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DATE: April 18, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 381
RELATING TO: Health Insurance/Oral Contraceptives
SPONSOR(S): Representative Rich and others
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH PROMOTION YEAS 9 NAYS 3
 - (2) INSURANCE
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4) COUNCIL FOR HEALTHY COMMUNITIES
 - (5)
-

I. SUMMARY:

While most employment-related insurance policies in the United States cover prescription drugs, many plans exclude coverage for prescription contraceptive drugs.

The Equal Employment Opportunity Commission (EEOC) is a federal administrative agency regulating unfair employment practices by employers with more than 25 employees. Aggrieved persons must file employment discrimination charges with the EEOC prior to filing a lawsuit. The EEOC has issued a decision concluding there was reasonable cause to believe that two respondents had engaged in an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, by failing to offer insurance coverage for the cost of prescription contraceptive drugs while offering prescription coverage for other preventative treatments. There has been no judicial determination on the merits in this case and the case is unresolved.

This bill would require any individual or group health insurance policy or health maintenance contract providing coverage for outpatient prescription drugs to also cover prescription oral contraceptives. The bill's provisions would also apply to group coverage by out-of-state groups and to small employer carriers issuing health benefit plans. The Department of Insurance would be responsible for regulating insurer compliance with this mandate. This bill would provide an exclusion from the mandate for a religious health plan sponsor.

Section 624.215, F.S., requires any proposal for legislation which mandates a health benefit coverage to be submitted with a report to the Agency for Health Care Administration, and the legislative committee having jurisdiction, which assesses the social and financial impacts of the proposed coverage. A report has been provided.

The bill would have a fiscal impact on the state of approximately \$2.1 million for the FY 2002-03 and an indeterminate fiscal impact on local government. The study identifies a fiscal impact upon the private sector of \$21.40 per employee, per year, and \$17.16 per employer, per year. [The study does not indicate whether this is the employer's total cost per year or the cost per employee, per year.]

This bill provides an effective date of October 1, 2001.

On March 27, 2001, the Committee On Health Promotion adopted a "remove everything" amendment that is traveling with the bill. See Section VI. of this analysis for an explanation.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill would require individual and group health insurance policies and health maintenance contracts providing coverage for outpatient prescription drugs to also provide coverage for prescription oral contraceptives. The Department of Insurance would be responsible for regulating insurer compliance with this mandate.

2. Lower Taxes Yes No N/A
3. Individual Freedom Yes No N/A
4. Personal Responsibility Yes No N/A
5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Health Plan Coverage of Oral Contraceptives

According to the American College of Obstetricians and Gynecologists, 90 percent of health plans cover prescription drugs and devices, but only 49 percent of 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. Currently, there are three types of FDA-approved oral contraceptives: the combined pill; the Progestin-only minipill; and emergency contraceptives. Contraceptives are often covered when used for medical treatment purposes other than for birth control.

Contraceptive Coverage for Women

While most employment-related insurance policies in the United States cover prescription drugs, many plans exclude coverage from prescription contraceptive drugs or devices.

Thirteen states have passed legislation mandating insurance coverage of contraceptives when a policy covers prescription drugs or devices: California, Connecticut, Delaware, Georgia, Hawaii, Iowa, Maine, Maryland, Nevada, New Hampshire, North Carolina, Rhode Island, and Vermont. Legislation requiring contraceptive coverage for federal employees passed 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 religious-affiliated plans and doctors with moral objections.

Costs of Contraceptives

A National Association of Health Plans study suggests 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.

Equal Employment Opportunity Commission

The Commission

The Equal Employment Opportunity Commission (EEOC) is a federal administrative agency regulating unfair employment practices by employers with more than 25 employees. The EEOC enforces, among other federal laws, Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Title VII includes the Pregnancy Discrimination Act, which requires equal treatment of women “affected by pregnancy, childbirth, or related medical conditions” in all aspects of employment, including the receipt of fringe benefits. Aggrieved persons must file employment discrimination charges with the EEOC prior to filing a lawsuit.

The EEOC has little enforcement authority of its own; rather, it seeks the assistance of the courts when unable to resolve a complaint. Also, EEOC decisions may have precedential value in relation to other proceedings within the EEOC, but they have little effect beyond the parties involved. If the charged party resolves the claim or there is “no reasonable cause” found, a decision on the merits by a court of law does not occur.

