WEST VIRGINIA CODE CHAPTER 33 ARTICLE 16E

WV Legislature

§33-16E-1. Findings; short title.

(a) This article may be referred to as the "Prescription Fairness Act of 2005."

(b) The Legislature hereby finds and declares that:

(1) Contraceptives prevent unintended pregnancy;

(2) Planned pregnancies lead to healthier pregnancies, children and families; and

(3) Contraceptive coverage provides West Virginians with critical access to birth control.

(4) Therefore, the Legislature finds that prescription contraceptives are basic health-care for West Virginia's women and families and that health insurance plans which include a prescription drug plan should be required to cover contraceptives.

WV Legislature

§33-16E-2. Definitions.

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

(1) "Contraceptives" means drugs or devices approved by the food and drug administration to prevent pregnancy.

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

(3) "Health insurance plan" means benefits consisting of medical care provided directly, through insurance or reimbursement, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate; hospital, medical or health service corporation contract; health maintenance organization contract; fraternal benefit society contract; plan provided by a multiple-employer trust or a multiple-employer welfare arrangement; or plan provided by the West Virginia Public Employees Insurance Agency pursuant to article sixteen, chapter five of this code.

(4) "Outpatient contraceptive services" means consultations, examinations, procedures and medical services, provided on an outpatient basis and related to the use of prescription contraceptive drugs and devices to prevent pregnancy issued under a health insurance plan that provides benefits for prescription drugs or prescription devices in a prescription drug plan.

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

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§33-16E-3. Applicability.

(a) The provisions of this article apply to individual and group health insurance plans issued by accident and sickness insurers; health maintenance organizations; fraternal benefit societies; hospital service corporations; the West Virginia Public Employees Insurance Agency; health-care service corporations; health service corporations; multiple employee trusts; and multiple employer welfare arrangements. The provisions of this section shall not apply to persons eligible for coverage under Title XIX of the Social Security Act, known as Medicaid (42 U.S.C. §1396a et seq.), or for any other similar coverage under state or federal governmental plans.

(b) The provisions of this article do not apply to:

(1) Any policy of liability insurance or contract supplemental thereto; coverage only for accident or disability income insurance or any combination thereof; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; workers' compensation insurance; or other similar insurance under which benefits for medical care are secondary or incidental to other insurance benefits;

(2) If offered separately, a policy providing benefits for long-term care, nursing home care, home health care, community-based care or any combination thereof, dental or vision benefits, or other similar, limited benefits;

(3) If offered as independent, noncoordinated benefits under separate policies or certificates, specified disease or illness coverage, hospital indemnity or other fixed indemnity insurance, or coverage, such as Medicare supplement insurance, supplemental to a group health plan; or

(4) A policy of accident and sickness insurance covering a period of less than one year.

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§33-16E-4. Parity for contraceptive drugs, devices and outpatient services.

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

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

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

A health insurance plan is prohibited from:

(1) Imposing deductibles, copayments, other cost-sharing mechanisms, or waiting periods for prescription contraceptive drugs or devices greater than deductibles, copayments, other cost-sharing mechanisms or waiting periods for other covered prescription drugs or devices.

(2) Imposing deductibles, copayments, other cost-sharing mechanisms or waiting periods for outpatient contraceptive services greater than such deductibles, copayments, other cost-sharing mechanisms or waiting periods for other covered outpatient services.

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§33-16E-6. Additional prohibitions.

A health insurance plan is prohibited from:

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

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

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

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

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

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

(b) Nothing in this article shall be construed to exclude coverage for prescription contraceptive supplies ordered by a health-care provider with prescriptive authority for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for prescription contraception that is necessary to preserve the life or health of an enrollee.

(c) The health insurer for 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. The health insurer shall make available for purchase at the prevailing group rate a rider that provides prescription contraceptive drugs and devices.

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