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BILL ANALYSIS

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Senate Bills 41 and 42 (as introduced 1-24-07)
Sponsor: Senator Martha G. Scott (S.B. 41)
Senator Gilda Z. Jacobs (S.B. 42)
Committee: Health Policy

Date Completed: 5-12-08

**CONTENT**

Senate Bills 41 and 42 would amend the Insurance Code and the Nonprofit Health Care Corporation Reform Act, respectively, to require a policy or certificate that provides prescription coverage to include coverage for any prescribed drug or device approved by the U.S. Food and Drug Administration for use as a contraceptive.

The coverage required under the bills could not be subject to any dollar limit, copayment, deductible, or coinsurance provision that did not apply to prescription coverage generally.

Senate Bill 41 would apply to an expense-incurred hospital, medical, or surgical policy or certificate delivered, issued for delivery, or renewed in this State, and to a health maintenance organization group or individual contract. Senate Bill 42 would apply to a Blue Cross and Blue Shield of Michigan certificate.

Proposed MCL 500.3406s (S.B. 41)
Proposed MCL 550.1416e (S.B. 42)

**BACKGROUND**

On August 21, 2006, the Michigan Civil Rights Commission issued a declaratory ruling on the question of whether an employer's exclusion of prescription contraceptives from a health plan that covers other prescription drugs violates the Elliot-Larsen Civil Rights Act (ELCRA).

The Commission noted that contraceptives are sometimes prescribed for reasons other than pregnancy prevention. Also, a physician might prescribe contraceptives because a woman is at a heightened risk for developing dangerous medical conditions associated with pregnancy. In light of these facts, the Commission opined that contraceptives should be considered part of a comprehensive health plan.

The ELCRA prohibits an employer from discriminating against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of sex. "Sex" includes pregnancy, childbirth, or a medical condition related to pregnancy or childbirth (excluding nontherapeutic abortion not intended to save the mother's life). The Commission's ruling states, "The language of ELCRA clearly prohibits employers from excluding prescription contraceptive coverage. Such an exclusion would mean that the employer is treating women differently based on sex." In addition to the language of the

statute, the Commission cited past decisions of the U.S. Equal Employment Opportunity Commission and Federal courts upholding the conclusion that an employer's failure to cover contraceptives, whether used for contraceptive purposes or for the treatment of other conditions, on the same terms that it covers other prescriptions is a violation of Title VII of the Federal Civil Rights Act, as amended by the Pregnancy Discrimination Act. (Title VII applies to employers with at least 15 employees.)

The Commission also stated that an exception from the requirement to provide equitable contraceptive coverage should be made for a religious employer, i.e., an entity that meets all of the following criteria:

-- The entity is a nonprofit organization under the Internal Revenue Code.
-- The entity's purpose is the inculcation of religious values.
-- The entity employs primarily people who share its religious tenets.
-- The entity serves primarily people who share its religious tents.

Under the ruling, all employers in Michigan are subject to the same requirements as employers covered under Title VII.

Legislative Analyst: Julie Cassidy

**FISCAL IMPACT**

The bills would require insurers to cover contraceptives in the same manner that other pharmaceuticals are covered. As the State's Medicaid program and State employees both have contraceptive coverage, the bills should not have a fiscal impact on the State. To the extent that health insurance for local units does not cover contraceptive services, there could be a slight increase in direct costs.

Fiscal Analyst: Matthew Grabowski