EEOC Decision Relating to Oral Contraceptives Coverage

On December 14, 2000, the Commission issued a decision, based on the facts presented, concluding there was reasonable cause to believe that two respondents¹ had engaged in an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964, by failing to offer insurance coverage for the cost of prescription contraceptive drugs and devices while offering prescription coverage for other preventative treatments.

The EEOC found the failure to offer the coverage violated the Pregnancy Discrimination Act because Congress intended to prohibit discrimination against women based on the whole range of matters concerning the childbearing process, presumably including the period prior to conception. The Commission directed the respondents to cover the cost of providing the prescriptive contraceptives to the same extent that those plans cover other preventative treatments and provide the full range of prescriptive contraceptive choices.

The case remains unresolved. The EEOC is required to attempt to conciliate the matter. Should the conciliation be unsuccessful, the EEOC may file suit against the employer or issue a “notice of right to sue” to the aggrieved parties. There has been no judicial determination on the merits in this case, only the EEOC’s decision that there is reasonable cause to believe employment discrimination occurred.

Health Insurance Mandates

State laws frequently require private health insurance policies and health maintenance organization (HMO) contracts to include specific coverages for particular treatments, conditions, persons, or providers. These are commonly referred to as “mandated [health] benefits.” These mandated benefits affect plans covering an estimated 33 percent of all Floridians and 40 percent of insured Floridians. Self-funded plans provided by employers are not affected by these mandated benefit requirements because the federal Employee Retirement Income Security Act of 1974 (ERISA) generally preempts state regulation of these plans.

¹ The EEOC decision notes that the two employers were under common ownership.

On January 28, 2000, the House Committee on Insurance published its interim project entitled "Managing Mandated Health Benefits: Policy Options for Consideration." Key findings of the report included the following:

- Florida has more mandated benefits than nearly every other state;
- An estimated 33 percent of all Floridians are covered under health plans subject to mandated benefits;
- It is not always apparent in statute which health plans are subject to which state-mandated health benefits;
- The costs of mandated benefits in Florida have not been calculated; and
- The statutorily-prescribed provisions for managing mandated benefits legislation have not been followed.

By most measures, Florida has more mandated benefits than nearly every other state. The Committee identified 51 mandated health benefits applicable to either private insurer or health maintenance plans. In a separate count, BlueCross BlueShield Association placed the number of mandates in Florida Statutes at 44—the second highest in the nation, compared to an average of 25 among all states. [Source: BlueCross BlueShield Association, State Legislative Health Care and Insurance Issues.]

Section 624.215, F.S., requires any proposal for legislation which mandates a health benefit coverage be submitted with a report to the Agency for Health Care Administration and the legislative committee having jurisdiction which assesses the social and financial impacts of the proposed coverage.

C. EFFECT OF PROPOSED CHANGES:

The bill would require certain health insurance policies and health maintenance contracts providing coverage for outpatient prescription drugs to also provide coverage for prescription oral contraceptives. The bill's provisions also apply to group coverage by out-of-state groups and to small employer carriers issuing health benefit plans. The bill provides an exclusion for plans provided by religious health plan sponsors.

Please see section V. of this analysis.

D. SECTION-BY-SECTION ANALYSIS:

Preamble. The bill would provide a series of "Whereas" clauses that describes a federal Equal Employment Opportunity Commission administrative decision on the requirement of the availability of oral contraceptive prescriptive coverage and the need for this bill to provide authority to the Department of Insurance to compel compliance with that decision by employer, insurers, and health plans. The bill would provide legislative findings and intent including a statement that the bill constitutes an important state interest.

Section 1. Creates an unnumbered section that would provide that this act may be cited as the "Equity in Prescription Insurance and Contraceptive Coverage Act."

Section 2. Creates an unnumbered section that would list legislative findings and intent providing background relating to unintended pregnancies, the need for oral contraceptive prescriptive coverage, and the cost effectiveness of such coverage, and also providing that the enactment of this bill constitutes an important state interest.

Section 3. Creates an unnumbered section that would provide an optional exclusion for plans and policy holders of plans provided by religious health plan sponsors from the requirements of ss. 627.64061 or 627.65741, F.S. "Religious health plan sponsor" is defined as "a health plan sponsor that meets the definition of church plan under s. 3(33) of the federal Employee Retirement Income Security Act (ERISA) of 1974." The bill would prohibit the exclusion of prescription oral contraceptives coverage necessary to preserve the life or health of the patient.

The bill would direct that nothing in this bill shall be construed to require coverage for chemically induced abortions.

