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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4313

02/26/2024 Authored by Hollins; Xiong; Virnig; Lee, K., and Freiberg
The bill was read for the first time and referred to the Committee on Health Finance and Policy

1.1 A bill for an act
1.2 relating to health insurance; requiring coverage of over-the-counter contraceptive
1.3 drugs, devices, and products by insurers and medical assistance; requiring reports;
1.4 amending Minnesota Statutes 2023 Supplement, sections 62Q.522, subdivisions
1.5 1, 2, 3; 256B.0625, subdivision 13.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2023 Supplement, section 62Q.522, subdivision 1, is
1.8 amended to read:

1.9 Subdivision 1. Definitions. (a) The definitions in this subdivision apply to this section.

1.10 (b) "Closely held for-profit entity" means an entity that:

1.11 (1) is not a nonprofit entity;

1.12 (2) has more than 50 percent of the value of its ownership interest owned directly or
1.13 indirectly by five or fewer owners; and

1.14 (3) has no publicly traded ownership interest.

1.15 For purposes of this paragraph:

1.16 (i) ownership interests owned by a corporation, partnership, limited liability company,
1.17 estate, trust, or similar entity are considered owned by that entity's shareholders, partners,
1.18 members, or beneficiaries in proportion to their interest held in the corporation, partnership,
1.19 limited liability company, estate, trust, or similar entity;

1.20 (ii) ownership interests owned by a nonprofit entity are considered owned by a single
1.21 owner;

2.1 (iii) ownership interests owned by all individuals in a family are considered held by a
2.2 single owner. For purposes of this item, "family" means brothers and sisters, including
2.3 half-brothers and half-sisters, a spouse, ancestors, and lineal descendants; and

2.4 (iv) if an individual or entity holds an option, warrant, or similar right to purchase an
2.5 ownership interest, the individual or entity is considered to be the owner of those ownership
2.6 interests.

2.7 (c) "Contraceptive method" means a drug, device, or other product approved by the Food
2.8 and Drug Administration to prevent unintended pregnancy and includes prescription
2.9 contraceptives and over-the-counter contraceptives.

2.10 (d) "Contraceptive service" or "service" means consultation, examination, procedures,
2.11 and medical services related to the prevention of unintended pregnancy, excluding
2.12 vasectomies. This includes but is not limited to voluntary sterilization procedures, patient
2.13 education, counseling on contraceptives, and follow-up services related to contraceptive
2.14 methods or services, management of side effects, counseling for continued adherence, and
2.15 device insertion or removal.

2.16 (e) "Eligible organization" means an organization that opposes providing coverage for
2.17 some or all contraceptive methods or services on account of religious objections and that
2.18 is:

2.19 (1) organized as a nonprofit entity and holds itself out to be religious; or

2.20 (2) organized and operates as a closely held for-profit entity, and the organization's
2.21 owners or highest governing body has adopted, under the organization's applicable rules of
2.22 governance and consistent with state law, a resolution or similar action establishing that the
2.23 organization objects to covering some or all contraceptive methods or services on account
2.24 of the owners' sincerely held religious beliefs.

2.25 (f) "Exempt organization" means an organization that is organized and operates as a
2.26 nonprofit entity and meets the requirements of section 6033(a)(3)(A)(i) or (iii) of the Internal
2.27 Revenue Code of 1986, as amended.

2.28 (g) "Medical necessity" includes but is not limited to considerations such as severity of
2.29 side effects, difference in permanence and reversibility of a contraceptive method or service,
2.30 and ability to adhere to the appropriate use of the contraceptive method or service, as
2.31 determined by the attending provider.

3.1 (h) "Over-the-counter contraceptive" or "OTC contraceptive" means a drug, device, or
3.2 other product that does not require a prescription and is approved by the Food and Drug
3.3 Administration to prevent unintended pregnancy.

3.4 (i) "Prescription contraceptive" means a drug, device, or other product that requires a
3.5 prescription and is approved by the Food and Drug Administration to prevent unintended
3.6 pregnancy.

3.7 ~~(h)~~ (j) "Therapeutic equivalent version" means a drug, device, or product that can be
3.8 expected to have the same clinical effect and safety profile when administered to a patient
3.9 under the conditions specified in the labeling, and that:

3.10 (1) is approved as safe and effective;

3.11 (2) is a pharmaceutical equivalent: (i) containing identical amounts of the same active
3.12 drug ingredient in the same dosage form and route of administration; and (ii) meeting
3.13 compendial or other applicable standards of strength, quality, purity, and identity;

3.14 (3) is bioequivalent in that:

3.15 (i) the drug, device, or product does not present a known or potential bioequivalence
3.16 problem and meets an acceptable in vitro standard; or

3.17 (ii) if the drug, device, or product does present a known or potential bioequivalence
3.18 problem, it is shown to meet an appropriate bioequivalence standard;

3.19 (4) is adequately labeled; and

3.20 (5) is manufactured in compliance with current manufacturing practice regulations.

3.21 **EFFECTIVE DATE.** This section is effective January 1, 2025, and applies to health
3.22 plans offered, issued, or renewed on or after that date.

