

AMENDED IN SENATE MARCH 29, 2016

SENATE BILL

No. 999

Introduced by Senator Pavley

(Principal coauthor: Senator Hertzberg)

(Principal coauthors: Assembly Members Atkins, Gomez, and Gonzalez)

(Coauthors: Senators Allen, Block, Hall, Hill, Jackson, Leyva, and Wieckowski Wieckowski, and Wolk)

(Coauthors: Assembly Members Burke, Cristina Garcia, Gipson, Levine, McCarty, and Williams)

February 10, 2016

An act to amend Section 4064.5 of the Business and Professions Code, to amend Section 1367.25 of the Health and Safety Code, and to amend Section 10123.196 of the Insurance Code, relating to contraceptives.

LEGISLATIVE COUNSEL'S DIGEST

SB 999, as amended, Pavley. Health insurance: contraceptives: annual supply.

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 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, as well as voluntary sterilization procedures, contraceptive education and counseling, and related followup services.

This bill would require a health care service plan or a health insurance policy issued, amended, ~~or renewed~~ *renewed, or delivered* on or after January 1, 2017, to cover a 12-month supply of FDA-approved, self-administered hormonal contraceptives dispensed at one time by a prescriber, pharmacy, or onsite at a location licensed or authorized to dispense drugs or supplies. 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.

Existing law authorizes a pharmacist to dispense not more than a 90-day supply of a dangerous drug other than a controlled substance pursuant to a valid prescription that specifies an initial quantity of less than a 90-day supply followed by periodic refills of that amount if the patient has met specified requirements, including having completed an initial 30-day supply of the drug. Existing law prohibits a pharmacist from dispensing a greater supply of a dangerous drug if the prescriber indicates "no change to quantity" on the prescription.

This bill would authorize a pharmacist to dispense ~~prescribed, FDA-approved, self-administered hormonal contraceptives either as prescribed or, at the patient's request, in a 12-month supply, unless the prescriber specifically indicates no change to quantity.~~ *FDA-approved, self-administered hormonal contraceptives as provided on the prescription, including a prescription for a 12-month supply, or, when dispensing pursuant to protocols developed by the Board of Pharmacy, up to a 12-month supply at one time.*

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. (a) The Legislature hereby finds all of the
- 2 following:
- 3 (1) California has a long history of, and commitment to,
- 4 expanding access to services that aim to reduce the risk of
- 5 unintended pregnancies and improving reproductive health
- 6 outcomes.

1 (2) California’s Family Planning, Access, Care, and Treatment
2 ~~(PACT) program~~, (*Family PACT*) *Waiver Program* created in
3 1999, is viewed nationally as the “gold standard” of publicly
4 funded programs providing access to reproductive health care. The
5 program has long recognized the value and importance of providing
6 women with a year’s supply of birth control.

7 (3) The Affordable Care Act (ACA) and subsequent federal
8 regulations made contraceptive coverage a national policy by
9 requiring most private health insurance plans to provide coverage
10 for a broad range of preventive services without cost-sharing,
11 including FDA-approved prescription contraceptives.

12 (4) Since the passage of the ACA, many states have passed laws
13 strengthening or expanding this federal contraceptive coverage
14 requirement. In 2014, California passed the Contraceptive
15 Coverage Equity Act of 2014, which requires plans to cover all
16 prescribed FDA-approved contraceptives for women without
17 cost-sharing, and requires plans to cover at least one therapeutic
18 equivalent of a prescribed contraceptive drug, device, or product.

19 (5) Numerous studies support what California has determined
20 for decades in the Family PACT program: dispensing a 12-month
21 supply of birth control at one time has numerous benefits,
22 including, but not limited to, reducing a woman’s odds of having
23 an unintended pregnancy by 30 percent, increasing contraception
24 continuation rates, and decreasing costs per client to insurers by
25 reducing the number of pregnancy tests and pregnancies.

26 (6) Access to contraception is a key element in shaping women’s
27 health and well-being. Nearly all women have used contraceptives
28 at some point in their lives, and 62 percent are currently using at
29 least one method.

30 (7) Several states have mirrored the year-supply requirement
31 for contraceptive coverage in their publicly funded family planning
32 or Medicaid programs, recognizing the health benefits of reducing
33 barriers to continuous and effective use of contraception. Recently,
34 Oregon and Washington D.C. have gone further to require private
35 health care service plans and health insurance policies to also cover
36 a 12-month supply of contraceptives. With California’s history of
37 leadership in establishing public policies that increase access to
38 contraceptives, adopting a similar requirement is a natural
39 progression of our state’s commitment to reducing unintended
40 pregnancy.

