

1 HOUSE BILL 284

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH COVERAGE; ENACTING SECTIONS OF THE HEALTH
12 CARE PURCHASING ACT, THE NEW MEXICO INSURANCE CODE AND THE
13 HEALTH MAINTENANCE ORGANIZATION LAW TO PROVIDE COVERAGE FOR
14 CONTRACEPTION; ENACTING A NEW SECTION OF THE PUBLIC ASSISTANCE
15 ACT TO ESTABLISH DISPENSING REQUIREMENTS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Health Care Purchasing
19 Act is enacted to read:

20 "[NEW MATERIAL] COVERAGE FOR CONTRACEPTION.--

21 A. Group health coverage, including any form of
22 self-insurance, offered, issued or renewed under the Health
23 Care Purchasing Act that provides coverage for prescription
24 drugs shall provide, at a minimum, the following coverage:

25 (1) at least one product or form of

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1 contraception in each of the contraceptive methods identified
2 by the federal food and drug administration;

3 (2) a sufficient number and assortment of oral
4 contraceptive pills to reflect the variety of oral
5 contraceptives approved by the federal food and drug
6 administration; and

7 (3) clinical services related to the provision
8 or use of contraception, including consultations, examinations,
9 procedures, ultrasound, anesthesia, patient education,
10 counseling, device insertion and removal, follow-up care and
11 side-effects management.

12 B. Except as provided in Subsection C of this
13 section, the coverage required pursuant to this section shall
14 not be subject to:

15 (1) enrollee cost-sharing;

16 (2) utilization review;

17 (3) prior authorization or step therapy
18 requirements; or

19 (4) any other restrictions or delays on the
20 coverage.

21 C. A group health plan may discourage brand-name
22 pharmacy items by applying cost-sharing to brand-name items
23 when at least one generic or therapeutic equivalent is covered
24 within the same method of contraception without patient cost-
25 sharing; provided that when an enrollee's health care provider

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1 determines that a particular item or service is medically
2 necessary, the group health plan shall cover the brand-name
3 pharmacy item without cost-sharing. For the purposes of this
4 subsection, "medically necessary" includes a health care
5 provider's consideration of the following:

- 6 (1) severity of side effects;
- 7 (2) duration of efficacy; and
- 8 (3) other factors that the enrollee's health
9 care provider deems relevant.

10 D. A group health plan administrator shall grant an
11 enrollee an expedited hearing to appeal any adverse
12 determination made relating to the provisions of this section.
13 The process for requesting an expedited hearing pursuant to
14 this subsection shall:

- 15 (1) be easily accessible, transparent,
16 sufficiently expedient and not unduly burdensome on an
17 enrollee, the enrollee's representative or the enrollee's
18 health care provider;
- 19 (2) defer to the determination of the
20 enrollee's health care provider; and
- 21 (3) provide for a determination of the claim
22 according to a time frame and in a manner that takes into
23 account the nature of the claim and the medical exigencies
24 involved for a claim involving an urgent health care need.

25 E. A group health plan shall not require a

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1 prescription for any item or service that is available without
2 a prescription.

3 F. A group health plan shall provide coverage and
4 shall reimburse a health care provider or dispensing entity on
5 a per-unit basis for dispensing a supply of contraceptives as
6 follows; provided that the contraceptives are prescribed and
7 self-administered:

8 (1) for the first fill of the contraceptive to
9 an enrollee, a three-month supply, as prescribed; and

10 (2) for subsequent fills of the same
11 contraceptive to the enrollee, regardless of whether the
12 enrollee was enrolled in the group health plan at the time of
13 the first fill for that contraceptive, a twelve-month supply,
14 as prescribed.

15 G. Nothing in this section shall be construed to:

16 (1) require a health care provider to
17 prescribe twelve months of contraceptives at one time; or

18 (2) permit a group health plan to limit
19 coverage or impose cost-sharing for an alternate method of
20 contraception if an enrollee changes contraceptive methods
21 before exhausting a previously dispensed supply.

22 H. The provisions of this section shall not apply
23 to short-term travel, accident-only or limited or disease-
24 specific group health plans.

