

SENATE BILL 848

C3

6lr2391
CF HB 1005

By: Senators Kelley, Madaleno, Astle, Benson, Brochin, Conway, Currie, Feldman, Ferguson, Gladden, Guzzone, Kagan, King, Klausmeier, Lee, Manno, McFadden, Nathan-Pulliam, Pinsky, Pugh, Ramirez, Raskin, Young, and Zucker

Introduced and read first time: February 5, 2016

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2016

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance – Contraceptive Equity Act**

3 FOR the purpose of prohibiting certain insurers, nonprofit health service plans, and health
4 maintenance organizations from applying a copayment, coinsurance, or prior
5 authorization requirement for certain contraceptive drugs and devices; providing
6 that the prohibition does not apply with respect to a certain health benefit plan;
7 ~~requiring a certain insurer, nonprofit health service plan, and health maintenance~~
8 ~~organization to post its contraceptive formulary on its Web site in a certain format,~~
9 ~~include certain information on the formulary, and provide a print copy of the~~
10 ~~formulary on request;~~ establishing an exception to the prohibition against applying
11 a copayment or coinsurance requirement for certain contraceptive drugs or devices;
12 requiring a certain insurer, nonprofit health service plan, and health maintenance
13 organization to provide coverage for a single dispensing to an insured or an enrollee
14 of a certain supply of prescription contraceptives, ~~except for certain prescriptions, for~~
15 a certain period of time subject to certain exceptions; requiring the insurer, nonprofit
16 health service plan, and health maintenance organization to increase the dispensing
17 fee paid to ~~certain individuals~~ the pharmacist under certain circumstances; requiring
18 a ~~certain~~ the insurer, nonprofit health service plan, and health maintenance
19 organization to provide coverage without a prescription for certain contraceptive
20 drugs, subject to certain limitations; prohibiting the insurer, nonprofit health service
21 plan, and health maintenance ~~organizations~~ organization from applying a
22 copayment or coinsurance requirement for the contraceptive drugs dispensed

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 without a prescription that exceeds a certain copayment or coinsurance requirement;
 2 requiring certain insurers, nonprofit health service plans, and health maintenance
 3 organizations to provide coverage for male sterilization; excluding a certain
 4 organization from the requirement to provide the coverage for male sterilization;
 5 prohibiting certain insurers, nonprofit health service plans, and health maintenance
 6 organizations from applying a copayment, coinsurance requirement, or deductible to
 7 coverage for male sterilization; providing that the prohibition does not apply with
 8 respect to a certain health benefit plan; altering the circumstances under which a
 9 member may receive a prescription drug or device that is not on the formulary of a
 10 certain insurer, nonprofit health service plan, or health maintenance organization;
 11 requiring the procedure under which a member may receive a prescription drug or
 12 device that is not on the formulary to provide for coverage of a contraceptive
 13 prescription drug or device that is medically necessary for ~~adherence purposes~~ the
 14 member to adhere to the appropriate use of the prescription drug or device;
 15 prohibiting the Maryland Medical Assistance Program and the Maryland Children's
 16 Health Program from applying a prior authorization requirement for certain
 17 contraceptive drugs and devices; requiring the Maryland Medical Assistance
 18 Program and the Maryland Children's Health Program to provide coverage for a
 19 single dispensing to an enrollee of a certain supply of prescription contraceptives,
 20 subject to a certain exception; defining a certain term; providing for the application
 21 of this Act; providing for a delayed effective date; and generally relating to health
 22 insurance coverage of contraceptive drugs, devices, and procedures and
 23 contraception equity.

24 BY adding to

25 Article – Insurance

26 Section 15–826.1 and 15–826.2

27 Annotated Code of Maryland

28 (2011 Replacement Volume and 2015 Supplement)

29 BY repealing and reenacting, with amendments,

30 Article – Insurance

31 Section 15–831

32 Annotated Code of Maryland

33 (2011 Replacement Volume and 2015 Supplement)

34 BY adding to

35 Article – Health – General

36 Section 15–148

37 Annotated Code of Maryland

38 (2015 Replacement Volume)

39 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

40 That the Laws of Maryland read as follows:

41 **Article – Insurance**

1 15-826.1.