(b) It is therefore the intent of the Legislature to expand on California's existing contraceptive coverage policy by requiring all health care service plans and health insurance policies, including both commercial and Medi-Cal managed care plans, to cover a 12-month supply of a prescribed FDA-approved contraceptive, such as the ring, the patch, and oral contraceptives.

SEC. 2. Section 4064.5 of the Business and Professions Code is amended to read:

4064.5. (a) A pharmacist may dispense not more than a 90-day supply of a dangerous drug other than a controlled substance pursuant to a valid prescription that specifies an initial quantity of less than a 90-day supply followed by periodic refills of that amount if all of the following requirements are satisfied:

(1) The patient has completed an initial 30-day supply of the dangerous drug.

(2) The total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the prescription, including refills.

(3) The prescriber has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary.

(4) The pharmacist is exercising his or her professional judgment.

(b) For purposes of this section, if the prescription continues the same medication as previously dispensed in a 90-day supply, the initial 30-day supply under paragraph (1) of subdivision (a) is not required.

(c) A pharmacist dispensing an increased supply of a dangerous drug pursuant to this section shall notify the prescriber of the increase in the quantity of dosage units dispensed.

(d) In no case shall a pharmacist dispense a greater supply of a dangerous drug pursuant to this section if the prescriber personally indicates, either orally or in his or her own handwriting, "No change to quantity," or words of similar meaning. Nothing in this subdivision shall prohibit a prescriber from checking a box on a prescription marked "No change to quantity," provided that the prescriber personally initials the box or checkmark. To indicate that an increased supply shall not be dispensed pursuant to this section for an electronic data transmission prescription as defined in subdivision (c) of Section 4040, a prescriber may indicate "No

1 change to quantity,” or words of similar meaning, in the
2 prescription as transmitted by electronic data, or may check a box
3 marked on the prescription “No change to quantity.” In either
4 instance, it shall not be required that the prohibition on an increased
5 supply be manually initialed by the prescriber.

6 (e) This section shall not apply to psychotropic medication or
7 psychotropic drugs as described in subdivision (d) of Section 369.5
8 of the Welfare and Institutions Code.

9 ~~(f) Except for the provisions of subdivision (d), this section does~~
10 ~~not apply to a prescription for FDA-approved, self-administered~~
11 ~~hormonal contraceptives approved by the FDA. A prescription for~~
12 ~~FDA-approved, self-administered hormonal contraceptives shall~~
13 ~~be dispensed either as provided on the prescription or, at the~~
14 ~~patient’s request, up to a 12-month supply.~~

15 *(f) Except for the provisions of subdivision (d), this section does*
16 *not apply to FDA-approved, self-administered hormonal*
17 *contraceptives.*

18 *(1) A prescription for FDA-approved, self-administered*
19 *hormonal contraceptives shall be dispensed as provided on the*
20 *prescription, including, but not limited to, a prescription for a*
21 *12-month supply.*

22 *(2) When a pharmacist furnishes self-administered hormonal*
23 *contraception pursuant to Section 4052.3 under protocols*
24 *developed by the Board of Pharmacy, he or she may dispense, at*
25 *the patient’s request, up to a 12-month supply at one time.*

26 (g) Nothing in this section shall be construed to require a health
27 care service plan, health insurer, workers’ compensation insurance
28 plan, pharmacy benefits manager, or any other person or entity,
29 including, but not limited to, a state program or state employer, to
30 provide coverage for a dangerous drug in a manner inconsistent
31 with a beneficiary’s plan benefit.

32 SEC. 3. Section 1367.25 of the Health and Safety Code is
33 amended to read:

34 1367.25. (a) A group health care service plan contract, except
35 for a specialized health care service plan contract, that is issued,
36 amended, renewed, or delivered on or after January 1, 2000,
37 ~~through to~~ December 31, 2015, inclusive, and an individual health
38 care service plan contract that is amended, renewed, or delivered
39 on or after January 1, 2000, ~~through to~~ December 31, 2015,
40 inclusive, except for a specialized health care service plan contract,

1 shall provide coverage for the following, under general terms and
2 conditions applicable to all benefits:

3 (1) A health care service plan contract that provides coverage
4 for outpatient prescription drug benefits shall include coverage for
5 a variety of federal Food and Drug Administration (FDA)-approved
6 prescription contraceptive methods designated by the plan. In the
7 event the patient's participating provider, acting within his or her
8 scope of practice, determines that none of the methods designated
9 by the plan is medically appropriate for the patient's medical or
10 personal history, the plan shall also provide coverage for another
11 FDA-approved, medically appropriate prescription contraceptive
12 method prescribed by the patient's provider.