25 I. For the purposes of this section:

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1 (1) "contraceptive methods identified by the
2 federal food and drug administration":

3 (a) means tubal ligation; sterilization
4 implant; copper intrauterine device; intrauterine device with
5 progestin; implantable rod; contraceptive shot or injection;
6 combined oral contraceptives; extended or continuous use oral
7 contraceptives; progestin-only oral contraceptives; patch;
8 vaginal ring; diaphragm with spermicide; sponge with
9 spermicide; cervical cap with spermicide; male and female
10 condoms; spermicide alone; vasectomy; ulipristal acetate;
11 levonorgestrel emergency contraception; and any additional
12 methods of contraception approved by the federal food and drug
13 administration; and

14 (b) does not mean a product that has
15 been recalled for safety reasons or withdrawn from the market;

16 (2) "cost-sharing" means a deductible,
17 copayment or coinsurance that an enrollee is required to pay in
18 accordance with the terms of a group health plan; and

19 (3) "health care provider" means an individual
20 licensed to provide health care in the ordinary course of
21 business."

22 SECTION 2. A new section of the Public Assistance Act is
23 enacted to read:

24 "[NEW MATERIAL] MEDICAL ASSISTANCE--REIMBURSEMENT FOR A
25 TWELVE-MONTH SUPPLY OF COVERED PRESCRIPTION CONTRACEPTIVE DRUGS

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1 OR DEVICES.--

2 A. In providing coverage for family planning
3 services and supplies under the medical assistance program, the
4 department shall ensure that a recipient is permitted to fill
5 or refill a prescription for a twelve-month supply of a
6 covered, self-administered contraceptive at one time, as
7 prescribed.

8 B. Nothing in this section shall be construed to
9 limit a recipient's freedom to choose or change the method of
10 family planning to be used, regardless of whether the recipient
11 has exhausted a previously dispensed supply of contraceptives."

12 SECTION 3. Section 59A-22-42 NMSA 1978 (being Laws 2001,
13 Chapter 14, Section 1, as amended) is amended to read:

14 "59A-22-42. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS
15 OR DEVICES.--

16 A. Each individual and group health insurance
17 policy, health care plan and certificate of health insurance
18 delivered or issued for delivery in this state that provides a
19 prescription drug benefit shall provide [coverage for
20 ~~prescription contraceptive drugs or devices approved by the~~
21 ~~food and drug administration.~~

22 ~~B. Coverage for food and drug administration-~~
23 ~~approved prescription contraceptive drugs or devices may be~~
24 ~~subject to deductibles and coinsurance consistent with those~~
25 ~~imposed on other benefits under the same policy, plan or~~

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1 certificate], at a minimum, the following coverage:

2 (1) at least one product or form of
3 contraception in each of the contraceptive methods identified
4 by the federal food and drug administration;

5 (2) a sufficient number and assortment of oral
6 contraceptive pills to reflect the variety of oral
7 contraceptives approved by the federal food and drug
8 administration; and

9 (3) clinical services related to the provision
10 or use of contraception, including consultations, examinations,
11 procedures, ultrasound, anesthesia, patient education,
12 counseling, device insertion and removal, follow-up care and
13 side-effects management.

14 B. Except as provided in Subsection C of this
15 section, the coverage required pursuant to this section shall
16 not be subject to:

17 (1) cost-sharing for insureds;
18 (2) utilization review;
19 (3) prior authorization or step therapy
20 requirements; or

21 (4) any restrictions or delays on the
22 coverage.

23 C. An insurer may discourage brand-name pharmacy
24 items by applying cost-sharing to brand-name items when at
25 least one generic or therapeutic equivalent is covered within

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1 the same method of contraception without cost-sharing by the
2 insured; provided that when an insured's health care provider
3 determines that a particular item or service is medically
4 necessary, the health insurance policy, health care plan or
5 certificate of health insurance shall cover the brand-name
6 pharmacy item without cost-sharing. For the purposes of this
7 subsection, "medically necessary" includes a health care
8 provider's consideration of the following:

- 9 (1) severity of side effects;
10 (2) duration of efficacy; and
11 (3) other factors that the insured's health
12 care provider deems relevant.

