered individual's covered spouse and covered dependents.

(d) This section does not preclude coverage for contraceptive drugs, devices, products, and procedures as prescribed by a provider for reasons other than contraceptive purposes, including decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or providing contraception that is necessary to preserve the life or health of the covered individual.

(e) The plan is not required under this section to cover experimental or investigational treatments.

(d) A religious employer may request and an entity subject to this section shall grant an exclusion from coverage under the policy, ~~plan~~ plan, or contract for the coverage required ~~under subsection (b) of this section~~ under this section for the insertion and removal and medically necessary examination associated with the use of FDA-approved drugs or devices if the required coverage conflicts with the religious organization's bona fide religious beliefs and practices. A religious employer that obtains an exclusion under this subsection shall provide its employees reasonable and timely notice of the exclusion.

Section 3. Amend Chapter 52, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5201. Definitions.

For purposes of this chapter:

(a) An "eligible child dependent" is one who is:

(1) The child of a regular officer, employee or eligible pensioner or spouse of a regular officer, employee or eligible pensioner, either by birth or adoption, who is under the age of 26 or is unmarried, regardless of age, and incapable of self support because of an intellectual, mental or physical disability which existed before age 21; or

(2) An unmarried child under the age of 19 years or the age of 24 if a full time student who depends for support upon and resides with a regular officer, employee or eligible pensioner in a regular parent-child relationship and qualifies as a dependent of the regular officer, employee or eligible pensioner under Internal Revenue Code § 105 [26 U.S.C. § 105].

( ) “FDA” means the Food and Drug Administration.

( ) “Plan” means the basic health care insurance plan for state employees provided under this chapter.

( ) "Therapeutic equivalent" means a contraceptive drug, device, or product that is all of the following:

(1) Approved as safe and effective.

(2) Pharmaceutically equivalent to another contraceptive drug, device, or product in that it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity, and identity.

(3) Assigned, by the FDA the same therapeutic equivalence code as another contraceptive drug, device or product.

§ 5203. Specifications of the coverage.

(a) The basic health care insurance plan for state employees shall be equivalent to the "minimum creditable coverage" as defined by applicable federal ~~law.~~ law and include coverage for contraceptive methods under § 5203A of this chapter.

§ 5203A. Insurance coverage for contraceptive methods.

(a) The plan shall provide coverage for contraceptive methods that includes all of the following:

(1) All FDA-approved contraceptive drugs, devices, and other products as follows:

a. If the FDA has approved 1 or more therapeutic equivalents of a contraceptive drug, device, or product, the plan is not required to include all such therapeutically equivalent versions in its formulary as long as at least 1 is included and covered without cost-sharing and in accordance with this section.

b. If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, the plan may provide coverage for more than 1 drug, device, or other product and may impose cost-sharing requirements as long as at least 1 drug, device, or other product for that method is available without cost-sharing. If, however, an individual's attending provider recommends a particular FDA-approved contraceptive based on a medical determination with respect to that individual, regardless of whether the contraceptive has a therapeutic equivalent, the plan shall provide coverage for the prescribed contraceptive drug, device, or product without cost-sharing.

c. The plan is not required to provide coverage for male condoms.

(2) FDA-approved emergency contraception available over-the-counter, whether with a prescription or dispensed consistent with the requirements of Chapter 25 of Title 24.

(3) A prescription for contraceptives intended to last for no more than a 12-month period which may be dispensed all at once or over the course of the 12-month period, regardless of whether the covered individual was enrolled in the plan or policy under this chapter at the time the prescription contraceptive was first dispensed.

(4) Voluntary female sterilization procedures.

(5) Patient education and counseling on contraception.

(6) Follow-up services related to the drugs, devices, products, and procedures covered under this subsection, including management of side effects, counseling for continued adherence, and device insertion and removal.

(b)(1) Coverage provided under this section is not subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement, except under paragraph (a)(1) of this section or as otherwise required under federal law. Coverage offered under this section may not impose unreasonable restrictions or delays in the coverage, except that reasonable medical management techniques may be applied to coverage within a method category, as defined by the FDA, but not across types of methods.

