

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 347

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

AN ACT

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

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

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

"[NEW MATERIAL] COVERAGE FOR CONTRACEPTION.--

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

(1) at least one product or form of

.207697.1

underscored material = new
[bracketed material] = delete

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

.207697.1

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 provide coverage and

.207697.1

1 shall reimburse a health care provider or dispensing entity on
2 a per-unit basis for dispensing a supply of contraceptives as
3 follows; provided that the contraceptives are prescribed and
4 self-administered:

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

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

12 F. Nothing in this section shall be construed to:

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

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

19 G. The provisions of this section shall not apply
20 to short-term travel, accident-only or limited or disease-
21 specific group health plans.

22 H. For the purposes of this section:

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

25 (a) means tubal ligation; sterilization

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

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

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

16 (3) "health care provider" means an individual
 17 licensed to provide health care in the ordinary course of
 18 business."

19 **SECTION 2.** A new section of the Public Assistance Act is
 20 enacted to read:

21 "[NEW MATERIAL] MEDICAL ASSISTANCE--REIMBURSEMENT FOR A
 22 TWELVE-MONTH SUPPLY OF COVERED PRESCRIPTION CONTRACEPTIVE DRUGS
 23 OR DEVICES.--

24 A. In providing coverage for family planning
 25 services and supplies under the medical assistance program, the

.207697.1

1 department shall ensure that a recipient is permitted to fill
2 or refill a prescription for a twelve-month supply of a
3 covered, self-administered contraceptive at one time, as
4 prescribed.

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

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

11 "59A-22-42. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS
12 OR DEVICES.--

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

19 ~~B. Coverage for food and drug administration-~~
20 ~~approved prescription contraceptive drugs or devices may be~~
21 ~~subject to deductibles and coinsurance consistent with those~~
22 ~~imposed on other benefits under the same policy, plan or~~
23 ~~certificate], at a minimum, the following coverage:~~

24 (1) at least one product or form of
25 contraception in each of the contraceptive methods identified

1 by the federal food and drug administration;

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

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

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

14 (1) cost-sharing for insureds;
15 (2) utilization review;
16 (3) prior authorization or step therapy
17 requirements; or
18 (4) any restrictions or delays on the
19 coverage.

20 C. An insurer may discourage brand-name pharmacy
21 items by applying cost-sharing to brand-name items when at
22 least one generic or therapeutic equivalent is covered within
23 the same method of contraception without cost-sharing by the
24 insured; provided that when an insured's health care provider
25 determines that a particular item or service is medically

.207697.1

1 necessary, the health insurance policy, health care plan or
2 certificate of health insurance 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 insured's health
9 care provider deems relevant.

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

- 14 (1) be easily accessible, transparent,
15 sufficiently expedient and not unduly burdensome on an insured,
16 the insured's representative or the insured's health care
17 provider;

- 18 (2) defer to the determination of the
19 insured's health care provider; and

- 20 (3) provide for a determination of the claim
21 according to a time frame and in a manner that takes into
22 account the nature of the claim and the medical exigencies
23 involved for a claim involving an urgent health care need.

24 E. A health insurance policy, health care plan or
25 certificate of health insurance shall provide coverage and

1 shall reimburse a health care provider or dispensing entity on
 2 a per-unit basis for dispensing a supply of contraceptives as
 3 follows; provided that the contraceptives are prescribed and
 4 self-administered:

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

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

13 F. Nothing in this section shall be construed to:

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

16 (2) permit a health insurance policy, health
 17 care plan or certificate of health insurance to limit coverage
 18 or impose cost-sharing for an alternate method of contraception
 19 if an insured changes contraceptive methods before exhausting a
 20 previously dispensed supply.

21 ~~[G.]~~ G. The provisions of this section shall not
 22 apply to short-term travel, accident-only or limited or
 23 specified-disease policies.

24 H. For the purposes of this section:

25 (1) "contraceptive methods identified by the

1 federal food and drug administration":

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

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

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

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

22 ~~[D.]~~ I. A religious entity purchasing individual or
23 group health insurance coverage may elect to exclude
24 prescription contraceptive drugs or devices from the health
25 coverage purchased."

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

3 "59A-46-44. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS
4 OR DEVICES.--

5 A. Each individual and group health maintenance
6 organization contract delivered or issued for delivery in this
7 state that provides a prescription drug benefit shall provide
8 ~~[coverage for prescription contraceptive drugs or devices~~
9 ~~approved by the food and drug administration.~~

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

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

18 (2) a sufficient number and assortment of oral
19 contraceptive pills to reflect the variety of oral
20 contraceptives approved by the federal food and drug
21 administration; and

22 (3) clinical services related to the provision
23 or use of contraception, including consultations, examinations,
24 procedures, ultrasound, anesthesia, patient education,
25 counseling, device insertion and removal, follow-up care and

.207697.1

1 side-effects management.

2 B. Except as provided in Subsection C of this
3 section, the coverage required pursuant to this section shall
4 not be subject to:

5 (1) enrollee cost-sharing;

6 (2) utilization review;

7 (3) prior authorization or step therapy
8 requirements; or

9 (4) any restrictions or delays on the
10 coverage.

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

21 (1) severity of side effects;

22 (2) duration of efficacy; and

23 (3) other factors that the enrollee's health
24 care provider deems relevant.

25 D. A health maintenance organization shall grant an

1 enrollee an expedited hearing to appeal any adverse
2 determination made relating to the provisions of this section.
3 The process for requesting an expedited hearing pursuant to
4 this subsection shall:

5 (1) be easily accessible, transparent,
6 sufficiently expedient and not unduly burdensome on an
7 enrollee, the enrollee's representative or the enrollee's
8 health care provider;

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

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

15 E. A health maintenance organization contract shall
16 provide coverage and shall reimburse a health care provider or
17 dispensing entity on a per-unit basis for dispensing a supply
18 of contraceptives as follows; provided that the contraceptives
19 are prescribed and self-administered:

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

22 (2) for subsequent fills of the same
23 contraceptive to the enrollee, regardless of whether the
24 enrollee was enrolled in health coverage pursuant to the health
25 maintenance organization contract at the time of the first fill

.207697.1

1 for that contraceptive, a twelve-month supply, as prescribed.

2 F. Nothing in this section shall be construed to:

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

5 (2) permit a health maintenance organization
6 contract to limit coverage or impose cost-sharing for an
7 alternate method of contraception if an enrollee changes
8 contraceptive methods before exhausting a previously dispensed
9 supply.

10 G. For the purposes of this section:

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

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

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

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

5 (3) "health care provider" means an individual
6 licensed to provide health care in the ordinary course of
7 business.

8 [~~G.~~] H. A religious entity purchasing individual or
9 group health maintenance organization coverage may elect to
10 exclude prescription contraceptive drugs or devices from the
11 health coverage purchased."

12 - 15 -
13
14
15
16
17
18
19
20
21
22
23
24
25

underscored material = new
[bracketed material] = delete

