

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2111

By Delegate Pushkin

[Introduced January 11, 2023; Referred to the
Committee on Banking and Insurance then Health
and Human Resources]

1 A BILL to repeal §33-16E-1 of the Code of West Virginia, 1931, as amended; and to amend and
 2 reenact §33-16E-2, §33-16E-4, §33-16E-5, §33-16E-6 and §33-16E-7, all relating to
 3 increasing access to contraceptive drugs, devices, and procedures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16E. CONTRACEPTIVE AND STERILIZATION COVERAGE.

§33-16E-1. Findings; short title.

1 [Repealed]

§33-16E-2. Definitions.

1 For the purposes of this article, these definitions are applicable unless a different meaning
 2 clearly appears from the context.

3 (1) "Contraceptives" means ~~drugs or devices approved by the food and drug administration~~
 4 ~~to prevent pregnancy~~ all drugs and devices approved by the United States Food and Drug
 5 Administration that are used to prevent pregnancy including, but not limited to, hormonal drugs
 6 administered orally, transdermally, and intravaginally.

7 (2) "Covered person" means the policyholder, subscriber, certificate holder, enrollee or
 8 other individual who is participating in, or receiving coverage under a health insurance plan. For
 9 the purposes of this article, covered person does not include a dependent child.

10 (3) "Health insurance plan" means benefits consisting of medical care provided directly,
 11 through insurance or reimbursement, or indirectly, including items and services paid for as medical
 12 care, under any hospital or medical expense incurred policy or certificate; hospital, medical or
 13 health service corporation contract; health maintenance organization contract; fraternal benefit
 14 society contract; plan provided by a multiple-employer trust or a multiple-employer welfare
 15 arrangement; or plan provided by the West Virginia Public Employees Insurance Agency pursuant
 16 to §5-16-1, *et seq.* of this code.

17 (4) "Outpatient contraceptive services" means consultations, examinations, procedures,
 18 and medical services, provided on an outpatient basis and related to the use of prescription

19 contraceptive drugs and devices to prevent pregnancy issued under a health insurance plan that
20 provides benefits for prescription drugs or prescription devices in a prescription drug plan.

21 (5) "Religious employer" is an entity whose sincerely held religious beliefs or sincerely held
22 moral convictions are central to the employer's operating principles, and the entity is an
23 organization listed under 26 U.S.C. 501 (c)(3), 26 U.S.C. 3121, or listed in the Official Catholic
24 Directory published by P.J. Kennedy and Sons.

25 (6) "Sterilization procedure" means a tubal occlusion, vasectomy, or other permanent
26 method of birth control that is undertaken as a surgical procedure.

§33-16E-4. Parity for sterilizations; and prohibiting cost-sharing for contraceptive drugs,
devices, and outpatient services.

1 ~~(a) Health insurance plans that provide benefits for prescription drugs or prescription~~
2 ~~devices in prescription drug plans may not exclude or restrict benefits to covered persons for any~~
3 ~~prescription contraceptive drug or prescription contraceptive device approved by the federal Food~~
4 ~~and Drug Administration. All customary benefit management rules, including, but not limited to,~~
5 ~~drug formularies and coverage criteria may be applied by the health insurance plan.~~

6 ~~(b) Health insurance plans that provide benefits for prescription drugs or prescription~~
7 ~~devices in a prescription drug plan and that provide benefits for outpatient services provided by a~~
8 ~~health care professional may not exclude or restrict outpatient contraceptive services for covered~~
9 ~~persons for prescription contraceptives or prescription devices~~

10 (a) A health insurance plan that is amended, renewed, or delivered on or after January 1,
11 2024, shall provide coverage for the following:

12 (1) Contraceptives

13 (A) If the FDA has designated a therapeutic equivalent of an FDA approved prescription
14 contraceptive, the health insurance plan must include either original FDA approved prescription
15 contraceptive or at least one of its therapeutic equivalent. If there is no therapeutic equivalent, the
16 health insurance plan must include the original.