(2) Coverage provided to a regular officer or employee or eligible pensioner under this section shall be the same for the covered individual's covered spouse and covered dependents.

(c) This section does not preclude coverage for contraceptive drugs, devices, products, and procedures as prescribed by a provider for reasons other than contraceptive purposes, including decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or providing contraception that is necessary to preserve the life or health of the covered individual.

(d) The plan is not required under this section to cover experimental or investigational treatments.

Section 4. Amend Chapter 5, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 526. Insurance coverage for contraceptive methods for recipients of aid under § 505(3) of this title.

(a) For purposes of this section:

(1) “FDA” means the Food and Drug Administration.

(2) "Therapeutic equivalent" means a contraceptive drug, device, or product that meets all of the following:

a. Approved as safe and effective.

b. Pharmaceutically equivalent to another contraceptive drug, device or product in that it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity, and identity.

c. Assigned, by the FDA, the same therapeutic equivalence code as another contraceptive drug, device, or product.

(b) Carriers shall provide coverage for contraceptive methods in all health benefit plans delivered or issued for delivery under § 505(3) of this title. Coverage for contraceptive methods must include all of the following:

(1) All FDA-approved contraceptive drugs, devices, and other products as follows:

a. If the FDA has approved 1 or more therapeutic equivalents of a contraceptive drug, device, or product, a carrier is not required to include all such therapeutically equivalent versions in its formulary as long as at least 1 is included and covered without cost-sharing and in accordance with this section.

b. If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, the carrier may provide coverage for more than 1 drug, device, or other product and may impose cost-sharing requirements as long as at least 1 drug, device, or other product for that method is available without cost-sharing. If, however, an individual's attending provider recommends a particular FDA-approved contraceptive based on a medical determination with respect to that individual, regardless of whether the contraceptive has a therapeutic equivalent, the carrier shall provide coverage for the prescribed contraceptive drug, device, or product without cost-sharing.

c. The carrier is not required to provide coverage for male condoms.

(2) FDA-approved emergency contraception available over-the-counter, whether with a prescription or dispensed consistent with the requirements of Chapter 25 of Title 24.

(3) A prescription for contraceptives intended to last for no more than a 12-month period which may be dispensed all at once or over the course of the 12-month period, regardless of whether the covered individual was enrolled in a plan or policy under § 505(3) of this title at the time the prescription contraceptive was first dispensed.

(4) Voluntary female sterilization procedures.

(5) Patient education and counseling on contraception.

(6) Follow-up services related to the drugs, devices, products, and procedures covered under this subsection, including management of side effects, counseling for continued adherence, and device insertion and removal.

(c) A carrier may not impose any deductible, coinsurance, copayment, or any other cost-sharing requirement for coverage provided under this section, except under paragraph (b)(1) of this section or as otherwise required under federal law. A carrier may not impose unreasonable restrictions or delays in the coverage under this section, except that reasonable medical management techniques may be applied to coverage within a method category, as defined by the FDA, but not across types of methods.

(d) This section does not preclude coverage for contraceptive drugs, devices, products, and procedures as prescribed by a provider for reasons other than contraceptive purposes, including decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or providing contraception that is necessary to preserve the life or health of the covered individual.

(e) Carriers are not required under this section to cover experimental or investigational treatments.

SYNOPSIS

Birth control use is nearly universal among women of reproductive age in the United States and is a key part of preventative health care for women. Access to birth control provides health benefits for women and children, improves women's ability to control whether and when they have a child, and fosters women's ability to participate in education and the workforce. However, the cost of birth control, particularly the higher up-front costs of the more effective, longer-acting birth control methods, is often a barrier to women accessing the birth control they need.

This Act codifies the current federal requirement that health insurance plans include coverage for contraceptives and applies this requirement to individual, group, State employee, and public assistance plans. This Act retains the current ability for religious employers to exclude coverage for the insertion and removal and medically necessary examination associated with the use of FDA-approved drugs or devices.

Author: Senator Henry