13 (2) Benefits for an enrollee under this subdivision shall be the
14 same for an enrollee's covered spouse and covered nonspouse
15 dependents.

16 (b) (1) A health care service plan contract, except for a
17 specialized health care service plan contract, that is issued,
18 amended, renewed, or delivered on or after January 1, 2016, shall
19 provide coverage for all of the following services and contraceptive
20 methods for women:

21 (A) Except as provided in subparagraphs (B) and (C) of
22 paragraph (2), all FDA-approved contraceptive drugs, devices,
23 and other products for women, including all FDA-approved
24 contraceptive drugs, devices, and products available over the
25 counter, as prescribed by the enrollee's provider.

26 (B) Voluntary sterilization procedures.

27 (C) Patient education and counseling on contraception.

28 (D) Followup services related to the drugs, devices, products,
29 and procedures covered under this subdivision, including, but not
30 limited to, management of side effects, counseling for continued
31 adherence, and device insertion and removal.

32 (2) (A) Except for a grandfathered health plan, a health care
33 service plan subject to this subdivision shall not impose a
34 deductible, coinsurance, copayment, or any other cost-sharing
35 requirement on the coverage provided pursuant to this subdivision.
36 Cost sharing shall not be imposed on any Medi-Cal beneficiary.

37 (B) If the FDA has approved one or more therapeutic equivalents
38 of a contraceptive drug, device, or product, a health care service
39 plan is not required to cover all of those therapeutically equivalent
40 versions in accordance with this subdivision, as long as at least

1 one is covered without cost sharing in accordance with this
2 subdivision.

3 (C) If a covered therapeutic equivalent of a drug, device, or
4 product is not available, or is deemed medically inadvisable by
5 the enrollee's provider, a health care service plan shall provide
6 coverage, subject to a plan's utilization management procedures,
7 for the prescribed contraceptive drug, device, or product without
8 cost sharing. Any request by a contracting provider shall be
9 responded to by the health care service plan in compliance with
10 the Knox-Keene Health Care Service Plan Act of 1975, as set forth
11 in this chapter and, as applicable, with the plan's Medi-Cal
12 managed care contract.

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

16 (4) Benefits for an enrollee under this subdivision shall be the
17 same for an enrollee's covered spouse and covered nonspouse
18 dependents.

19 (5) For purposes of paragraphs (2) and (3) of this subdivision,
20 "health care service plan" shall include Medi-Cal managed care
21 plans that contract with the State Department of Health Care
22 Services pursuant to Chapter 7 (commencing with Section 14000)
23 and Chapter 8 (commencing with Section 14200) of Part 3 of
24 Division 9 of the Welfare and Institutions Code.

25 (c) Notwithstanding any other provision of this section, a
26 religious employer may request a health care service plan contract
27 without coverage for FDA-approved contraceptive methods that
28 are contrary to the religious employer's religious tenets. If so
29 requested, a health care service plan contract shall be provided
30 without coverage for contraceptive methods.

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

33 (A) The inculcation of religious values is the purpose of the
34 entity.

35 (B) The entity primarily employs persons who share the
36 religious tenets of the entity.

37 (C) The entity serves primarily persons who share the religious
38 tenets of the entity.

(D) The entity is a nonprofit organization as described in Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

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

(d) (1) Every health care service plan contract that is issued, amended, renewed, or delivered on or after January 1, 2017, shall cover a 12-month supply of FDA-approved, self-administered hormonal contraceptives dispensed by a prescriber or pharmacy at one time to an enrollee.

(2) If a 12-month supply of FDA-approved, self-administered hormonal contraceptives is dispensed onsite at a location licensed or otherwise authorized to dispense drugs or supplies, the health care service plan shall cover the 12-month supply.

(e) This section shall not be construed to exclude coverage for contraceptive supplies as prescribed by a provider, acting within his or her scope of practice, for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for contraception that is necessary to preserve the life or health of an enrollee.

(f) This section shall not be construed to deny or restrict in any way the department's authority to ensure plan compliance with this chapter when a plan provides coverage for contraceptive drugs, devices, and products.

(g) This section shall not be construed to require an individual or group health care service plan contract to cover experimental or investigational treatments.

