

**Department of Legislative Services**  
 Maryland General Assembly  
 2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 686  
 Finance

(Senator Astle)

**Health Insurance - Coverage for Over-the-Counter Contraceptive Drugs and Devices**

This bill requires insurers, nonprofit health service plans, and health maintenance organizations (collectively known as carriers) to provide coverage without a prescription for all contraceptive drugs and devices approved by the U.S. Food and Drug Administration (FDA) and available over the counter. Coverage is subject to specified limitations on copayments and coinsurance requirements. **The bill takes effect January 1, 2020, and applies to all policies, contracts, and health benefit plans subject to the bill that are issued, delivered, or renewed in the State on or after that date.**

**Fiscal Summary**

**State Effect:** Minimal increase in special fund revenues for the Maryland Insurance Administration in FY 2020 from the \$125 rate and form filing fee. Review of filings can likely be handled with existing budgeted resources. Expenditures for the State Employee and Retiree Health and Welfare Benefits Program (60% general funds, 30% special fund, and 10% federal funds) increase by *as much as* \$716,000 in FY 2020, as discussed below. Future years reflect annualization and inflation.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	\$0	-	\$0	\$0	\$0
GF Expenditure	\$0	\$429,600	\$876,400	\$894,000	\$902,900
SF Expenditure	\$0	\$214,800	\$438,200	\$447,000	\$451,500
FF Expenditure	\$0	\$71,600	\$146,100	\$149,000	\$150,500
Net Effect	\$0	(\$716,000)	(\$1,460,700)	(\$1,489,900)	(\$1,504,800)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** To the extent the bill increases the cost of health insurance, expenditures for local governments that purchase fully insured health insurance policies increase. Revenues are not affected.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** Under Chapters 436 and 437 of 2016 (the Contraceptive Equity Act), 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.

Under the federal Patient Protection and Affordable Care Act, most health plans must cover all FDA-approved contraceptive methods for women, as prescribed by a health care provider. Services must be covered without a copayment or coinsurance when provided by an in-network provider.

**Background:** According to FDA, four methods of contraception can be obtained over the counter without a prescription: (1) sponge with spermicide; (2) male condom; (3) female condom; and (4) spermicide. With the exception of male condoms, all of these methods, if prescribed by a health care provider, are currently covered for women by most health plans.

The male condom is 98% effective at preventing pregnancy with perfect use. However, the method's failure rate increases to 18% with typical use. Male (and female) condoms are the only contraceptive methods available that protect against sexually transmitted infections and HIV in addition to preventing pregnancy.

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, therefore, advises that the State Employee and Retiree Health and Welfare Benefits Program is generally not subject to 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.

**State Expenditures:** Although not required to follow health insurance mandates, the State Employee and Retiree Health and Welfare Benefits Program generally does. Thus,

expenditures for the program (60% general funds, 30% special funds, 10% federal funds) increase by at least \$263,953 and by as much as \$716,040 in fiscal 2020, which reflects the January 1, 2020 effective date of the mandate. This estimate reflects the cost to provide coverage of male condoms for the first half of the calendar 2020 plan year only. The information and assumptions used in calculating the estimate are stated below.

- About 78,000 participants aged 18 to 44 years of age and dependents ages 15 to 26 years of age are covered under the program.
- Between 9.4% (7,332) and 10.2% (7,956) elect to use male condoms as a form of contraception.
- The average cost per condom ranges from \$0.75 to \$1.25.
- An average of 8 to 12 condoms per month (or 96 to 144 condoms per year) will be purchased by individuals covered under the program.
- The expected cost to cover male condoms ranges from \$527,904 to \$1,432,080 on an annualized basis in the first year. Future years reflect inflation.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Guttmacher Institute; U.S. Food and Drug Administration; Department of Budget and Management; Maryland Department of Health; Maryland Health Benefit Exchange; Department of Legislative Services

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