

AMENDED IN SENATE APRIL 22, 2014

AMENDED IN SENATE APRIL 9, 2014

SENATE BILL

No. 1053

Introduced by Senator Mitchell

(Coauthors: Senators DeSaulnier, Evans, and Wolk)

(Coauthors: Assembly Members Ammiano, Garcia, Mullin, Skinner, Ting, and Wieckowski)

February 18, 2014

An act to amend Section 1367.25 of the Health and Safety Code, and to amend Section 10123.196 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1053, as amended, Mitchell. Health care coverage: contraceptives.

Existing law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various reforms to the health insurance market. Among other things, PPACA requires a nongrandfathered group health plan and a health insurance issuer offering group or individual insurance coverage to provide coverage for and not impose cost sharing requirements for certain preventive services, including those preventive care and screenings for women provided in specified guidelines. PPACA requires those plans and issuers to provide coverage without cost sharing for all federal Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity, as prescribed by a provider, except as specified.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful

violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan contract or health insurance policy that provides coverage for outpatient prescription drug benefits to provide coverage for a variety of federal Food and Drug Administration (FDA) approved prescription contraceptive methods designated by the plan or insurer, except as specified. Existing law authorizes a religious employer, as defined, to request a contract or policy without coverage of FDA approved contraceptive methods that are contrary to the employer's religious tenets and, if so requested, requires a contract or policy to be provided without that coverage. Existing law requires an individual or small group health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2014, to cover essential health benefits, which are defined to include the health benefits covered by particular benchmark plans.

This bill would require a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2015, to provide coverage for all FDA approved contraceptive drugs, devices, and products ~~in each contraceptive category outlined by the FDA~~, as well as voluntary sterilization procedures ~~and~~, contraceptive education and counseling, *and related followup services*. The bill would prohibit a nongrandfathered plan contract or health insurance policy from imposing any cost-sharing requirements or other restrictions or delays with respect to this coverage, except as specified. The bill would also authorize a plan or insurer to require a prescription to trigger coverage of FDA approved over-the-counter contraceptive methods and supplies. The bill would retain the provision authorizing a religious employer to request a contract or policy without coverage of FDA approved contraceptive methods that are contrary to the employer's religious tenets. Because a willful violation of the bill's requirements by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) California has a long history of expanding timely access to
4 birth control to prevent unintended pregnancy.

5 (b) The federal Patient Protection and Affordable Care Act
6 includes a contraceptive coverage guarantee as part of a broader
7 requirement for health insurance carriers and plans to cover key
8 preventive care services without out-of-pocket costs for patients.

9 (c) The Legislature intends to build on existing state and federal
10 law to ensure greater contraceptive coverage equity and timely
11 access to all federal Food and Drug Administration approved
12 methods of birth control for all individuals covered by health care
13 service plan contracts and health insurance policies in California.

14 (d) *Medical management techniques such as denials, step*
15 *therapy, or prior authorization in public and private health care*
16 *coverage can impede access to the most effective contraceptive*
17 *methods.*

18 SEC. 2. Section 1367.25 of the Health and Safety Code is
19 amended to read:

20 1367.25. (a) A group health care service plan contract, except
21 for a specialized health care service plan contract, that is issued,
22 amended, renewed, or delivered on or after January 1, 2000,
23 through December 31, 2014, inclusive, and an individual health
24 care service plan contract that is amended, renewed, or delivered
25 on or after January 1, 2000, through December 31, 2014, inclusive,
26 except for a specialized health care service plan contract, shall
27 provide coverage for the following, under general terms and
28 conditions applicable to all benefits:

29 (1) A health care service plan contract that provides coverage
30 for outpatient prescription drug benefits shall include coverage for
31 a variety of federal Food and Drug Administration (FDA) approved
32 prescription contraceptive methods designated by the plan. In the
33 event the patient's participating provider, acting within his or her
34 scope of practice, determines that none of the methods designated
35 by the plan is medically appropriate for the patient's medical or
36 personal history, the plan shall also provide coverage for another
37 FDA approved, medically appropriate prescription contraceptive
38 method prescribed by the patient's provider.

1 (2) Benefits for an enrollee under this subdivision shall be the
2 same for an enrollee’s covered spouse and covered nonspouse
3 dependents.

4 (b) (1) A group or individual health care service plan contract,
5 except for a specialized health care service plan contract, that is
6 issued, amended, renewed, or delivered on or after January 1, 2015,
7 shall provide coverage for all of the following:

8 (A) All FDA approved contraceptive drugs, devices, and
9 ~~products in each contraceptive category outlined by the FDA,~~
10 *products*, including drugs, devices, and products available over
11 the counter, as prescribed by the enrollee’s provider.

12 (B) Voluntary sterilization procedures.

13 (C) Patient education and counseling on contraception.