2 (A) IN THIS SECTION, "AUTHORIZED PRESCRIBER" HAS THE MEANING
3 STATED IN § 12-101 OF THE HEALTH OCCUPATIONS ARTICLE.

4 (B) THIS SECTION APPLIES TO:

5 (1) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT
6 PROVIDE COVERAGE FOR CONTRACEPTIVE DRUGS AND DEVICES UNDER
7 INDIVIDUAL, GROUP, OR BLANKET HEALTH INSURANCE POLICIES OR CONTRACTS
8 THAT ARE ISSUED OR DELIVERED IN THE STATE; AND

9 (2) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE
10 COVERAGE FOR CONTRACEPTIVE DRUGS AND DEVICES UNDER INDIVIDUAL OR
11 GROUP CONTRACTS THAT ARE ISSUED OR DELIVERED IN THE STATE.

12 (C) (1) ~~EXCEPT WITH RESPECT~~ THIS SUBSECTION DOES NOT APPLY TO A
13 HEALTH BENEFIT PLAN THAT IS A GRANDFATHERED HEALTH PLAN, AS DEFINED IN
14 § 1251 OF THE AFFORDABLE CARE ACT, ~~AN~~.

15 (2) AN ENTITY SUBJECT TO THIS SECTION:

16 (I) EXCEPT FOR A DRUG OR DEVICE FOR WHICH THE U.S. FOOD
17 AND DRUG ADMINISTRATION HAS ISSUED A BLACK BOX WARNING, MAY NOT APPLY
18 A PRIOR AUTHORIZATION REQUIREMENT FOR A CONTRACEPTIVE DRUG OR DEVICE
19 THAT IS:

20 1. A. AN INTRAUTERINE DEVICE; OR

21 B. AN IMPLANTABLE ROD;

22 2. APPROVED BY THE U.S. FOOD AND DRUG
23 ADMINISTRATION; AND

24 3. OBTAINED UNDER A PRESCRIPTION WRITTEN BY AN
25 AUTHORIZED PRESCRIBER; AND

26 ~~(I)~~ (II) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
27 SUBSECTION, MAY NOT APPLY A ~~COPAYMENT, COINSURANCE, OR PRIOR~~
28 ~~AUTHORIZATION~~ COPAYMENT OR COINSURANCE REQUIREMENT FOR A
29 CONTRACEPTIVE DRUG OR DEVICE THAT IS:

30 ~~(I)~~ 1. APPROVED BY THE U.S. FOOD AND DRUG
31 ADMINISTRATION; AND

1 ~~(H)~~ 2. OBTAINED UNDER A PRESCRIPTION WRITTEN BY AN
2 AUTHORIZED PRESCRIBER; ~~BUT,~~

3 ~~(2)~~ (3) AN ENTITY SUBJECT TO THIS SECTION MAY APPLY A
4 COPAYMENT OR COINSURANCE REQUIREMENT FOR A CONTRACEPTIVE DRUG OR
5 DEVICE THAT, ACCORDING TO THE U.S. FOOD AND DRUG ADMINISTRATION, IS
6 THERAPEUTICALLY EQUIVALENT TO ANOTHER CONTRACEPTIVE DRUG OR DEVICE
7 THAT IS AVAILABLE UNDER THE SAME POLICY OR CONTRACT WITHOUT A
8 COPAYMENT OR COINSURANCE REQUIREMENT.

