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HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE SERVICES
ANALYSIS

BILL #: HB 371

RELATING TO: Health Insurance

SPONSOR(S): Representatives Effman and Wasserman Schultz

COMPANION BILL(S): SB 1160 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE SERVICES
(2) INSURANCE
(3) GOVERNMENT OPERATIONS
(4) GENERAL GOVERNMENT APPROPRIATIONS
(5)

I. SUMMARY:

HB 371 creates the "Equity in Prescription Insurance and Contraceptive Coverage Act of 1999." The bill requires health insurance policies and health maintenance contracts that provide coverage for prescription drugs to provide coverage for prescription oral contraceptives to the same extent and subject to the same contract terms, including copayments and deductibles, as any other prescription drug.

In addition, HB 371 provides that a religious health plan sponsor will not be required to provide coverage for oral contraceptives that are contrary to the religious tenets of the religion or religious group. The bill defines the term "religious health plan sponsor" by referring to the federal definition of "church plan" set out in the Employee Retirement Income Security Act of 1974 and its progeny.

The bill also specifies that the Legislature has determined that the act fulfills an important state interest.

This legislation may result in increased costs for state and local government related provisions of employee health benefits. According to the Division of State Group Insurance, enactment of this legislation will result in increased annual costs to the state employee health insurance program of $2.1 million.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Contraceptive Coverage for Women

While most employment-related insurance policies in the United States cover prescription drugs, a vast majority excludes coverage from prescription contraceptive drugs or devices. Insurance companies explain that the reason coverage is not extended to contraceptive drugs or devices is that the purpose of medical insurance is generally to cover illnesses, disabilities, and physical dysfunctions. Drugs, devices, or other contraceptive methods used for the purpose of family planning are generally outside the scope of medical care, from an insurance perspective. Insurance companies further argue that mandated contraceptive coverage would increase the cost of premiums and may force small-business owners into dropping their insurance plans completely.

In 1998, bills mandating contraceptive coverage were introduced in 18 states. In April of 1998, Maryland became the first of these states to pass such legislation. The Maryland law includes a conscience clause that permits a religious organization to obtain an exemption if providing contraceptive services conflicts with its religious beliefs and practices. Six other states--Hawaii, Montana, New Mexico, Texas, Virginia, and West Virginia--have some legal requirement for insurance coverage of contraceptives. Hawaii and Virginia require insurers to offer coverage to employers, and Montana, New Mexico, Texas, and West Virginia require at least some insurance plans to cover some contraceptive care.

Legislation requiring contraceptive coverage also passed at the federal level in 1998. The Omnibus Federal Budget Act includes a provision that requires federal employee health insurance plans to cover prescription contraceptives if the plan pays for other drugs. The federal law provides exemptions for religiously affiliated plans and doctors with moral objections.

According to the American College of Obstetricians and Gynecologists, 90% of health plans cover prescription drugs and devices, but only 49% of indemnity plans cover the five most commonly prescribed reversible methods of conception. These five methods include: birth control pills, Depo Provera, Norplant, the intrauterine device, and the diaphragm.

Close to 50% of all pregnancies in the United States are unintended, and half of all unintended pregnancies end in abortion. A 1994 Florida study showed that 45.8% of pregnancies in Florida were unintended, and 24% of those unintended pregnancies ended in induced abortion. Proponents of legislation calling for contraceptive coverage argue that contraceptives are proven to prevent unintended pregnancies and, as a result, reduce the number of abortions. California research shows that access to contraceptives reduces the probability of having an abortion by 85%. Proponents also argue that providing a policyholder with a monthly supply of birth control pills will cost insurance companies much less than the cost for prenatal care and delivery charges resulting from a woman's unintended pregnancy.

Opponents of contraceptive coverage include religious groups. Such groups are concerned with the moral implications and conscience conflicts that may result from such legislation. Religious opponents argue that employers should not be forced to offer and pay for coverage of birth control when it violates their religious teachings and deeply held moral beliefs.

It should be noted that contraceptives are covered when used for purposes other than for birth control. Doctors prescribe birth control pills for several conditions, including prevention of ovarian cancer, management of painful or heavy menstrual periods, symptoms of menopause, and endometriosis, a painful disease in which the uterine lining grows outside the uterus.

A 1994 study by the Women's Research and Education Institute in Washington, D.C., found that women of reproductive age pay 68 percent more than men in out-of-pocket expenses for health care, and much of this difference in expenditures is due to contraceptive supplies and services. A monthly supply of birth control pills costs between $20 and $30. Insurance companies are more likely to cover abortion services than contraceptives. A vast majority of insurance plans cover sterilization and most insurers pay for vasectomies.

A National Association of Health Plans study asserts that the cost of extending the prescription contraceptive benefit would be $16 per employee each year.

According to the American Journal of Public Health, the managed care cost for one year of contraceptive pills is $422, while the cost of prenatal care and delivery for each unintended pregnancy carried to term is $5,512.

According to a recent study by the Alan Guttmacher Institute, providing coverage for the full range of FDA-approved reversible contraceptive methods would result in a total cost of $21.40 per employee per year. With standard cost-sharing between employers and employees, employers would pay $17.12, which translates into monthly cost of $1.43 per employee. Employers' overall insurance cost would increase by only 0.6%.