14 (D) *Followup services related to the drugs, devices, products,*
15 *and procedures covered under this subdivision, including, but not*
16 *limited to, management of side effects, counseling for continued*
17 *adherence, and device removal.*

18 (2) (A) Except for a grandfathered health plan, and subject to
19 subparagraph (B), a health care service plan subject to this
20 subdivision shall not impose a deductible, coinsurance, copayment,
21 or any other cost-sharing requirement on the coverage provided
22 pursuant to this subdivision.

23 (B) A health care service plan may cover a generic drug, device,
24 or product without cost sharing and impose cost sharing for
25 equivalent nonpreferred or branded drugs, devices, or products.
26 However, if a generic version of a drug, device, or product is not
27 available, or is deemed medically inadvisable by the enrollee’s
28 provider, a health care service plan shall provide coverage for the
29 nonpreferred or brand name drug, device, or product without cost
30 sharing.

31 (3) A health care service plan may require a prescription to
32 trigger coverage of FDA approved over-the-counter contraceptive
33 methods and supplies under this subdivision.

34 (4) Except as otherwise authorized under this section, a health
35 care service plan shall not impose any restrictions or delays on the
36 coverage required under this subdivision.

37 (5) Benefits for an enrollee under this subdivision shall be the
38 same for an enrollee’s covered spouse and covered nonspouse
39 dependents.

1 (c) Notwithstanding any other provision of this section, a
2 religious employer may request a health care service plan contract
3 without coverage for FDA approved contraceptive methods that
4 are contrary to the religious employer’s religious tenets. If so
5 requested, a health care service plan contract shall be provided
6 without coverage for contraceptive methods.

7 (1) For purposes of this section, a “religious employer” is an
8 entity for which each of the following is true:

9 (A) The inculcation of religious values is the purpose of the
10 entity.

11 (B) The entity primarily employs persons who share the
12 religious tenets of the entity.

13 (C) The entity serves primarily persons who share the religious
14 tenets of the entity.

15 (D) The entity is a nonprofit organization as described in
16 Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of
17 1986, as amended.

18 (2) Every religious employer that invokes the exemption
19 provided under this section shall provide written notice to
20 prospective enrollees prior to enrollment with the plan, listing the
21 contraceptive health care services the employer refuses to cover
22 for religious reasons.

23 (d) Nothing in this section shall be construed to exclude
24 coverage for contraceptive supplies as prescribed by a provider,
25 acting within his or her scope of practice, for reasons other than
26 contraceptive purposes, such as decreasing the risk of ovarian
27 cancer or eliminating symptoms of menopause, or for contraception
28 that is necessary to preserve the life or health of an enrollee.

29 (e) Nothing in this section shall be construed to deny or restrict
30 in any way the department’s authority to ensure plan compliance
31 with this chapter when a plan provides coverage for contraceptive
32 drugs, devices, and products.

33 (f) Nothing in this section shall be construed to require an
34 individual or group health care service plan contract to cover
35 experimental or investigational treatments.

36 (g) For purposes of this section, the following definitions apply:

37 (1) “Grandfathered health plan” has the meaning set forth in
38 Section 1251 of PPACA.

39 (2) “PPACA” means the federal Patient Protection and
40 Affordable Care Act (Public Law 111-148), as amended by the

1 federal Health Care and Education Reconciliation Act of 2010
2 (Public Law 111-152), and any rules, regulations, or guidance
3 issued thereunder.

4 (3) With respect to health care service plan contracts issued,
5 amended, or renewed on or after January 1, 2015, “provider” means
6 an individual who is certified or licensed pursuant to Division 2
7 (commencing with Section 500) of the Business and Professions
8 Code, or an initiative act referred to in that division, or Division
9 2.5 (commencing with Section 1797).

10 SEC. 3. Section 10123.196 of the Insurance Code is amended
11 to read:

12 10123.196. (a) An individual or group policy of disability
13 insurance issued, amended, renewed, or delivered on or after
14 January 1, 2000, through December 31, 2014, inclusive, that
15 provides coverage for hospital, medical, or surgical expenses, shall
16 provide coverage for the following, under the same terms and
17 conditions as applicable to all benefits:

18 (1) A disability insurance policy that provides coverage for
19 outpatient prescription drug benefits shall include coverage for a
20 variety of federal Food and Drug Administration (FDA) approved
21 prescription contraceptive methods, as designated by the insurer.
22 If an insured’s health care provider determines that none of the
23 methods designated by the disability insurer is medically
24 appropriate for the insured’s medical or personal history, the insurer
25 shall, in the alternative, provide coverage for some other FDA
26 approved prescription contraceptive method prescribed by the
27 patient’s health care provider.

28 (2) Coverage with respect to an insured under this subdivision
29 shall be identical for an insured’s covered spouse and covered
30 nonspouse dependents.

