SENATE BILL No. 999

Introduced by Senator Pavley
(Principal coauthor: Senator Hertzberg)
(Principal coauthors: Assembly Members Atkins, Gomez, and Gonzalez)
(Coauthors: Senators Allen, Hall, Hill, Jackson, Leyva, and Wieckowski)
(Coauthors: Assembly Members Burke, Cristina Garcia, 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 introduced, 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 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.

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:

SECTION 1. (a) The Legislature hereby finds all of the following:

(1) California has a long history of, and commitment to, expanding access to services that aim to reduce the risk of unintended pregnancies and improving reproductive health outcomes.

(2) California's Family Planning, Access, Care, and Treatment (PACT) program, created in 1999, is viewed nationally as the "gold standard" of publicly funded programs providing access to reproductive health care. The program has long recognized the value and importance of providing women with a year's supply of birth control.

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

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

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

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

(7) Several states have mirrored the year-supply requirement for contraceptive coverage in their publicly funded family planning or Medicaid programs, recognizing the health benefits of reducing barriers to continuous and effective use of contraception. Recently, Oregon and Washington D.C. have gone further to require private health care service plans and health insurance policies to also cover a 12-month supply of contraceptives. With California's history of leadership in establishing public policies that increase access to contraceptives, adopting a similar requirement is a natural progression of our state's commitment to reducing unintended 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 change to quantity," or words of similar meaning, in the prescription as transmitted by electronic data, or may check a box marked on the prescription "No change to quantity." In either instance, it shall not be required that the prohibition on an increased supply be manually initialed by the prescriber.

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

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

~~(f)~~

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

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

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

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

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

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

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

(B) Voluntary sterilization procedures.

(C) Patient education and counseling on contraception.

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

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

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

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

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

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

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

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

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

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

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

(C) The entity serves primarily persons who share the religious 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.

~~(d)~~

(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.

~~(e)~~

(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.

~~(f)~~

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

~~(g)~~

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

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

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

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

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

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

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

(B) Voluntary sterilization procedures.

(C) Patient education and counseling on contraception.

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

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

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

(C) If a covered therapeutic equivalent of a drug, device, or product is not available, or is deemed medically inadvisable by

the insured's provider, a disability insurer shall provide coverage, subject to an insurer's utilization management procedures, for the prescribed contraceptive drug, device, or product without cost sharing. Any request by a contracting provider shall be responded to by the disability insurer in compliance with Section 10123.191.

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

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

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

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

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

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

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

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

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

(D) The entity is a nonprofit organization pursuant to 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 any prospective employee once an offer of employment has been made, and prior to that person commencing that employment, listing the contraceptive health care services the employer refuses to cover for religious reasons.

(f) (1) A group or individual policy of disability insurance, except for a specialized health insurance policy, 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 insured.

(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 insurer shall cover the 12-month supply.

~~(f)~~

(g) 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 insured.

~~(g)~~

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

~~(h)~~

(i) 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 policies of disability insurance issued, amended, or renewed on or after January 1, 2016, "health care provider" means an individual who is certified or licensed pursuant to Division 2 (commencing with Section 500) of the Business and

Professions Code, or an initiative act referred to in that division, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

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

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