Legislative Analysis

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MANDATE HEALTH INSURANCE COVERAGE FOR FDA-APPROVED CONTRACEPTIVES

House Bill 5156
Sponsor: Rep. Pam Byrnes

House Bill 5157
Sponsor: Rep. Sarah Roberts
Committee: Judiciary

Complete to 9-8-09

A SUMMARY OF HOUSE BILLS 5156 AND 5157 AS INTRODUCED 6-25-09

Generally speaking, the bills would require that health insurance policies and similar contracts that provide coverage for prescriptions include coverage for any prescribed drug or device approved for use as a contraceptive by the U.S. Food and Drug Administration.

Such coverage could not be subject to any dollar limit, copayment, deductible, or coinsurance provision that did not apply to prescription coverage generally. The bills have an effective date of January 1, 2010.

House Bill 5156 would amend the Insurance Code to apply to expense-incurred hospital, medical, or surgical policies or certificates of commercial health insurers, and to health maintenance organizations (HMOs) group or individual contracts. (MCL 500.3406s)

House Bill 5157 would amend the Nonprofit Health Care Corporation Reform Act, which regulates Blue Cross and Blue Shield of Michigan, to apply to group and nongroup certificates of BCBM. (MCL 550.1416e)

FISCAL IMPACT:

The bills would have no significant impact on the Department of Energy, Labor, and Economic Growth - Office of Financial and Insurance Regulation in administering the insurance mandates as set forth in the legislation. Beyond that, however, the bills would have some cost implications (new costs and potential cost savings), which are indeterminate at this time, for the state, local units of government, and private entities to the extent health insurance plans do not currently provide coverage for prescription contraceptives. At present, 27 states have mandated insurance coverage for prescription contraceptives.[1]

[1] *Insurance Coverage of Contraceptives*, State Policies in Brief, Guttmacher Institute, September 1, 2009, [http://www.guttmacher.org/statecenter/spibs/spib_ICC.pdf]. On this topic generally, the Congressional Budget Office notes, "[b]enefit mandates ensure that enrollees who may need those services will have coverage for them, but they also tend to raise insurance premiums in order to cover the added costs of the services. The extent of the premium increase resulting from a mandate would depend not only on the costs of the services involved and the likelihood they would be used by enrollees but also on whether health insurance policies would have covered those services in the absence of a mandate." See, *Key Issues in Analyzing Major Health Insurance Proposals*, Congressional Budget Office, December 2008, [http://www.cbo.gov/ftpdocs/99xx/doc9924/12-18-KeyIssues.pdf].

The Council for Affordable Health Insurance, for instance, notes that mandated contraceptive coverage increases the cost of health insurance by 1% to 3%.[2] Additionally, a number of states have reviewed the cost implications of a prescription contraceptive insurance mandate under its mandated benefits review law.[3] In a November 1996 study, the Virginia Special Advisory Commission on Mandated Health Insurance Benefits found, in a survey of insurance providers, that adding a prescription contraceptive mandate would increase monthly premiums by $0.06 to $3.90 per month for group policy holders and by $0.82 to $1.50 per month for individual policy holders, and, based on submitted comments, would impose additional administrative costs on insurers of $16 per enrollee.[4]

In a May 2000 report, the Pennsylvania Health Care Cost Containment Council (PHC4) noted that one insurer (Capital Blue Cross) estimated the monthly per member impact to be between $1.50 and $3.00, while administrative costs on insurers were estimated to be $21.40 per year per member.[5] In a November 2006 report, the New Mexico Health Policy Commission found that the average total cost (including administrative costs) of adding coverage for contraceptives was $25.31 per employee per year, which approximately equated to an increase on employers of less than 1%.[6] In a January 2008 study, the Maryland Health Care Commission found that the state's prescription contraceptive mandate increased group health insurance premiums by 0.6%.[7]

Beyond the potential impact on insurance premiums, a prescription contraceptive mandate has the potential to decrease health care costs through the avoidance of unintended pregnancies, including the necessary costs of pre-natal care, hospital stays, neonatal care, and abortions.[8]

The cost impact of a prescription contraceptive mandate would appear to be minimized, in large measure, to the extent that such coverage is already provided through the various health insurance plans. On August 21, 2006, the state Civil Rights Commission issued a

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[2] Victoria Craig Bunch, JP Wieske, Vlasta Prikazsky, *Health Insurance Mandates in the State 2009*, Council for Affordable Health Insurance, [http://www.cahi.org/cahi_contents/resources/pdf/HealthInsuranceMandates2009.pdf].

[3] See, generally, Nicole M. Bellows, Helen Ann Halpin, Sara B, Menamin, *State-Mandated Benefit Review Laws*, Health Services Research, June 2006, [http://www.chbrp.org/documents/benefit_review_laws_hsr062006.pdf].

[4] *House Bill 1233: Mandated Coverage for Prescription Contraceptive Drugs*, Virginia Special Advisory Commission on Mandated Health Insurance Benefits, House Document No. 24 (1997), November 27, 1996, [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD241997/$file/HD24_1997.pdf]. Under Virginia law, the commission reviews proposed health insurance mandates, assessing the social impact, financial impact, and medical efficacy of the proposed mandate. In this case, the commission voted against the enactment of HB 1233, finding that "coverage is generally available for those individuals who want it."

