

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 986
Finance

(Senator Kelley)

Appropriations

State Employee and Retiree Health and Welfare Benefits Program -
Contraceptive Drugs and Devices and Male Sterilization

This bill requires the Secretary of Budget and Management to ensure that the State Employee and Retiree Health and Welfare Benefits Program complies with specified provisions of law relating to health insurance coverage of contraceptive drugs and devices and male sterilization.

Fiscal Summary

State Effect: Minimal increase in expenditures for the program (approximately 60% general funds, 30% special funds, 10% federal funds) beginning in FY 2019, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The Secretary of Budget and Management must adopt regulations for the administration of the program, ensure that the program complies with all federal and State laws governing employee benefit plans, and annually recommend to the Governor the State share of the costs of the program.

Under § 15-826 of the Insurance Article, carriers must provide coverage for any U.S. Food and Drug Administration (FDA)-approved prescription contraceptive drug or device, including coverage for the insertion or removal or any medically necessary examination

associated with the use of a contraceptive drug or device. Carriers may not impose a different copayment or coinsurance for a contraceptive drug or device than is imposed for any other prescription. A religious organization may request an exclusion from this coverage if it conflicts with the religious organization's bona fide religious beliefs and practices.

Requirements under Chapters 436 and 437 of 2016 – The Contraceptive Equity Act

Limitations of Prior Authorization: Insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) that provide coverage for contraceptive drugs and devices are prohibited from applying a prior authorization requirement for an intrauterine device or implantable rod that is approved by FDA and obtained under a written prescription, unless FDA has issued a black box warning (a warning on the prescription drug or device's label designed to call attention to serious or life-threatening risks).

Copayments or Coinsurance for Therapeutically Equivalent Drugs or Devices: Carriers may apply a copayment or coinsurance requirement for a contraceptive drug or device that is therapeutically equivalent to another contraceptive drug or device that is available without a copayment or coinsurance.

Six-month Supply of Prescription Contraception: Carriers must provide coverage for a single dispensing of a six-month supply of prescription contraceptives. This requirement does not apply to the first two-month supply of prescription contraceptives dispensed under the initial prescription or any subsequent prescription for a contraceptive that is different than the last contraceptive dispensed. Carriers may provide for a smaller supply if a six-month supply would extend beyond the plan year. Whenever carriers increase the copayment for a single dispensing of a six-month supply of prescription contraceptives, the carriers must proportionately increase the dispensing fee paid to the pharmacist.

Coverage of Over-the-counter Contraceptive Drugs: Carriers must provide coverage without a prescription for all FDA-approved contraceptive drugs available by prescription and over the counter. Carriers may not apply a copayment or coinsurance requirement for a contraceptive drug dispensed without a prescription that is greater than the copayment or coinsurance requirement for a prescription contraceptive drug. Carriers may only be required to provide point-of-sale coverage of over-the-counter contraceptive drugs at in-network pharmacies and may limit the frequency with which coverage is provided.

Coverage of Male Sterilization: Carriers that provide hospital, medical, or surgical benefits to groups must provide coverage for male sterilization. This mandate does not apply to a religious organization that requests an exemption. Any carriers that provide coverage for

male sterilization must provide such coverage with no copayment, coinsurance, or deductible requirement.

Coverage for Contraceptive Off-formulary for Adherence: Carriers that limit coverage of prescription drugs and devices to a specified formulary must provide a procedure for coverage for a prescription drug or device that is not in the carrier's formulary if, in the judgment of the authorized prescriber, a contraceptive prescription drug or device that is not on the formulary is medically necessary for the member to adhere to the appropriate use of the prescription drug or device.

Background: Self-insured employer plans are exempt from State health insurance mandates and requirements under the federal Employee Retirement Income Security Act. The Department of Budget and Management (DBM), therefore, advises that the program is generally not subject to these mandates because all but one of its medical plans are self-insured; Kaiser is fully insured and subject to mandates. However, under the program, prescription contraceptive drugs (through the prescription plan) and prescription contraceptive devices (through the medical plan) are currently covered with no copayment. Prescriptions for contraceptives can be written for 12 months, but they are generally filled in 90-day supplies (the industry standard) rather than the 6 months required under the Contraceptive Equity Act. DBM advises that this is done in part to reduce the fiscal impact that occurs in the event the participant is no longer covered under the program within the 6 months. Male sterilization is subject to coinsurance under the program's two preferred provider organization (PPO) plans and is covered in full under the two exclusive provider plans and Kaiser.

State Expenditures: Although not required to follow health insurance mandates, the program generally does. Thus, this estimate is based on the assumption that the program will follow the bill's requirements. As prescription contraceptive drugs and devices are already covered with no copayment under the program, and male sterilization is only subject to coinsurance under the two PPO plans, the anticipated cost to the program to provide a six-month rather than 90-day supply of prescription contraceptives and to provide coverage for male sterilization with no coinsurance in all plans is minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 1024 (Delegate Hettleman, *et al.*) - Appropriations.

Information Source(s): Department of Budget and Management; Maryland Insurance Administration; Department of Legislative Services

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