17 (B) If the covered contraceptive is deemed medically inadvisable by the covered person's
 18 provider, the health Insurance plan shall defer to the determination and judgment of the attending
 19 provider and provide coverage for an alternate prescribed contraceptive.

20 (C) A health insurance plan covering contraceptives must provide reimbursement for up to
 21 a 12-month supply of prescribed contraceptive, and must allow enrollees to receive the 12-month
 22 supply of contraceptives at one time, unless the enrollee request a smaller supply or the
 23 prescribing provider instructed that the enrollee must receive a smaller supply. The health
 24 insurance plan must provide coverage for up to a 12-month supply for a prescription contraceptive
 25 regardless of whether the enrollee was enrolled in the plan at the time the prescription
 26 contraceptive was first prescribed or dispensed.

27 (2) Voluntary sterilization procedures;

28 (3) Patient education and counseling on contraception;

29 (4) Follow-up services related to the drugs, devices, products, and procedures covered
 30 under this section, including, but not limited to, management of side effects, counseling for
 31 continued adherence, and device insertion and removal.

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

36 (c) Nothing in this section shall be construed to require a health carrier to cover
 37 contraceptive drugs provided by a provider or pharmacy or at a location licensed or otherwise
 38 authorized to dispense drugs or supplies, that does not participate in the healthcare provider
 39 network, except as may be otherwise authorized or required by state law or by the plan's policies
 40 governing out-of-network coverage.

§33-16E-5. Extraordinary surcharges prohibited.

1 A health insurance plan is prohibited from:

2 (1) Imposing deductibles, copayments, other cost-sharing mechanisms, or waiting periods,
 3 restrictions, prior authorization, utilization controls, or any other delays on coverage for
 4 prescription contraceptive drugs. ~~or devices greater than deductibles, copayments, other cost-~~
 5 ~~sharing mechanisms or waiting periods for other covered prescription drugs or devices.~~

6 (2) Imposing deductibles, copayments, other cost-sharing mechanisms or waiting periods
 7 ~~for outpatient contraceptive services~~ greater than such deductibles, copayments, other cost-
 8 sharing mechanisms or waiting periods for other covered inpatient or outpatient services for
 9 provision of a sterilization procedure.

§33-16E-6. Additional prohibitions.

1 A health insurance plan is prohibited from:

2 (1) Denying eligibility, enrollment or renewal of coverage to any individual because of their
 3 use or potential use of contraceptives or sterilization services.

4 (2) Providing monetary payments or rebates to covered persons to encourage them to
 5 accept less than the minimum protections available under this section.

6 (3) Penalizing, or otherwise reducing or limiting the reimbursement of a health care
 7 professional because such professional prescribed contraceptive drugs or devices, or provided
 8 contraceptive services.

9 (4) Providing incentives, monetary or otherwise, to a health-care professional to induce
 10 such professional to withhold contraceptive drugs, devices or sterilization or other services from
 11 covered persons.

§33-16E-7. Religious employer exemption.

1 (a) Notwithstanding any other provision of this article, a religious employer may exclude or
 2 restrict from any health-care insurance plan contract benefits for any prescription contraceptive
 3 drugs and devices, or sterilization services that are contrary to the religious employer’s religious
 4 tenets.

5 (b) Nothing in this article shall be construed to exclude coverage for sterilization

6 procedures or prescription contraceptive supplies ordered by a health-care provider with
7 prescriptive authority for reasons other than contraceptive purposes, such as decreasing the risk
8 of ovarian cancer or eliminating symptoms of menopause, or for prescription contraception or
9 sterilization procedures that is necessary to preserve the life or health of an enrollee.

10 (c) The health insurer for every religious employer that invokes the exemption provided
11 under this section shall provide written notice to prospective enrollees prior to enrollment with the
12 plan, listing the contraceptive health-care services and sterilization services the employer refuses
13 to cover for religious reasons. The health insurer shall make available for purchase at the
14 prevailing group rate a rider that provides prescription contraceptive drugs and devices.

NOTE: The purpose of this bill is to provide easier access to contraceptives and sterilization services.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.