31 (b) (1) A group or individual policy of disability insurance,
32 except for a specialized health insurance policy, that is issued,
33 amended, renewed, or delivered on or after January 1, 2015, shall
34 provide coverage for all of the following:

35 (A) All FDA approved contraceptive drugs, devices, and
36 products ~~in each contraceptive category outlined by the FDA,~~
37 including drugs, devices, and products available over the counter,
38 as prescribed by the insured’s provider.

39 (B) Voluntary sterilization procedures.

40 (C) Patient education and counseling on contraception.

1 (D) *Followup services related to the drugs, devices, products,*
2 *and procedures covered under this subdivision, including, but not*
3 *limited to, management of side effects, counseling for continued*
4 *adherence, and device removal.*

5 (2) (A) Except for a grandfathered health plan, and subject to
6 subparagraph (B), a disability insurer subject to this subdivision
7 shall not impose a deductible, coinsurance, copayment, or any
8 other cost-sharing requirement on the coverage provided pursuant
9 to this subdivision.

10 (B) A disability insurer may cover a generic drug, device, or
11 product without cost sharing and impose cost sharing for an
12 equivalent nonpreferred or branded drug, device, or product.
13 However, if a generic version of a drug, device, or product is not
14 available, or is deemed medically inadvisable by the insured's
15 provider, a disability insurer shall provide coverage for the
16 nonpreferred or brand name drug, device, or product without cost
17 sharing.

18 (3) An insurer may require a prescription to trigger coverage of
19 FDA approved over-the-counter contraceptive methods and
20 supplies under this subdivision.

21 (4) Except as otherwise authorized under this section, an insurer
22 shall not impose any restrictions or delays on the coverage required
23 under this subdivision.

24 (5) Coverage with respect to an insured under this subdivision
25 shall be identical for an insured's covered spouse and covered
26 nonspouse dependents.

27 (c) Nothing in this section shall be construed to deny or restrict
28 in any way any existing right or benefit provided under law or by
29 contract.

30 (d) Nothing in this section shall be construed to require an
31 individual or group disability insurance policy to cover
32 experimental or investigational treatments.

33 (e) Notwithstanding any other provision of this section, a
34 religious employer may request a disability insurance policy
35 without coverage for contraceptive methods that are contrary to
36 the religious employer's religious tenets. If so requested, a
37 disability insurance policy shall be provided without coverage for
38 contraceptive methods.

39 (1) For purposes of this section, a "religious employer" is an
40 entity for which each of the following is true:

1 (A) The inculcation of religious values is the purpose of the
2 entity.

3 (B) The entity primarily employs persons who share the religious
4 tenets of the entity.

5 (C) The entity serves primarily persons who share the religious
6 tenets of the entity.

7 (D) The entity is a nonprofit organization pursuant to Section
8 6033(a)(2)(A)(i) or (iii) of the Internal Revenue Code of 1986, as
9 amended.

10 (2) Every religious employer that invokes the exemption
11 provided under this section shall provide written notice to any
12 prospective employee once an offer of employment has been made,
13 and prior to that person commencing that employment, listing the
14 contraceptive health care services the employer refuses to cover
15 for religious reasons.

16 (f) Nothing in this section shall be construed to exclude coverage
17 for contraceptive supplies as prescribed by a provider, acting within
18 his or her scope of practice, for reasons other than contraceptive
19 purposes, such as decreasing the risk of ovarian cancer or
20 eliminating symptoms of menopause, or for contraception that is
21 necessary to preserve the life or health of an insured.

22 (g) This section shall only apply to disability insurance policies
23 or contracts that are defined as health benefit plans pursuant to
24 subdivision (a) of Section 10198.6, except that for accident only,
25 specified disease, or hospital indemnity coverage, coverage for
26 benefits under this section shall apply to the extent that the benefits
27 are covered under the general terms and conditions that apply to
28 all other benefits under the policy or contract. Nothing in this
29 section shall be construed as imposing a new benefit mandate on
30 accident only, specified disease, or hospital indemnity insurance.

31 (h) For purposes of this section, the following definitions apply:

32 (1) “Grandfathered health plan” has the meaning set forth in
33 Section 1251 of PPACA.

34 (2) “PPACA” means the federal Patient Protection and
35 Affordable Care Act (Public Law 111-148), as amended by the
36 federal Health Care and Education Reconciliation Act of 2010
37 (Public Law 111-152), and any rules, regulations, or guidance
38 issued thereunder.

39 (3) With respect to policies of disability insurance issued,
40 amended, or renewed on or after January 1, 2015, “health care

1 provider” means an individual who is certified or licensed pursuant
2 to Division 2 (commencing with Section 500) of the Business and
3 Professions Code, or an initiative act referred to in that division,
4 or Division 2.5 (commencing with Section 1797) of the Health
5 and Safety Code.

6 SEC. 4. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

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