[5] *Mandated Benefits Review: Senate Bill 1094 - Contraception Drugs and Devices*, Pennsylvania Health Care Cost Containment Council, May 2000, [http://www.phc4.org/reports/mandates/SB1094/docs/mandateSB1094report.pdf]. Finding that, "while savings are likely from this measure, the *amount* of possible savings relative to the cost of the legislation is unclear, as is the extent to which the savings would be passed on to the purchasers of health care", the council did not recommend enactment of SB 1094.

[6] *House Memorial 38 - A Study on Contraceptive Use and Insurance Coverage*, New Mexico Health Policy Commission, November 20, 2006,
[http://www.hpc.state.nm.us/documents/HM38_A%20Study%20on%20Contraceptive%20Use%20and%20Insurance%20Coverage_200.pdf].

[7] *Study of Mandated Health Insurance Services: A Comparative Evaluation*, Maryland Health Care Commission, January 1, 2008, [http://mhcc.maryland.gov/health_insurance/mandated_1207.pdf].

[8] See, *Insurance Coverage of Contraceptives*, State Policies in Brief, Guttmacher Institute, September 1, 2009, [http://www.guttmacher.org/statecenter/spibs/spib_ICC.pdf]. See, also, *Improving Women's Health: Why Contraceptive Coverage Matters*, U.S. Senate Committee on Health, Education, Labor, and Pensions, September 10, 2001, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:75167.pdf].

Declaratory Judgment ruling that the prohibition against discrimination under the Elliot-Larsen Civil Rights Act, 1976 PA 453, effectively prohibits employers from excluding prescription contraceptives from coverage under a comprehensive health plan.[9] The commission held that, "[t]he clear language of the [Elliot-Larsen Civil Rights Act] prohibits discrimination based upon a woman's ability to become pregnant. Exclusion of contraceptives from [a] health plan targets women unfairly because only women are directly affected by pregnancy. The [Michigan Civil Rights Commission] formally recognizes this exclusion as an unlawful employment practice. The MCRC's position is consistent not only with ELCRA, but also with the EEOC's position and federal court opinions holding that exclusion of prescription contraceptives is discriminatory. By issuing this Declaratory Ruling, all employers in Michigan are now subject to the same requirements that currently exist for employers covered under Title VII."[10] The U.S. Equal Employment Opportunity Commission (EEOC) reached a similar conclusion in a December 2000 ruling reviewing the impact of the Pregnancy Discrimination Act of 1978 (incorporated into Title VII of the federal Civil Rights Act of 1964) on the exclusion of prescription contraceptives from a health insurance plan that covered other prescription medications.[11] However, in finding the EEOC decision to be "unpersuasive" and lacking the force of law, the Eight Circuit Court of Appeals, in a 2006 decision, held that a health insurance policy that excluded all contraceptives did not violate the Pregnancy Discrimination Act.[12]

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

[9] *Declaratory Ruling on Contraceptive Equity*, Michigan Civil Rights Commission, August 21, 2006, [http://michigan.gov/documents/Declaratory_Ruling_7-26-06_169371_7.pdf].

[10] Elsewhere the commission noted, "[i]t is the ruling of the MCRC that an employer's exclusion of contraceptive from a health plan that covers other prescription drugs and services does violate Article 2, Section 202 of the ELCRA. To comply with this ruling, an employer in Michigan must provide full coverage for all contraceptive drugs and services if the employer's comprehensive plan covers other drugs and services." Section 202 of the Elliot-Larsen Civil Rights Act, MCL 37.2202, prohibits employers from "[s]egregat[ing], classify[ing], or otherwise discriminate[ing] against a person on the basis of sex with respect to a term, condition, or privilege of employment, including, but not limited to, a benefit plan or system." Section 201 of the act, MCL 37.2201, defines "sex" to mean "pregnancy, childbirth, or a medical condition related to pregnancy or childbirth that does not include nontherapeutic abortion not intended to save the life of the mother." The commission noted, however, that "[a]lthough it is discriminatory to exclude prescription contraceptives from an otherwise comprehensive health plan, an exception should be made for certain religious employers."

[11] See, [http://www.eeoc.gov/policy/docs/decision-contraception.html]. The federal Civil Rights Act generally applies to employers with 15 or more employees. See, 42 USC 2000e. The act notes that discrimination "because of sex" or "on the basis of sex" includes, but is not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work…" The section explicitly states that employers are not required to provide health insurance for abortion, except when necessary to protect the life of the mother. See, also, Title 29 (Labor), Part 1604 (Guidelines on Discrimination Because of Sex) of the Code of Federal Regulations. Among other things, the regulations note that "any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions."

[12] See, *In re Union Pacific Railroad Employment Practices Litigation*, U.S. 8th Circuit Court of Appeals, [http://www.ca8.uscourts.gov/opndir/07/03/061706P.pdf].