Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Health Care & Wellness Committee

HB 2465

Brief Description: Requiring private health insurers and the medicaid program to reimburse for a twelve-month supply of contraceptive drugs.

Sponsors: Representatives Robinson, Stambaugh, Wylie, Walsh, S. Hunt, Frame, Sawyer, Rossetti, Riccelli, Magendanz, Harris, Reykdal, Senn, Kagi, Lytton, Tharinger, Caldier, Stanford, Farrell, Cody, Kilduff, Peterson, Kuderer, Bergquist, Ormsby and Santos.

Brief Summary of Bill

- Requires private insurance and Medicaid to reimburse for a 12-month supply of contraceptive drugs provided at once.

Hearing Date: 1/26/16

Staff: Jim Morishima (786-7191).

Background:

I. Private Insurance Contraceptive Coverage.

A. Federal Law.

Under the federal Patient Protection and Affordable Care Act (PPACA), all group health plans must cover preventive services with no cost-sharing. Under federal rules, preventive services include all federal Food and Drug Administration (FDA)-approved contraceptive methods. Drugs that induce abortions and vasectomies are not included in this coverage mandate.

Pursuant to federal rules, a health plan purchased or offered by a religious employer, such as a church, is not required to cover contraceptives. A health plan purchased or offered by a non-profit religious organization, such as a religiously affiliated hospital, is not required to cover contraceptives if the organization certifies that it has religious objections (in which case the carrier covers the cost of the coverage).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In *Burwell v. Hobby Lobby*, the United States Supreme Court ruled that requiring a closely held corporation to cover contraceptives with no cost-sharing violates the Religious Freedom Restoration Act (RFRA) when such coverage violates the corporation's religious beliefs. However, the RFRA does not apply to state laws, so the ruling does not apply to any state coverage mandates.

B. State Law.

Under the PPACA, each state must establish a Health Benefit Exchange (Exchange) in which consumers may compare and purchase individual and small group market health insurance. Individuals between 134 and 400 percent of the federal poverty level are eligible for federal premium and cost-sharing subsidies in the Exchange on a sliding scale.

The PPACA requires non-grandfathered individual and small group market health plans to offer the "essential health benefits" both inside and outside of the Exchange. The essential health benefits are established by the states using a supplemented benchmark plan. Prescription drugs, including all FDA-approved contraceptive methods and prescription-based sterilization procedures for women, are included in Washington's essential health benefits package. A health carrier may subject this contraceptive coverage to cost-sharing requirements.

Rules adopted by the Office of the Insurance Commissioner (OIC) require a state-regulated health plan to cover prescription contraceptives if it provides generally comprehensive coverage of prescription drugs. This requirement applies to all state-regulated health plans, regardless of whether they are subject to the essential health benefits requirement. A health carrier may subject this contraceptive coverage to cost-sharing requirements.

II. Medicaid Contraceptive Coverage.

Medicaid is a federal-state program that provides health care services to specified categories of low-income individuals pursuant to federal standards. Family planning services, including contraception, are covered under Medicaid. The federal government provides a 90 percent match rate for family planning services. States may request waivers from federal requirements for experimental, pilot, or demonstration projects.

Through the Take Charge waiver, the Health Care Authority (HCA) provides coverage for family planning services, including birth control pills, to state residents with family incomes below 250 percent of the federal poverty level. Take Charge services are delivered by a variety of local contractors, including county health departments, community clinics, and nonprofit organizations.

Under a 2013 budget proviso, the HCA was required to make arrangements for all Medicaid programs offered through managed care plans or fee-for-service programs to require dispensing of contraceptive drugs with a one-year supply provided at one time unless a patient requests a smaller supply or the prescribing physician instructs that the patient must receive a smaller supply. Contracts with managed care plans must allow on-site dispensing of the prescribed contraceptive drugs at family planning clinics. Dispensing practices must follow clinical

guidelines for appropriate prescribing and dispensing to ensure the health of the patient while maximizing access to effective contraceptive drugs.

Summary of Bill:

I. Private Insurance Contraceptive Coverage.

A health benefit plan issued or renewed on or after January 1, 2017, that includes coverage for contraceptive drugs must reimburse for a 12-month supply of contraceptive drugs obtained at once by an enrollee, unless the enrollee requests a smaller supply or the prescribing provider instructs that the enrollee must receive a smaller supply. The health plan must allow the enrollee to receive the drugs on-site, if available. Any dispensing practices required by the plan must follow clinical guidelines for appropriate prescribing and dispensing to ensure the health of the patient while maximizing access to effective contraceptive drugs.

"Contraceptive drugs" is defined to mean all drugs approved by the United States Food and Drug Administration (FDA), including, but not limited to, hormonal drugs administered orally, transdermally, or intravaginally.

II. Medicaid Contraceptive Coverage.

The HCA must make arrangements for all Medicaid programs offered through managed care plans or fee-for-service programs to require dispensing of contraceptive drugs with a one-year supply provided at one time unless a patient requests a smaller supply or the prescribing physician instructs that the patient must receive a smaller supply. Contracts with managed care plans must allow on-site dispensing of the prescribed contraceptive drugs at family planning clinics. Dispensing practices must follow clinical guidelines for appropriate prescribing and dispensing to ensure the health of the patient while maximizing access to effective contraceptive drugs.

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Appropriation: None.

Fiscal Note: Requested on January 21, 2016.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.