3.23 Sec. 2. Minnesota Statutes 2023 Supplement, section 62Q.522, subdivision 2, is amended
3.24 to read:

3.25 Subd. 2. **Required coverage; cost sharing prohibited.** (a) A health plan must provide
3.26 coverage for contraceptive methods and services.

3.27 (b) A health plan company must not impose cost-sharing requirements, including co-pays,
3.28 deductibles, or coinsurance, for contraceptive methods or services.

3.29 (c) A health plan company must not impose any referral requirements, restrictions, or
3.30 delays for contraceptive methods or services.

4.1 (d) A health plan must include at least one of each type of Food and Drug Administration
 4.2 approved prescription contraceptive ~~method~~ in its formulary. If more than one therapeutic
 4.3 equivalent version of a prescription contraceptive ~~method~~ is approved, a health plan must
 4.4 include at least one therapeutic equivalent version in its formulary, but is not required to
 4.5 include all therapeutic equivalent versions.

4.6 (e) For each health plan, a health plan company must list the prescription contraceptive
 4.7 ~~methods~~ and services that are covered without cost-sharing in a manner that is easily
 4.8 accessible to enrollees, health care providers, and representatives of health care providers.
 4.9 The list for each health plan must be promptly updated to reflect changes to the coverage.

4.10 (f) If an enrollee's attending provider recommends a particular prescription contraceptive
 4.11 ~~method~~ or service based on a determination of medical necessity for that enrollee, the health
 4.12 plan must cover that prescription contraceptive ~~method~~ or service without cost-sharing. The
 4.13 health plan company issuing the health plan must defer to the attending provider's
 4.14 determination that the particular prescription contraceptive ~~method~~ or service is medically
 4.15 necessary for the enrollee.

4.16 (g) A health plan must provide coverage for all types and brands of OTC contraceptives.

4.17 (h) A health plan must provide coverage for OTC contraceptives at the point-of-sale.

4.18 (i) A health plan is prohibited from placing limitations on the type, quantity, or purchase
 4.19 frequency of OTC contraceptives.

4.20 (j) If the application of this subdivision before an enrollee has met the enrollee's health
 4.21 plan's deductible would result in: (1) health savings account ineligibility under United States
 4.22 Code, title 26, section 223; or (2) catastrophic health plan ineligibility under United States
 4.23 Code, title 42, section 18022(e), then this subdivision applies to contraceptive methods and
 4.24 services only after the enrollee has met the enrollee's health plan's deductible.

4.25 **EFFECTIVE DATE.** This section is effective January 1, 2025, and applies to health
 4.26 plans offered, issued, or renewed on or after that date.

4.27 Sec. 3. Minnesota Statutes 2023 Supplement, section 62Q.522, subdivision 3, is amended
 4.28 to read:

4.29 Subd. 3. **Exemption.** (a) An exempt organization is not required to cover ~~contraceptives~~
 4.30 contraceptive methods or ~~contraceptive~~ services if the exempt organization has religious
 4.31 objections to the coverage. An exempt organization that chooses to not provide coverage
 4.32 for some or all ~~contraceptives~~ contraceptive methods and ~~contraceptive~~ services must notify
 4.33 employees as part of the hiring process and to all employees at least 30 days before:

- 5.1 (1) an employee enrolls in the health plan; or
5.2 (2) the effective date of the health plan, whichever occurs first.

5.3 (b) If the exempt organization provides coverage for some contraceptive methods or
5.4 services, the notice required under paragraph (a) must provide a list of the contraceptive
5.5 methods or services the organization refuses to cover.

5.6 Sec. 4. Minnesota Statutes 2023 Supplement, section 256B.0625, subdivision 13, is
5.7 amended to read:

5.8 Subd. 13. **Drugs.** (a) Medical assistance covers drugs, except for fertility drugs when
5.9 specifically used to enhance fertility, if prescribed by a licensed practitioner and dispensed
5.10 by a licensed pharmacist, by a physician enrolled in the medical assistance program as a
5.11 dispensing physician, or by a physician, a physician assistant, or an advanced practice
5.12 registered nurse employed by or under contract with a community health board as defined
5.13 in section 145A.02, subdivision 5, for the purposes of communicable disease control.

5.14 (b) The dispensed quantity of a prescription drug must not exceed a 34-day supply unless
5.15 authorized by the commissioner or as provided in paragraph (h) or the drug appears on the
5.16 90-day supply list published by the commissioner. The 90-day supply list shall be published
5.17 by the commissioner on the department's website. The commissioner may add to, delete
5.18 from, and otherwise modify the 90-day supply list after providing public notice and the
5.19 opportunity for a 15-day public comment period. The 90-day supply list may include
5.20 cost-effective generic drugs and shall not include controlled substances.