13 D. An insurer shall grant an insured an expedited
14 hearing to appeal any adverse determination made relating to
15 the provisions of this section. The process for requesting an
16 expedited hearing pursuant to this subsection shall:

17 (1) be easily accessible, transparent,
18 sufficiently expedient and not unduly burdensome on an insured,
19 the insured's representative or the insured's health care
20 provider;

21 (2) defer to the determination of the
22 insured's health care provider; and

23 (3) provide for a determination of the claim
24 according to a time frame and in a manner that takes into
25 account the nature of the claim and the medical exigencies

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1 involved for a claim involving an urgent health care need.

2 E. An insurer shall not require a prescription for
3 any item or service that is available without a prescription.

4 F. A health insurance policy, health care plan or
5 certificate of health insurance shall provide coverage and
6 shall reimburse a health care provider or dispensing entity on
7 a per-unit basis for dispensing a supply of contraceptives as
8 follows; provided that the contraceptives are prescribed and
9 self-administered:

10 (1) for the first fill of the contraceptive to
11 an insured, a three-month supply, as prescribed; and

12 (2) for subsequent fills of the same
13 contraceptive to the insured, regardless of whether the insured
14 was enrolled in coverage pursuant to the health insurance
15 policy, health care plan or certificate of insurance at the
16 time of the first fill for that contraceptive, a twelve-month
17 supply, as prescribed.

18 G. Nothing in this section shall be construed to:

19 (1) require a health care provider to
20 prescribe twelve months of contraceptives at one time; or

21 (2) permit a health insurance policy, health
22 care plan or certificate of health insurance to limit coverage
23 or impose cost-sharing for an alternate method of contraception
24 if an insured changes contraceptive methods before exhausting a
25 previously dispensed supply.

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1 [~~G.~~] H. The provisions of this section shall not
2 apply to short-term travel, accident-only or limited or
3 specified-disease policies.

4 I. For the purposes of this section:

5 (1) "contraceptive methods identified by the
6 federal food and drug administration":

7 (a) means tubal ligation; sterilization
8 implant; copper intrauterine device; intrauterine device with
9 progestin; implantable rod; contraceptive shot or injection;
10 combined oral contraceptives; extended or continuous use oral
11 contraceptives; progestin-only oral contraceptives; patch;
12 vaginal ring; diaphragm with spermicide; sponge with
13 spermicide; cervical cap with spermicide; male and female
14 condoms; spermicide alone; vasectomy; ulipristal acetate;
15 levonorgestrel emergency contraception; and any additional
16 methods of contraception approved by the federal food and drug
17 administration; and

18 (b) does not mean a product that has
19 been recalled for safety reasons or withdrawn from the market;

20 (2) "cost-sharing" means a deductible,
21 copayment or coinsurance that an insured is required to pay in
22 accordance with the terms of a health insurance policy, health
23 care plan or certificate of health insurance; and

24 (3) "health care provider" means an individual
25 licensed to provide health care in the ordinary course of

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1 business.

2 [D-] J. A religious entity purchasing individual or
3 group health insurance coverage may elect to exclude
4 prescription contraceptive drugs or devices from the health
5 coverage purchased."

6 SECTION 4. Section 59A-46-44 NMSA 1978 (being Laws 2001,
7 Chapter 14, Section 3, as amended) is amended to read:

8 "59A-46-44. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS
9 OR DEVICES.--

10 A. Each individual and group health maintenance
11 organization contract delivered or issued for delivery in this
12 state that provides a prescription drug benefit shall provide
13 ~~[coverage for prescription contraceptive drugs or devices~~
14 ~~approved by the food and drug administration.~~

15 ~~B. Coverage for food and drug administration-~~
16 ~~approved prescription contraceptive drugs or devices may be~~
17 ~~subject to deductibles and coinsurance consistent with those~~
18 ~~imposed on other benefits under the same contract], at a~~
19 minimum, the following coverage:

20 (1) at least one product or form of
21 contraception in each of the contraceptive methods identified
22 by the federal food and drug administration;

23 (2) a sufficient number and assortment of oral
24 contraceptive pills to reflect the variety of oral
25 contraceptives approved by the federal food and drug

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1 administration; and

2 (3) clinical services related to the provision
3 or use of contraception, including consultations, examinations,
4 procedures, ultrasound, anesthesia, patient education,
5 counseling, device insertion and removal, follow-up care and
6 side-effects management.

