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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

BULLETIN 2020-26

TO: Commercial Health Insurers; Blue Cross Blue Shield of Massachusetts, Inc.; and Health Maintenance Organizations Offering or Renewing Insured Health Products in Massachusetts

FROM: Gary D. Anderson, Commissioner of Insurance

DATE: August 7, 2020

RE: Massachusetts Requirement that Carriers Cover Certain Contraceptives Without Consumer Cost-Sharing

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The Division of Insurance ("Division") issues this Bulletin 2020-26 to rescind Bulletin 2016-03, *Federal Requirement that Carriers Cover Certain Contraceptives Without Any Consumer Cost-Sharing,* and to remind insured health carriers ("Carriers") about Chapter 120 of the Acts of 2017, *An Act Relative to Advancing Contraceptive Coverage and Economic Security In Our State*, which amended insurance laws: M.G.L. c. 175, § 47W; M.G.L. c. 176A, § 8W; M.G.L. c. 176B, § 4W; and M.G.L. c. 176G, § 40 ("Chapter 120"). Carriers shall provide the benefits set forth in Chapter 120 to residents of the Commonwealth and to all group members having a principal place of employment in the Commonwealth.[1]

Chapter 120 Contraceptive Services

Carriers shall provide coverage for Food and Drug Administration ("FDA") approved contraceptive drugs, devices and other products; however, coverage shall not be required for male condoms or FDA-approved oral contraceptive drugs that do not have a therapeutic equivalent. Chapter 120 defines therapeutic equivalent as a "contraceptive drug, device or product that is: (i) approved as safe and effective; (ii) pharmaceutically equivalent to another contraceptive drug, device or product in that it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity and identity; and (iii) assigned the same therapeutic equivalence code as another contraceptive drug, device or product by the FDA."

The federal Birth Control Guide lists a number of FDA-approved methods of contraception for women, including, but not limited to, oral contraceptives, patches, and vaginal rings.[2] Under

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[1] Section 2713 of the Public Health Service Act, as amended by the ACA, and its implementing regulations relating to the coverage of preventive health care services, continue to require Carriers to provide benefits for certain contraceptive services. Chapter 120 has no effect on Carriers' continuing obligations under federal law.

[2] The FDA's Birth Control Guide is available at https://www.fda.gov/consumers/free-publications-women/birth-control.

Chapter 120, if there is a therapeutic equivalent of a drug, device or other product for an FDA-approved contraceptive method, Carriers may provide coverage for more than one drug, device, or other product and may impose cost-sharing requirements so long as at least one drug, device, or other product for that method is available without cost-sharing. If the FDA has approved one or more therapeutic equivalents of a contraceptive drug, device or product, Carriers shall not be required to include all such therapeutically equivalent versions in their formulary so long as at least one is included and covered without cost-sharing.

Additionally, irrespective of other provisions within Chapter 120, if an individual's attending provider recommends a particular FDA-approved contraceptive based on a medical determination with respect to that individual, regardless of whether the contraceptive has a therapeutic equivalent, the Carrier shall provide coverage without cost-sharing, subject to that plan's utilization management procedures, for the prescribed contraceptive drug, device, or product.

Coverage shall be required under Chapter 120 for voluntary female sterilization procedures and FDA-approved emergency contraception available over-the-counter, whether with a prescription or dispensed by a licensed pharmacist, consistent with the requirements of M.G.L. c. 94C, § 19A. Coverage shall also be required for prescription contraceptives intended to last for: (A) not more than a three-month period for the first time the prescription contraceptive is dispensed to the member; and (B) for not more than a 12-month period for any subsequent dispensing of the same prescription, which may be dispensed all at once or over the course of the 12-month period, regardless of whether the member was enrolled in the plan at the time the prescription was first dispensed; provided, however, that a Carrier shall not be required to provide coverage for more than one 12-month prescription in a single dispensing per plan year.

Carriers shall also provide coverage for patient education and counseling on contraception and follow-up services related to the drugs, devices, products, and procedures covered under Chapter 120 including, but not limited to, management of side effects, counseling for continued adherence, and device insertion and removal. Nothing in Chapter 120 or this Bulletin shall be construed to exclude coverage for contraceptive drugs, devices, products, and procedures prescribed by a provider for reasons other than contraceptive purposes, including, but not limited to, decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or providing contraception that is necessary to preserve the life or health of an enrollee or the enrollee's covered spouse or covered dependents. Nothing in Chapter 120 shall be construed to require a Carrier to cover experimental or investigational treatments.

Coverage provided under Chapter 120 shall not be subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement, except as provided for in Chapter 120, or as otherwise required under federal law, and shall be the same for the subscriber's covered spouse and covered dependents. Coverage offered under Chapter 120 shall not impose unreasonable restrictions or delays in the coverage, in accordance with the requirements of chapter 176O. Reasonable medical management techniques may be applied to coverage within a method category, as defined by the FDA, but not across types of methods.

Appeals of an adverse determination of a request for coverage of an alternative FDA-approved contraceptive drug, device, or other product without cost-sharing shall be subject to the expedited grievance process under M.G.L. c. 176O, § 13, and 211 CMR 52.07 (6) and (7). If a Carrier uses

reasonable medical management techniques within a specific method of contraception, the Carrier must also have an exceptions process to waive the applicable cost sharing for any individual for whom the Carrier's designated form of contraception would be deemed medically inappropriate by the individual's provider.

Church or Qualified Church-Controlled Organization Exemption

Insured health coverage that is purchased by an employer that is a church or qualified church-controlled organization shall be exempt from the offer requirements in Chapter 120, at the request of the employer. Chapter 120 defines a church as "a church, a convention or association of churches or an elementary or secondary school that is controlled, operated or principally supported by a church or by a convention or association of churches." Chapter 120 defines a qualified church-controlled organization as follows:

> *an organization described in section 501(c)(3) of the federal Internal Revenue Code, other than an organization that: (i) offers goods, services or facilities for sale, other than on an incidental basis, to the general public, other than goods, services or facilities that are sold at a nominal charge that is substantially less than the cost of providing such goods, services or facilities; and (ii) normally receives more than 25 per cent of its support from: (A) governmental sources; (B) receipts from admissions, sales of merchandise, performance of services or furnishing of facilities, in activities which are not unrelated trades or businesses; or (C) both clauses (A) and (B).*

An employer that invokes the church or qualified church-controlled organization exemption shall provide written notice to prospective members prior to enrollment with the plan, and such notice shall list the contraceptive health care methods and services for which the employer will not provide coverage for religious reasons.

Chapter 120 Effective Date Requirements

The requirements under Chapter 120 apply to coverage that is issued or effective in Massachusetts. Carriers should amend their certificates of coverage and formularies and develop consumer communications, where necessary, to ensure continuing compliance with the requirements for coverage of these contraceptive health services. If you have any questions about this Bulletin, please contact Niels Puetthoff, Director, Bureau of Managed Care, at 617-521-7326 or niels.puetthoff@mass.gov.