5.21 (c) For the purpose of this subdivision and subdivision 13d, an "active pharmaceutical
5.22 ingredient" is defined as a substance that is represented for use in a drug and when used in
5.23 the manufacturing, processing, or packaging of a drug becomes an active ingredient of the
5.24 drug product. An "excipient" is defined as an inert substance used as a diluent or vehicle
5.25 for a drug. The commissioner shall establish a list of active pharmaceutical ingredients and
5.26 excipients which are included in the medical assistance formulary. Medical assistance covers
5.27 selected active pharmaceutical ingredients and excipients used in compounded prescriptions
5.28 when the compounded combination is specifically approved by the commissioner or when
5.29 a commercially available product:

- 5.30 (1) is not a therapeutic option for the patient;
5.31 (2) does not exist in the same combination of active ingredients in the same strengths
5.32 as the compounded prescription; and

6.1 (3) cannot be used in place of the active pharmaceutical ingredient in the compounded
6.2 prescription.

6.3 (d) Medical assistance covers the following over-the-counter drugs when prescribed by
6.4 a licensed practitioner or by a licensed pharmacist who meets standards established by the
6.5 commissioner, in consultation with the board of pharmacy: antacids, acetaminophen, family
6.6 planning products including coverage for all types and brands of over-the-counter
6.7 contraceptives in compliance with section 62Q.522, aspirin, insulin, products for the treatment
6.8 of lice, vitamins for adults with documented vitamin deficiencies, vitamins for children
6.9 under the age of seven and pregnant or nursing women, and any other over-the-counter drug
6.10 identified by the commissioner, in consultation with the Formulary Committee, as necessary,
6.11 appropriate, and cost-effective for the treatment of certain specified chronic diseases,
6.12 conditions, or disorders, and this determination shall not be subject to the requirements of
6.13 chapter 14. A pharmacist may prescribe over-the-counter medications as provided under
6.14 this paragraph for purposes of receiving reimbursement under Medicaid. When prescribing
6.15 over-the-counter drugs under this paragraph, licensed pharmacists must consult with the
6.16 recipient to determine necessity, provide drug counseling, review drug therapy for potential
6.17 adverse interactions, and make referrals as needed to other health care professionals.

6.18 (e) Effective January 1, 2006, medical assistance shall not cover drugs that are coverable
6.19 under Medicare Part D as defined in the Medicare Prescription Drug, Improvement, and
6.20 Modernization Act of 2003, Public Law 108-173, section 1860D-2(e), for individuals eligible
6.21 for drug coverage as defined in the Medicare Prescription Drug, Improvement, and
6.22 Modernization Act of 2003, Public Law 108-173, section 1860D-1(a)(3)(A). For these
6.23 individuals, medical assistance may cover drugs from the drug classes listed in United States
6.24 Code, title 42, section 1396r-8(d)(2), subject to this subdivision and subdivisions 13a to
6.25 13g, except that drugs listed in United States Code, title 42, section 1396r-8(d)(2)(E), shall
6.26 not be covered.

6.27 (f) Medical assistance covers drugs acquired through the federal 340B Drug Pricing
6.28 Program and dispensed by 340B covered entities and ambulatory pharmacies under common
6.29 ownership of the 340B covered entity. Medical assistance does not cover drugs acquired
6.30 through the federal 340B Drug Pricing Program and dispensed by 340B contract pharmacies.

6.31 (g) Notwithstanding paragraph (a), medical assistance covers self-administered hormonal
6.32 contraceptives prescribed and dispensed by a licensed pharmacist in accordance with section
6.33 151.37, subdivision 14; nicotine replacement medications prescribed and dispensed by a
6.34 licensed pharmacist in accordance with section 151.37, subdivision 15; and opiate antagonists

7.1 used for the treatment of an acute opiate overdose prescribed and dispensed by a licensed
7.2 pharmacist in accordance with section 151.37, subdivision 16.

7.3 (h) Medical assistance coverage for a prescription contraceptive must provide a 12-month
7.4 supply for any prescription contraceptive if a 12-month supply is prescribed by the
7.5 prescribing health care provider. The prescribing health care provider must determine the
7.6 appropriate duration for which to prescribe the prescription contraceptives, up to 12 months.
7.7 For purposes of this paragraph, "prescription contraceptive" means any drug or device that
7.8 requires a prescription and is approved by the Food and Drug Administration to prevent
7.9 pregnancy. Prescription contraceptive does not include an emergency contraceptive drug
7.10 approved to prevent pregnancy when administered after sexual contact. For purposes of this
7.11 paragraph, "health plan" has the meaning provided in section 62Q.01, subdivision 3.

7.12 **EFFECTIVE DATE.** This section is effective January 1, 2025.

7.13 Sec. 5. **OUTREACH AND REPORTS.**

7.14 (a) The Department of Commerce must work in conjunction with the Departments of
7.15 Health and Human Services to provide outreach and information to parties affected by
7.16 sections 1 and 2. Affected parties include but are not limited to health plan companies,
7.17 health plan company enrollees, and enrollees of medical assistance and MinnesotaCare.

7.18 (b) The Department of Commerce must work in conjunction with the Departments of
7.19 Health and Human Services to provide a report by March 31, 2026, and annually thereafter,
7.20 to the legislative committees with oversight of issues relating to commerce, health, and
7.21 human services. The report must include information and data regarding the use of coverage
7.22 and related costs to health plans and the state to provide OTC contraceptives.