



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

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**Supplement No. 1 to
Insurance Circular Letter No. 1 (2003)
January 21, 2017**

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations, Student Health Plans Certified Pursuant to Insurance Law § 1124, and Municipal Cooperatives

RE: Health Insurance Coverage for Contraceptive Services

STATUTORY AND REGULATORY REFERENCES: 42 U.S.C. § 300gg-13; N.Y. Insurance Law §§ 3217-a, 3216, 3221, 4303 and 4324; N.Y. Public Health Law § 4408; 29 C.F.R. § 2560.503-1, 45 C.F.R. § 147.130, 45 C.F.R. § 147.136, and 45 C.F.R. § 156.122

I. Purpose

This circular letter reminds article 43 corporations, health maintenance organizations, student health plans certified pursuant to Insurance Law § 1124, and municipal cooperative insurers (collectively “issuers”) of the state and federal requirements regarding health insurance coverage for contraceptive services. Strict compliance with all existing statutory and regulatory requirements for coverage and disclosure of information, including providing accurate information to insureds and prospective insureds, is mandated. This circular letter supplements Insurance Circular Letter No. 1 (2003).

II. Discussion

A. New York Law on Contraceptive Services

New York Insurance Law §§ 3221(l)(16) and 4303(cc) require issuers that provide prescription drug coverage to provide coverage for all contraceptive drugs and devices approved by the Food and Drug Administration (FDA) or generic equivalents when prescribed by a health care provider legally authorized to prescribe under Title VIII of the Education Law. In addition, Insurance Law §§ 3216(i)(17)(E), 3221(l)(8)(E) and (F) and 4303(j)(3) require all issuers, except for grandfathered plans,¹ to include coverage for preventive care and screenings, including contraceptive drugs and devices, *at no cost-sharing*.

¹ A grandfathered health plan means coverage provided by an issuer in which an individual was enrolled on March 23, 2010, for as long as the coverage maintains grandfathered status in accordance with 42 U.S.C § 18011(e).

Coverage under New York law is independent of federal law, and tracks the guidelines adopted by the Health Resources and Services Administration on August 1, 2012 based on recommendations from the Institute of Medicine. In relevant part, the guidelines include coverage of all FDA-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity effective for plan years beginning on or after August 1, 2012. The United States Departments of Labor (“DOL”), Health and Human Services (“HHS”), and the Treasury issued guidance on February 20, 2013 stating that contraceptive services related to follow-up and management of side effects, counseling for continued adherence, and device removal are included under the HRSA guidelines. These services must be covered under New York law with no cost-sharing, subject to reasonable medical management.

DOL, HHS, and Treasury issued further guidance on May 11, 2015 stating that individual and group non-grandfathered plans must cover, without cost sharing, at least one form of contraception within each of the methods of contraception that the FDA has identified for women. The contraceptive methods for women listed by the FDA include: (1) sterilization surgery for women; (2) surgical sterilization implant for women; (3) implantable rod; (4) IUD copper; (5) IUD with progestin; (6) shot/injection; (7) oral contraceptives (combined pill); (8) oral contraceptives (progestin only); (9) oral contraceptives extended/continuous use; (10) patch; (11) vaginal contraceptive ring; (12) diaphragm; (13) sponge; (14) cervical cap; (15) female condom; (16) spermicide; (17) emergency contraception (Plan B, One Step/Next Choice/My Way); and (18) emergency contraception (Ella).

Therefore, in accordance with Insurance Law §§ 3216(i)(17)(E), 3221(l)(8)(E) and (F), 3221(l)(16), 4303(j)(3) and 4303(cc), all issuers in New York must provide coverage for all contraceptive drugs and devices. In addition, issuers must provide coverage with no cost-sharing for at least one form of contraception within each of the methods of contraception that the FDA has identified for women. These requirements in the Insurance Law are independent of the requirements in federal law, 42 U.S.C. § 300gg-13.

B. Disclosure of Information

New York Insurance Law §§ 3217-a(a)(5) and 4324(a)(5) and Public Health Law § 4408(1)(e) require an issuer to supply an insured and, upon request, a prospective insured, with full and accurate information relevant to coverage, including an explanation of an insured’s financial responsibility for payment of premiums, coinsurance, copayments, deductibles and any other charges, annual limits on an insured’s financial responsibility, caps on payments for covered services, and financial responsibility for non-covered health care procedures, treatments or services. This requirement includes information regarding coverage and cost-sharing of contraceptive services. Additionally, pursuant to Insurance Law §§ 3217-a(b)(6) and 4324(b)(6) and Public Health Law § 4408(2)(f), an issuer must allow insureds and prospective insureds to inspect drug formularies used by the issuer, and must further disclose whether individual drugs are included or excluded from coverage to an insured or prospective insured who requests this information.

Likewise, under regulations promulgated pursuant to the Affordable Care Act (“ACA”), certain disclosure requirements regarding drug formularies apply to non-grandfathered individual

and small group health insurance policies and contracts. Pursuant to 45 C.F.R. § 156.122(d)(1), for a non-grandfathered health insurance policy or contract providing coverage in the individual or small group market, an issuer must publish an up-to-date, accurate, and complete list of all covered drugs on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug may be obtained, in a manner that is easily accessible to insureds, prospective insureds, the state (which would include DFS), the Exchange (known in New York as the New York State of Health), HHS, the U.S. Office of Personnel Management, and the general public. A formulary drug list is easily accessible when: (1) it can be viewed on the issuer's public web site through a clearly identifiable link or tab without requiring an individual to create or access an account or enter a policy or contract number; and (2) an individual can easily discern which formulary drug list applies to which plan if the issuer offers more than one plan. Accordingly, issuers in New York must consistently provide consumers with correct information regarding coverage and cost-sharing for contraceptive services. Issuers must comply with all state and federal disclosure requirements regarding contraceptive services.

III. Conclusion

In New York, an issuer must provide coverage for all contraceptive drugs and devices. In addition, an issuer must provide coverage at no cost-sharing for at least one form of contraception within each of the methods of contraception that the FDA has identified for women. An issuer also must provide coverage with no cost-sharing of contraceptive services related to follow-up and management of side effects, counseling for continued adherence, and device removal. Additionally, issuers must have an exceptions process for a woman to use to gain access to a contraceptive service at no cost-sharing that is easily accessible, transparent, and sufficiently expedient and that is not unduly burdensome for a woman. Further, issuers must provide complete and accurate information regarding contraceptive coverage to insureds and prospective insureds. Contraceptive coverage is an essential feature of primary care in New York. DFS will continue to ensure full compliance with these important consumer health protections.

Please direct any questions regarding this circular letter to Kimberly Luke, Associate Insurance Attorney, by mail at New York State Department of Financial Services, Health Bureau, One Commerce Plaza, 19th Floor, Albany, New York 12210, or by email at kimberly.luke@dfs.ny.gov.

Very truly yours,

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