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

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

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

(3) With respect to health care service plan contracts issued, amended, or renewed on or after January 1, 2016, "provider" means

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

5 SEC. 4. Section 10123.196 of the Insurance Code is amended
6 to read:

7 10123.196. (a) An individual or group policy of disability
8 insurance issued, amended, renewed, or delivered on or after
9 January 1, 2000, through December 31, 2015, inclusive, that
10 provides coverage for hospital, medical, or surgical expenses, shall
11 provide coverage for the following, under the same terms and
12 conditions as applicable to all benefits:

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

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

26 (b) (1) A group or individual policy of disability insurance,
27 except for a specialized health insurance policy, that is issued,
28 amended, renewed, or delivered on or after January 1, 2016, shall
29 provide coverage for all of the following services and contraceptive
30 methods for women:

31 (A) Except as provided in subparagraphs (B) and (C) of
32 paragraph (2), all FDA-approved contraceptive drugs, devices,
33 and other products for women, including all FDA-approved
34 contraceptive drugs, devices, and products available over the
35 counter, as prescribed by the insured's provider.

36 (B) Voluntary sterilization procedures.

37 (C) Patient education and counseling on contraception.

38 (D) Followup services related to the drugs, devices, products,
39 and procedures covered under this subdivision, including, but not

1 limited to, management of side effects, counseling for continued
2 adherence, and device insertion and removal.

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

7 (B) If the FDA has approved one or more therapeutic equivalents
8 of a contraceptive drug, device, or product, a disability insurer is
9 not required to cover all of those therapeutically equivalent versions
10 in accordance with this subdivision, as long as at least one is
11 covered without cost sharing in accordance with this subdivision.

12 (C) If a covered therapeutic equivalent of a drug, device, or
13 product is not available, or is deemed medically inadvisable by
14 the insured's provider, a disability insurer shall provide coverage,
15 subject to an insurer's utilization management procedures, for the
16 prescribed contraceptive drug, device, or product without cost
17 sharing. Any request by a contracting provider shall be responded
18 to by the disability insurer in compliance with Section 10123.191.

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

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

25 (c) This section shall not be construed to deny or restrict in any
26 way any existing right or benefit provided under law or by contract.

27 (d) This section shall not be construed to require an individual
28 or group disability insurance policy to cover experimental or
29 investigational treatments.

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

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

38 (A) The inculcation of religious values is the purpose of the
39 entity.

1 (B) The entity primarily employs persons who share the religious
2 tenets of the entity.

3 (C) The entity serves primarily persons who share the religious
4 tenets of the entity.

5 (D) The entity is a nonprofit organization pursuant to Section
6 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as
7 amended.

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

14 (f) (1) A group or individual policy of disability insurance,
15 except for a specialized health insurance policy, that is issued,
16 amended, renewed, or delivered on or after January 1, 2017, shall
17 cover a 12-month supply of FDA-approved, self-administered
18 hormonal contraceptives dispensed by a prescriber or pharmacy
19 at one time to an insured.

20 (2) If a 12-month supply of FDA-approved, self-administered
21 hormonal contraceptives is dispensed onsite at a location licensed
22 or otherwise authorized to dispense drugs or supplies, the insurer
23 shall cover the 12-month supply.

24 (g) This section shall not be construed to exclude coverage for
25 contraceptive supplies as prescribed by a provider, acting within
26 his or her scope of practice, for reasons other than contraceptive
27 purposes, such as decreasing the risk of ovarian cancer or
28 eliminating symptoms of menopause, or for contraception that is
29 necessary to preserve the life or health of an insured.

30 (h) This section only applies to disability insurance policies or
31 contracts that are defined as health benefit plans pursuant to
32 subdivision (a) of Section 10198.6, except that for accident only,
33 specified disease, or hospital indemnity coverage, coverage for
34 benefits under this section applies to the extent that the benefits
35 are covered under the general terms and conditions that apply to
36 all other benefits under the policy or contract. This section shall
37 not be construed as imposing a new benefit mandate on accident
38 only, specified disease, or hospital indemnity insurance.

39 (i) For purposes of this section, the following definitions apply:

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

3 (2) “PPACA” means the federal Patient Protection and
4 Affordable Care Act (Public Law 111-148), as amended by the
5 federal Health Care and Education Reconciliation Act of 2010
6 (Public Law 111-152), and any rules, regulations, or guidance
7 issued thereunder.

8 (3) With respect to policies of disability insurance issued,
9 amended, or renewed on or after January 1, 2016, “health care
10 provider” means an individual who is certified or licensed pursuant
11 to Division 2 (commencing with Section 500) of the Business and
12 Professions Code, or an initiative act referred to in that division,
13 or Division 2.5 (commencing with Section 1797) of the Health
14 and Safety Code.

15 SEC. 5. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.