Another study cautions that increasing governmentally mandated additional coverage will raise the cost of health insurance enough to discourage individuals who would otherwise opt to carry health insurance coverage, to elect to drop, fail to renew, or otherwise not to obtain health insurance. Dr. William S. Custer, Ph.D., of the Center for Risk Management and Insurance Research at the College of Business Administration at Georgia State University, presented his study on January 6, 1999. Dr. Custer asserts that there is a significant relationship between increases in coverage mandates and increases in the number of individuals lacking health insurance.

A recent poll by the Kaiser Family Foundation (KKF) indicated that America's public supports mandating contraceptive insurance coverage. According to the poll, seventy-eight percent of adults support contraceptive coverage, even if coverage would increase their insurance costs by $5 a month. Among privately insured women, support for contraceptive coverage rises to 88 percent.

The KKF poll also indicated that seven out of ten privately insured Americans and eight out of ten insured women believe that coverage should include all FDA-approved contraceptive methods.

The provisions of chapter 627, F.S., relate to insurance coverage requirements. Part VI of this chapter, consisting of ss. 627.601-627.6499, F.S., relates to health insurance policies. Part VII, consisting of ss. 627.651-627.6699, F.S., relates to group, blanket, and franchise health insurance policies. Section 627.6699, F.S., is the "Employee Health Care Access Act," relating specifically to small employer (50 or fewer employees) group health insurance coverage requirements. In addition, part I of chapter 641, F.S., consisting of ss. 641.17-641.3923, F.S., provides health maintenance organization coverage requirements.

Federal Definition of Church Plan

The term "church plan" is defined in the United States Code under the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA, "church plan" is defined as a plan established and maintained by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26, the Internal Revenue Code. [29 U.S.C. §1002 (1998)] Section 501 of the Internal Revenue Code includes in its list of exempt organizations "corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." Section 501 also exempts "religious and apostolic organizations" if such associations or corporations have a common treasury or community treasury. [26 U.S.C. § 501 (1999)] Both ERISA and the Internal Revenue Code include several conditions and exceptions to what is considered a "church plan" or an organization operated for religious purposes.

B. EFFECT OF PROPOSED CHANGES:

Health insurance policies and health maintenance contracts that provide coverage for prescription drugs will be required to provide coverage for prescription oral contraceptives. A religious health plan sponsor will not be required to provide coverage for oral contraceptives that are contrary to the religious tenets of the religion or religious group.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, certain health insurance policies that provide coverage for prescription drugs must cover prescription oral contraceptives.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

When insurance contracts are entered into or renewed, it is likely that certain additional expenses incurred by the insurance providers will be passed on in part to the insured.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Certain health insurance policies will cover prescription oral contraceptives, giving women additional choices in birth control alternatives.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 627.64061, 627.6515, 627.65741, 627.6699, 641.31, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides that this act may be cited as the “Equity in Prescription Insurance and Contraceptive Coverage Act of 1999.”

Section 2. Provides the legislative findings and intent of the “Equity in Prescription Insurance and Contraceptive Act of 1999" and specifies that the coverage requirements of the bill fulfill an important state interest.

Section 3. Authorizes a religious health plan sponsor to offer a plan that does not provide benefits for prescription oral contraceptives that are contrary to the religious tenets of the religion or religious corporation, association health plan sponsor that meets the definition of “church plan” under ERISA, notwithstanding other provisions of law to the contrary. An exception to the religious exemption includes the exclusion of coverage of prescription oral contraceptives necessary to preserve the life or health of the patient. Nothing in this act shall be construed to require coverage for chemically induced abortions.

Section 4. Creates s. 627.64061, F.S., relating to coverage for prescription contraceptives, to provide that any health insurance policy that provides coverage for outpatient prescription drugs shall cover prescription oral contraceptives to the same extent and subject to the same contract terms, including copayments and deductibles, as any other prescription drug.

Section 5. Amends s. 627.6515, F.S., relating to out-of-state group health insurance policies, to specify that such group insurance contracts that provide coverage for outpatient prescription drugs shall cover prescription oral contraceptives as specified in s. 627.65741, F.S., as created by section 6 of this bill.

Section 6. Creates s. 627.65741, F.S., relating to coverage for prescription contraceptives, to provide that any group, franchise, accident, or health insurance policy that provides coverage for outpatient prescription drugs shall cover prescription oral contraceptives to the same extent and subject to the same contract terms, including copayments and deductibles, as any other prescription drug.

Section 7. Amends s. 627.6699, F.S., relating to small employer group health insurance coverage requirements, to specify that such group insurance contracts that provide coverage for outpatient prescription drugs shall cover prescription oral contraceptives as specified in s. 627.65741, F.S., as created by section 6 of this bill.

Section 8. Creates s. 641.31(36), F.S., relating to health maintenance contracts, to provide that health maintenance contracts that provide coverage for outpatient prescription drugs shall cover prescription oral contraceptives to the same extent and subject to the same contract terms, including copayments and deductibles, as any other prescription drug.

Section 9. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

According to the Division of State Group Insurance, enactment of this legislation will result in increased annual costs to the state employee health insurance program of $2.1 million.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See item 2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

An initial increase in insurance contract costs due to increased contraceptive costs may be reduced over time as a result of reductions in costs for pregnancy coverage.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Insurance premiums will likely increase to cover the cost of these enhanced benefits.

2. Direct Private Sector Benefits:

Women who have health insurance may be provided expanded coverage for birth control.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require counties and municipalities to spend funds or to take actions requiring the expenditure of funds related to the provision of employee health benefits. This expenditure would apply to all persons similarly situated. To the extent that the bill does indiciate that the Legislature determines that the bill constitutes an important state interest, an exemption should be granted from any mandate concerns.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by: Staff Director:

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