Section 4. Creates s. 627.64061, F.S., relating to coverage for prescription oral contraceptives. Requires that individual health insurance policies governed by part IV of chapter 627, F.S., that provide coverage for outpatient prescription drugs must also provide coverage for prescription oral contraceptives prescribed by a practitioner authorized by the state to prescribe the medication. Requires the coverage to be provided 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(2)(c), F.S., relating to out-of-state group health insurance policies, requiring that such plans provide benefits as specified in s. 627.65741, F.S., relating to coverage for prescription oral contraceptives.

Section 6. Creates s. 627.65741, F.S., relating to coverage for prescription oral contraceptives. Requires any group, franchise, accident, or health insurance policy providing coverage for outpatient prescription drugs to also provide coverage for prescription oral contraceptives prescribed by a practitioner authorized by the state to prescribe the medication. Requires the coverage to be provided 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(12)(b), F.S., relating to the Employee Health Care Access Act, to add a statutory reference to s. 627.65741, F.S., relating to coverage for prescription oral contraceptives.

Section 8. Amends s. 641.31, F.S., relating to health maintenance contracts, to require that contracts providing coverage for outpatient prescription drugs also provide coverage for prescription oral contraceptives prescribed by a practitioner authorized by the state to prescribe the medication when the practitioners are under the organization's direct employ, under contract, or other arrangement with the organization to provide health care services to subscribers. Requires the coverage to be provided to the same extent and subject to the same contract terms, including copayments, as any other prescription medication.

Section 9. Provides for an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

This bill would not affect Medicaid.

The Division of State Group Insurance estimates that it would incur approximately \$21,000 in administrative costs and approximately \$2.106 million in operational costs to add the benefit to the state Preferred Provider Organization plan for fiscal year 2002-2003. The bill would have no fiscal impact on expenditures for state employee HMOs, as current benefits provide coverage for contraceptive services including, prescription drugs, contraceptive supplies, tubal ligations, and vasectomies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private employers in this state would have to bear the additional cost of providing prescription oral contraceptive benefits. It is unclear what, if any, difference in price per plan participant this change in benefits would actually involve. The study submitted pursuant to s. 624.215, F.S., identifies a fiscal impact upon the private sector of \$21.40 per employee, per year, and \$17.16 per employer, per year. [The study does not indicate whether this is the employer's total cost per year or the cost to the employer per employee, per year.]

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

While HB 381 may require cities and counties to spend funds, it applies to all persons similarly situated; that is, in this case, all insurers, be they a private company or self-insured public entity, would have to provide the benefit, and all purchasers of insurance would pay for the benefit. Further, the bill contains a legislative determination that it meets an important state interest.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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:

A. CONSTITUTIONAL ISSUES:

The traveling “remove everything” amendment adopted by the Committee on Health Promotion raises an issue regarding the delegation of legislative authority. Article III, section 1, of the Florida Constitution vests the legislative power of the State of Florida in the Legislature. Section 624.215, F.S., expresses the Legislature’s intent regarding health benefit mandates, stating the Legislative intent to conduct a systematic review of proposed health benefit mandates. The traveling “remove everything” amendment requires insurers regulated by the State of Florida to comply with health benefit mandates pursuant to the decisions of the federal Equal Employment Opportunity Commission, a federal employment regulatory agency.

B. RULE-MAKING AUTHORITY:

Although the department is directed to ensure compliance with EEOC decisions relative to this issue, the bill does not provide specific rulemaking authority to the department to promulgate rules that would put insurers on notice of, among other things, the particular EEOC decisions that will require compliance and the method of determining compliance.

C. OTHER COMMENTS:

Health insurers, who are not regulated as insurers by EEOC decisions regulating employers, would be required to provide coverage for prescription oral contraceptives. The bill would require insurers to provide coverage for prescription oral contraceptives in health insurance products sold – including insurance products sold to persons and employers not within the EEOC’s jurisdiction.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 27, 2001, the Committee on Health Promotion adopted a “remove everything” amendment. The amendment would require that benefits, exclusions, and limitations of individual health insurance policies, group carriers, small employer carriers, and health maintenance providers comply with and be consistent with decisions of the EEOC which hold that exclusion or limitation of a specific benefit related to contraceptive coverage when other preventative benefits are covered violates Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA) of 1978. The Department of Insurance would determine compliance when approving forms. The effective date would be changed from October 1, 2001, to July 1, 2001.

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

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