9 ~~(D)~~ ~~AN ENTITY SUBJECT TO THIS SECTION SHALL:~~

10 ~~(1) (i) POST ON ITS WEB SITE ITS CONTRACEPTIVE FORMULARY IN~~
11 ~~A CONSUMER FRIENDLY FORMAT THAT IS ACCESSIBLE TO INDIVIDUALS SEEKING~~
12 ~~INFORMATION ABOUT COVERAGE FOR CONTRACEPTIVE DRUGS AND DEVICES~~
13 ~~UNDER THE POLICIES OR CONTRACTS OF THE ENTITY; AND~~

14 ~~(ii) INCLUDE IN THE FORMULARY COMPLETE AND CURRENT~~
15 ~~INFORMATION ABOUT COST SHARING REQUIREMENTS FOR CONTRACEPTIVE DRUGS~~
16 ~~AND DEVICES ON AND OFF THE ENTITY'S FORMULARY; AND~~

17 ~~(2) PROVIDE A PRINT COPY OF THE CONTRACEPTIVE FORMULARY~~
18 ~~REQUIRED UNDER ITEM (1) OF THIS SUBSECTION ON REQUEST.~~

19 ~~(E)~~ (D) (1) EXCEPT AS PROVIDED IN ~~PARAGRAPH (2)~~ PARAGRAPHS (2)
20 AND (3) OF THIS SUBSECTION, AN ENTITY SUBJECT TO THIS SECTION SHALL
21 PROVIDE COVERAGE FOR A SINGLE DISPENSING TO AN INSURED OR AN ENROLLEE
22 OF A SUPPLY OF PRESCRIPTION CONTRACEPTIVES FOR A ~~13-MONTH~~ 6-MONTH
23 PERIOD.

24 (2) SUBJECT TO § 15-824 OF THIS SUBTITLE, AN ENTITY SUBJECT TO
25 THIS SECTION MAY PROVIDE COVERAGE FOR A SUPPLY OF PRESCRIPTION
26 CONTRACEPTIVES THAT IS FOR LESS THAN A 6-MONTH PERIOD, IF A 6-MONTH
27 SUPPLY WOULD EXTEND BEYOND THE PLAN YEAR.

28 ~~(2)~~ (3) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO
29 THE FIRST 2-MONTH SUPPLY OF PRESCRIPTION CONTRACEPTIVES DISPENSED TO
30 AN INSURED OR AN ENROLLEE UNDER:

31 (i) THE INITIAL ~~FIRST~~ PRESCRIPTION FOR THE
32 CONTRACEPTIVES; OR

1 (II) ANY SUBSEQUENT PRESCRIPTION FOR A CONTRACEPTIVE
 2 THAT IS DIFFERENT THAN THE LAST CONTRACEPTIVE DISPENSED TO OR CHANGE IN
 3 A PRESCRIPTION FOR CONTRACEPTIVES FOR THE INSURED OR THE ENROLLEE.

4 ~~(3)~~ (4) WHENEVER AN ENTITY SUBJECT TO THIS SECTION
 5 INCREASES THE COPAYMENT FOR A SINGLE DISPENSING OF A SUPPLY OF
 6 PRESCRIPTION CONTRACEPTIVES FOR A ~~13-MONTH~~ 6-MONTH PERIOD, THE ENTITY
 7 SHALL ALSO INCREASE PROPORTIONATELY THE DISPENSING FEE PAID TO THE
 8 PHARMACIST OR OTHER INDIVIDUAL AUTHORIZED BY LAW TO DISPENSE
 9 PRESCRIPTION CONTRACEPTIVES.

10 ~~(F)~~ (E) (1) AN SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN
 11 ENTITY SUBJECT TO THIS SECTION:

12 ~~(1)~~ (I) SHALL PROVIDE COVERAGE WITHOUT A PRESCRIPTION FOR
 13 ALL CONTRACEPTIVE DRUGS APPROVED BY THE U.S. FOOD AND DRUG
 14 ADMINISTRATION AND AVAILABLE BY PRESCRIPTION AND OVER THE COUNTER; AND

15 ~~(2)~~ (II) MAY NOT APPLY A COPAYMENT OR COINSURANCE
 16 REQUIREMENT FOR A CONTRACEPTIVE DRUG DISPENSED WITHOUT A
 17 PRESCRIPTION UNDER ITEM (I) OF THIS PARAGRAPH THAT EXCEEDS THE
 18 COPAYMENT OR COINSURANCE REQUIREMENT FOR THE CONTRACEPTIVE DRUG
 19 DISPENSED UNDER A PRESCRIPTION.

