

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE MAY 28, 2014

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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, without imposing 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, 2016, to provide coverage *for women* for all *prescribed and* FDA approved *female* contraceptive drugs, devices, and products, ~~except as specified~~, as well as voluntary sterilization procedures, 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 *promote gender equity and women's health and to ensure*
11 *greater contraceptive coverage equity and timely access to all*
12 *federal Food and Drug Administration approved methods of birth*
13 ~~control, other than male contraceptives available over the counter,~~
14 ~~for all individuals~~ *control for women* covered by health care service
15 plan contracts and health insurance policies in California.

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

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

22 1367.25. (a) A group health care service plan contract, except
23 for a specialized health care service plan contract, that is issued,
24 amended, renewed, or delivered on or after January 1, 2000,
25 through December 31, 2015, inclusive, and an individual health
26 care service plan contract that is amended, renewed, or delivered
27 on or after January 1, 2000, through December 31, 2015, inclusive,
28 except for a specialized health care service plan contract, shall
29 provide coverage for the following, under general terms and
30 conditions applicable to all benefits:

31 (1) A health care service plan contract that provides coverage
32 for outpatient prescription drug benefits shall include coverage for
33 a variety of federal Food and Drug Administration (FDA) approved
34 prescription contraceptive methods designated by the plan. In the
35 event the patient's participating provider, acting within his or her

1 scope of practice, determines that none of the methods designated
2 by the plan is medically appropriate for the patient's medical or
3 personal history, the plan shall also provide coverage for another
4 FDA approved, medically appropriate prescription contraceptive
5 method prescribed by the patient's provider.

6 (2) Benefits for an enrollee under this subdivision shall be the
7 same for an enrollee's covered spouse and covered nonspouse
8 dependents.

9 (b) (1) A group or individual health care service plan contract,
10 except for a specialized health care service plan contract, that is
11 issued, amended, renewed, or delivered on or after January 1, 2016,
12 shall provide coverage for all of the following *for women*:

13 (A) All FDA approved contraceptive drugs, devices, and
14 products *for women*, including drugs, devices, and products
15 available over the counter, ~~other than male contraceptive drugs,~~
16 ~~devices, and products available over the counter,~~ as prescribed by
17 the enrollee's provider.

18 (B) Voluntary sterilization procedures.

19 (C) Patient education and counseling on contraception.

20 (D) Followup services related to the drugs, devices, products,
21 and procedures covered under this subdivision, including, but not
22 limited to, management of side effects, counseling for continued
23 adherence, and device removal.

24 (2) (A) Except for a grandfathered health plan, and subject to
25 ~~subparagraphs (B) and (C);~~ *subparagraph (B)*, a health care service
26 plan subject to this subdivision shall not impose a deductible,
27 coinsurance, copayment, or any other cost-sharing requirement on
28 the coverage provided pursuant to this subdivision.

29 (B) A health care service plan may cover a *generic or preferred*
30 drug, device, or product without cost sharing and impose cost
31 sharing for equivalent nonpreferred ~~or branded~~ drugs, devices, or
32 products. However, if a *generic or preferred* version of a drug,
33 device, or product is not available, or is deemed medically
34 inadvisable by the enrollee's provider, a health care service plan
35 shall provide coverage for the nonpreferred ~~or brand name~~ drug,
36 device, or product without cost sharing.

37 ~~(C) A health care service plan may impose cost sharing for male~~
38 ~~voluntary sterilization procedures.~~

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

4 ~~(4)~~

5 (3) Except as otherwise authorized under this section, a health
6 care service plan shall not impose any restrictions or delays on the
7 coverage required under this subdivision.

8 ~~(5)~~

9 (4) Benefits for an enrollee under this subdivision shall be the
10 same for an enrollee's covered spouse and covered nonspouse
11 dependents.

12 (c) Notwithstanding any other provision of this section, a
13 religious employer may request a health care service plan contract
14 without coverage for FDA approved contraceptive methods that
15 are contrary to the religious employer's religious tenets. If so
16 requested, a health care service plan contract shall be provided
17 without coverage for contraceptive methods.

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

20 (A) The inculcation of religious values is the purpose of the
21 entity.

22 (B) The entity primarily employs persons who share the
23 religious tenets of the entity.

24 (C) The entity serves primarily persons who share the religious
25 tenets of the entity.

26 (D) The entity is a nonprofit organization as described in
27 Section 6033(a)(2)(A)i or iii, of the Internal Revenue Code of
28 1986, as amended.

29 (2) Every religious employer that invokes the exemption
30 provided under this section shall provide written notice to
31 prospective enrollees prior to enrollment with the plan, listing the
32 contraceptive health care services the employer refuses to cover
33 for religious reasons.

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

1 (e) Nothing in this section shall be construed to deny or restrict
2 in any way the department's authority to ensure plan compliance
3 with this chapter when a plan provides coverage for contraceptive
4 drugs, devices, and products.

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

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

9 (1) "Grandfathered health plan" has the meaning set forth in
10 Section 1251 of PPACA.

11 (2) "PPACA" means the federal Patient Protection and
12 Affordable Care Act (Public Law 111-148), as amended by the
13 federal Health Care and Education Reconciliation Act of 2010
14 (Public Law 111-152), and any rules, regulations, or guidance
15 issued thereunder.