7 B. Except as provided in Subsection C of this
8 section, the coverage required pursuant to this section shall
9 not be subject to:

10 (1) enrollee cost-sharing;
11 (2) utilization review;
12 (3) prior authorization or step therapy
13 requirements; or
14 (4) any restrictions or delays on the
15 coverage.

16 C. A health maintenance organization may discourage
17 brand-name pharmacy items by applying cost-sharing to brand-
18 name items when at least one generic or therapeutic equivalent
19 is covered within the same method of contraception without
20 enrollee cost-sharing; provided that when an enrollee's health
21 care provider determines that a particular item or service is
22 medically necessary, the health maintenance organization shall
23 cover the brand-name pharmacy item without cost-sharing. For
24 the purposes of this subsection, "medically necessary" includes
25 a health care provider's consideration of the following:

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- 1 (1) severity of side effects;
2 (2) duration of efficacy; and
3 (3) other factors that the enrollee's health
4 care provider deems relevant.

5 D. A health maintenance organization shall grant an
6 enrollee an expedited hearing to appeal any adverse
7 determination made relating to the provisions of this section.
8 The process for requesting an expedited hearing pursuant to
9 this subsection shall:

10 (1) be easily accessible, transparent,
11 sufficiently expedient and not unduly burdensome on an
12 enrollee, the enrollee's representative or the enrollee's
13 health care provider;

14 (2) defer to the determination of the
15 enrollee's health care provider; and

16 (3) provide for a determination of the claim
17 according to a time frame and in a manner that takes into
18 account the nature of the claim and the medical exigencies
19 involved for a claim involving an urgent health care need.

20 E. A health maintenance organization contract shall
21 not require a prescription for any item or service that is
22 available without a prescription.

23 F. A health maintenance organization contract shall
24 provide coverage and shall reimburse a health care provider or
25 dispensing entity on a per-unit basis for dispensing a supply

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1 of contraceptives as follows; provided that the contraceptives
2 are prescribed and self-administered:

3 (1) for the first fill of the contraceptive to
4 an enrollee, a three-month supply, as prescribed; and

5 (2) for subsequent fills of the same
6 contraceptive to the enrollee, regardless of whether the
7 enrollee was enrolled in health coverage pursuant to the health
8 maintenance organization contract at the time of the first fill
9 for that contraceptive, a twelve-month supply, as prescribed.

10 G. Nothing in this section shall be construed to:

11 (1) require a health care provider to
12 prescribe twelve months of contraceptives at one time; or

13 (2) permit a health maintenance organization
14 contract to limit coverage or impose cost-sharing for an
15 alternate method of contraception if an enrollee changes
16 contraceptive methods before exhausting a previously dispensed
17 supply.

18 H. For the purposes of this section:

19 (1) "contraceptive methods identified by the
20 federal food and drug administration":

21 (a) means tubal ligation; sterilization
22 implant; copper intrauterine device; intrauterine device with
23 progestin; implantable rod; contraceptive shot or injection;
24 combined oral contraceptives; extended or continuous use oral
25 contraceptives; progestin-only oral contraceptives; patch;

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1 vaginal ring; diaphragm with spermicide; sponge with
2 spermicide; cervical cap with spermicide; male and female
3 condoms; spermicide alone; vasectomy; ulipristal acetate;
4 levonorgestrel emergency contraception; and any additional
5 methods of contraception approved by the federal food and drug
6 administration; and

7 (b) does not mean a product that has
8 been recalled for safety reasons or withdrawn from the market;

9 (2) "cost-sharing" means a deductible,
10 copayment or coinsurance that an enrollee is required to pay in
11 accordance with the terms of a health maintenance organization
12 contract; and

13 (3) "health care provider" means an individual
14 licensed to provide health care in the ordinary course of
15 business.

16 [~~G-~~] I. A religious entity purchasing individual or
17 group health maintenance organization coverage may elect to
18 exclude prescription contraceptive drugs or devices from the
19 health coverage purchased."