20 (2) AN ENTITY SUBJECT TO THIS SECTION:

21 (I) MAY ONLY BE REQUIRED TO PROVIDE POINT-OF-SALE
 22 COVERAGE UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION AT IN-NETWORK
 23 PHARMACIES; AND

24 (II) MAY LIMIT THE FREQUENCY WITH WHICH THE COVERAGE
 25 REQUIRED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION IS PROVIDED.

26 15-826.2.

27 (A) (1) IN THIS SUBSECTION, "GROUP" MEANS A GROUP THAT IS NOT A
 28 GROUP COVERED UNDER A HEALTH INSURANCE POLICY OR CONTRACT OR UNDER A
 29 HEALTH MAINTENANCE ORGANIZATION CONTRACT ISSUED OR DELIVERED TO A
 30 SMALL EMPLOYER, AS DEFINED IN § 31-101 OF THIS ARTICLE.

31 (2) THIS SUBSECTION APPLIES TO:

32 (I) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT
 33 PROVIDE HOSPITAL, MEDICAL, OR SURGICAL BENEFITS TO GROUPS ON AN

1 EXPENSE—INCURRED BASIS UNDER HEALTH INSURANCE POLICIES OR CONTRACTS
2 THAT ARE ISSUED OR DELIVERED IN THE STATE; AND

3 (II) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE
4 HOSPITAL, MEDICAL, OR SURGICAL BENEFITS TO GROUPS UNDER CONTRACTS THAT
5 ARE ISSUED OR DELIVERED IN THE STATE.

6 (3) THIS SUBSECTION DOES NOT APPLY TO AN ORGANIZATION THAT
7 REQUESTS AND RECEIVES AN EXCLUSION FROM COVERAGE UNDER § 15–826(C) OF
8 THIS SUBTITLE.

9 (4) AN ENTITY SUBJECT TO THIS SUBSECTION SHALL PROVIDE
10 COVERAGE FOR MALE STERILIZATION.

11 (B) (1) THIS SUBSECTION APPLIES TO:

12 (I) INSURERS AND NONPROFIT HEALTH SERVICE PLANS THAT
13 PROVIDE COVERAGE FOR MALE STERILIZATION UNDER INDIVIDUAL, GROUP, OR
14 BLANKET HEALTH INSURANCE POLICIES OR CONTRACTS THAT ARE ISSUED OR
15 DELIVERED IN THE STATE; AND

16 (II) HEALTH MAINTENANCE ORGANIZATIONS THAT PROVIDE
17 COVERAGE FOR MALE STERILIZATION UNDER INDIVIDUAL OR GROUP CONTRACTS
18 THAT ARE ISSUED OR DELIVERED IN THE STATE.

19 (2) EXCEPT WITH RESPECT TO A HEALTH BENEFIT PLAN THAT IS A
20 GRANDFATHERED HEALTH PLAN, AS DEFINED IN § 1251 OF THE AFFORDABLE CARE
21 ACT, AN ENTITY SUBJECT TO THIS SUBSECTION MAY NOT APPLY A COPAYMENT,
22 COINSURANCE REQUIREMENT, OR DEDUCTIBLE TO COVERAGE FOR MALE
23 STERILIZATION.

24 15–831.

25 (a) (1) In this section the following words have the meanings indicated.

26 (2) “Authorized prescriber” has the meaning stated in § 12–101 of the
27 Health Occupations Article.

28 (3) “Formulary” means a list of prescription drugs or devices that are
29 covered by an entity subject to this section.

30 (4) (i) “Member” means an individual entitled to health care benefits
31 for prescription drugs or devices under a policy issued or delivered in the State by an entity
32 subject to this section.

1 (ii) “Member” includes a subscriber.