16 (3) With respect to health care service plan contracts issued,
17 amended, or renewed on or after January 1, 2016, "provider" means
18 an individual who is certified or licensed pursuant to Division 2
19 (commencing with Section 500) of the Business and Professions
20 Code, or an initiative act referred to in that division, or Division
21 2.5 (commencing with Section 1797).

22 SEC. 3. Section 10123.196 of the Insurance Code is amended
23 to read:

24 10123.196. (a) An individual or group policy of disability
25 insurance issued, amended, renewed, or delivered on or after
26 January 1, 2000, through December 31, 2015, inclusive, that
27 provides coverage for hospital, medical, or surgical expenses, shall
28 provide coverage for the following, under the same terms and
29 conditions as applicable to all benefits:

30 (1) A disability insurance policy that provides coverage for
31 outpatient prescription drug benefits shall include coverage for a
32 variety of federal Food and Drug Administration (FDA) approved
33 prescription contraceptive methods, as designated by the insurer.
34 If an insured's health care provider determines that none of the
35 methods designated by the disability insurer is medically
36 appropriate for the insured's medical or personal history, the insurer
37 shall, in the alternative, provide coverage for some other FDA
38 approved prescription contraceptive method prescribed by the
39 patient's health care provider.

1 (2) Coverage with respect to an insured under this subdivision
2 shall be identical for an insured's covered spouse and covered
3 nonspouse dependents.

4 (b) (1) A group or individual policy of disability insurance,
5 except for a specialized health insurance policy, that is issued,
6 amended, renewed, or delivered on or after January 1, 2016, shall
7 provide coverage for all of the following *for women*:

8 (A) All FDA approved contraceptive drugs, devices, and
9 products *for women*, including drugs, devices, and products
10 available over the counter, ~~other than male contraceptive drugs,~~
11 ~~devices, and products available over the counter,~~ as prescribed by
12 the insured's provider.

13 (B) Voluntary sterilization procedures.

14 (C) Patient education and counseling on contraception.

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

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

24 (B) A disability insurer may cover a generic *or preferred* drug,
25 device, or product without cost sharing and impose cost sharing
26 for an equivalent nonpreferred ~~or branded~~ drug, device, or product.
27 However, if a generic *or preferred* version of a drug, device, or
28 product is not available, or is deemed medically inadvisable by
29 the insured's provider, a disability insurer shall provide coverage
30 for the nonpreferred ~~or brand-name~~ drug, device, or product without
31 cost sharing.

32 ~~(C) A disability insurer may impose cost sharing for male~~
33 ~~voluntary sterilization procedures.~~

34 ~~(3) An insurer may require a prescription to trigger coverage of~~
35 ~~FDA approved over-the-counter contraceptive methods and~~
36 ~~supplies under this subdivision.~~

37 ~~(4)~~

38 (3) Except as otherwise authorized under this section, an insurer
39 shall not impose any restrictions or delays on the coverage required
40 under this subdivision.

1 ~~(5)~~
2 (4) Coverage with respect to an insured under this subdivision
3 shall be identical for an insured’s covered spouse and covered
4 nonspouse dependents.

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

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

11 (e) Notwithstanding any other provision of this section, a
12 religious employer may request a disability insurance policy
13 without coverage for contraceptive methods that are contrary to
14 the religious employer’s religious tenets. If so requested, a
15 disability insurance policy shall be provided without coverage for
16 contraceptive methods.

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

19 (A) The inculcation of religious values is the purpose of the
20 entity.

21 (B) The entity primarily employs persons who share the religious
22 tenets of the entity.

23 (C) The entity serves primarily persons who share the religious
24 tenets of the entity.

25 (D) The entity is a nonprofit organization pursuant to Section
26 6033(a)(2)(A)(i) or (iii) of the Internal Revenue Code of 1986, as
27 amended.

28 (2) Every religious employer that invokes the exemption
29 provided under this section shall provide written notice to any
30 prospective employee once an offer of employment has been made,
31 and prior to that person commencing that employment, listing the
32 contraceptive health care services the employer refuses to cover
33 for religious reasons.

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

1 (g) This section shall only apply to disability insurance policies
2 or contracts that are defined as health benefit plans pursuant to
3 subdivision (a) of Section 10198.6, except that for accident only,
4 specified disease, or hospital indemnity coverage, coverage for
5 benefits under this section shall apply to the extent that the benefits
6 are covered under the general terms and conditions that apply to
7 all other benefits under the policy or contract. Nothing in this
8 section shall be construed as imposing a new benefit mandate on
9 accident only, specified disease, or hospital indemnity insurance.

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

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

13 (2) “PPACA” means the federal Patient Protection and
14 Affordable Care Act (Public Law 111-148), as amended by the
15 federal Health Care and Education Reconciliation Act of 2010
16 (Public Law 111-152), and any rules, regulations, or guidance
17 issued thereunder.

18 (3) With respect to policies of disability insurance issued,
19 amended, or renewed on or after January 1, 2016, “health care
20 provider” means an individual who is certified or licensed pursuant
21 to Division 2 (commencing with Section 500) of the Business and
22 Professions Code, or an initiative act referred to in that division,
23 or Division 2.5 (commencing with Section 1797) of the Health
24 and Safety Code.

25 SEC. 4. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.