2 (b) (1) This section applies to:

3 (i) insurers and nonprofit health service plans that provide coverage
4 for prescription drugs and devices under individual, group, or blanket health insurance
5 policies or contracts that are issued or delivered in the State; and

6 (ii) health maintenance organizations that provide coverage for
7 prescription drugs and devices under individual or group contracts that are issued or
8 delivered in the State.

9 (2) An insurer, nonprofit health service plan, or health maintenance
10 organization that provides coverage for prescription drugs and devices through a pharmacy
11 benefit manager is subject to the requirements of this section.

12 (3) This section does not apply to a managed care organization as defined
13 in § 15–101 of the Health – General Article.

14 (c) Each entity subject to this section that limits its coverage of prescription drugs
15 or devices to those in a formulary shall establish and implement a procedure by which a
16 member may receive a prescription drug or device that is not in the entity’s formulary in
17 accordance with this section.

18 (d) The procedure shall provide for coverage for a prescription drug or device that
19 is not in the formulary if, in the judgment of the authorized prescriber:

20 (1) there is no equivalent prescription drug or device in the entity’s
21 formulary; [or]

22 (2) an equivalent prescription drug or device in the entity’s formulary:

23 (i) has been ineffective in treating the disease or condition of the
24 member; or

25 (ii) has caused or is likely to cause an adverse reaction or other harm
26 to the member; **OR**

27 **(3) FOR A CONTRACEPTIVE PRESCRIPTION DRUG OR DEVICE, THE**
28 **PRESCRIPTION DRUG OR DEVICE THAT IS NOT ON THE FORMULARY IS MEDICALLY**
29 **NECESSARY FOR ~~ADHERENCE PURPOSES~~ THE MEMBER TO ADHERE TO THE**
30 **APPROPRIATE USE OF THE PRESCRIPTION DRUG OR DEVICE.**

31 (e) A decision by an entity subject to this section not to provide access to or
32 coverage of a prescription drug or device in accordance with this section constitutes an
33 adverse decision as defined under Subtitle 10A of this title if the decision is based on a

1 finding that the proposed drug or device is not medically necessary, appropriate, or
2 efficient.

3 Article – Health – General

4 15-148.

5 (A) EXCEPT FOR A DRUG OR DEVICE FOR WHICH THE U.S. FOOD AND DRUG
6 ADMINISTRATION HAS ISSUED A BLACK BOX WARNING, THE PROGRAM AND THE
7 MARYLAND CHILDREN’S HEALTH PROGRAM MAY NOT APPLY A PRIOR
8 AUTHORIZATION REQUIREMENT FOR A CONTRACEPTIVE DRUG OR DEVICE THAT IS:

9 (1) (I) AN INTRAUTERINE DEVICE; OR

10 (II) AN IMPLANTABLE ROD;

11 (2) APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION; AND

12 (3) OBTAINED UNDER A PRESCRIPTION WRITTEN BY AN AUTHORIZED
13 PRESCRIBER.

14 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
15 THE PROGRAM AND THE MARYLAND CHILDREN’S HEALTH PROGRAM SHALL
16 PROVIDE COVERAGE FOR A SINGLE DISPENSING TO AN ENROLLEE OF A SUPPLY OF
17 PRESCRIPTION CONTRACEPTIVES FOR A 6-MONTH PERIOD.

18 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO THE
19 FIRST 2-MONTH SUPPLY OF PRESCRIPTION CONTRACEPTIVES DISPENSED TO AN
20 ENROLLEE UNDER:

21 (I) THE INITIAL PRESCRIPTION FOR THE CONTRACEPTIVES; OR

22 (II) ANY SUBSEQUENT PRESCRIPTION FOR A CONTRACEPTIVE
23 THAT IS DIFFERENT THAN THE LAST CONTRACEPTIVE DISPENSED TO THE
24 ENROLLEE.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
26 policies, contracts, and health benefit plans subject to this Act that are issued, delivered,
27 or renewed in the State on or after January 1, 2018.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 January 1, 2018.