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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3138

(By Delegates Amores, Trump, Caputo, Brown, Webster, Palumbo,
Schadler, Campbell, Browning, Marshall and Mahan)

Passed April 9, 2005

In Effect Ninety Days from Passage

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H. B. 3138

(BY DELEGATES AMORES, TRUMP, CAPUTO, BROWN, WEBSTER,
PALUMBO, SCHADLER, CAMPBELL, BROWNING,
MARSHALL AND MAHAN)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16E-1, §33-16E-2, §33-16E-3, §33-16E-4, §33-16E-5, §33-16E-6 and §33-16E-7, all relating to insurance and contraceptive coverage; providing definitions; specifying application of article; requiring health insurance plans provide parity for contraceptive drugs, devices and outpatient services; and providing exemptions and prohibitions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-16E-1, §33-16E-2,

§33-16E-3, §33-16E-4, §33-16E-5, §33-16E-6 and §33-16E-7, all to read as follows:

ARTICLE 16E. CONTRACEPTIVE COVERAGE.

§33-16E-1. Findings; short title.

1 (a) This article may be referred to as the “Prescription
2 Fairness Act of 2005.”

3 (b) The Legislature hereby finds and declares that:

4 (1) Contraceptives prevent unintended pregnancy;

5 (2) Planned pregnancies lead to healthier pregnancies,
6 children and families; and

7 (3) Contraceptive coverage provides West Virginians with
8 critical access to birth control.

9 (4) Therefore, the Legislature finds that prescription
10 contraceptives are basic health-care for West Virginia’s women
11 and families and that health insurance plans which include a
12 prescription drug plan should be required to cover contracep-
13 tives.

§33-16E-2. Definitions.

1 For the purposes of this article, these definitions are
2 applicable unless a different meaning clearly appears from the
3 context.

4 (1) “Contraceptives” means drugs or devices approved by
5 the food and drug administration to prevent pregnancy.

6 (2) “Covered person” means the policyholder, subscriber,
7 certificate holder, enrollee or other individual who is participat-
8 ing in, or receiving coverage under a health insurance plan. For

9 the purposes of this article, covered person does not include a
10 dependent child.

11 (3) “Health insurance plan” means benefits consisting of
12 medical care provided directly, through insurance or reimburse-
13 ment, or indirectly, including items and services paid for as
14 medical care, under any hospital or medical expense incurred
15 policy or certificate; hospital, medical or health service corpora-
16 tion contract; health maintenance organization contract;
17 fraternal benefit society contract; plan provided by a multiple-
18 employer trust or a multiple-employer welfare arrangement; or
19 plan provided by the West Virginia Public Employees Insur-
20 ance Agency pursuant to article sixteen, chapter five of this
21 Code.

22 (4) “Outpatient contraceptive services” means consulta-
23 tions, examinations, procedures and medical services, provided
24 on an outpatient basis and related to the use of prescription
25 contraceptive drugs and devices to prevent pregnancy issued
26 under a health insurance plan that provides benefits for pre-
27 scription drugs or prescription devices in a prescription drug
28 plan.

29 (5) “Religious employer” is an entity whose sincerely held
30 religious beliefs or sincerely held moral convictions are central
31 to the employer’s operating principles, and the entity is an
32 organization listed under 26 U.S.C. 501 (c)(3), 26 U.S.C. 3121,
33 or listed in the Official Catholic Directory published by P. J.
34 Kennedy and Sons.

§33-16E-3. Applicability.

1 (a) The provisions of this article apply to individual and
2 group health insurance plans issued by accident and sickness
3 insurers; health maintenance organizations; fraternal benefit
4 societies; hospital service corporations; the West Virginia

5 Public Employees Insurance Agency; health-care service
6 corporations; health service corporations; multiple employee
7 trusts; and multiple employer welfare arrangements. The
8 provisions of this section shall not apply to persons eligible for
9 coverage under Title XIX of the Social Security Act, known as
10 Medicaid (42 U.S.C. § 1396a *et seq.*), or for any other similar
11 coverage under state or federal governmental plans.

12 (b) The provisions of this article do not apply to:

13 (1) Any policy of liability insurance or contract supple-
14 mental thereto; coverage only for accident or disability income
15 insurance or any combination thereof; automobile medical
16 payment insurance; credit-only insurance; coverage for on-site
17 medical clinics; workers' compensation insurance; or other
18 similar insurance under which benefits for medical care are
19 secondary or incidental to other insurance benefits;

20 (2) If offered separately, a policy providing benefits for
21 long-term care, nursing home care, home health care,
22 community-based care or any combination thereof, dental or
23 vision benefits, or other similar, limited benefits;

24 (3) If offered as independent, noncoordinated benefits
25 under separate policies or certificates, specified disease or
26 illness coverage, hospital indemnity or other fixed indemnity
27 insurance, or coverage, such as medicare supplement insurance,
28 supplemental to a group health plan; or

29 (4) A policy of accident and sickness insurance covering a
30 period of less than one year.

§33-16E-4. Parity for contraceptive drugs, devices and outpatient services.

1 (a) Health insurance plans that provide benefits for
2 prescription drugs or prescription devices in prescription drug

3 plans may not exclude or restrict benefits to covered persons for
4 any prescription contraceptive drug or prescription contracep-
5 tive device approved by the federal Food and Drug Administra-
6 tion. All customary benefit management rules, including, but
7 not limited to, drug formularies and coverage criteria may be
8 applied by the health insurance plan.

9 (b) Health insurance plans that provide benefits for
10 prescription drugs or prescription devices in a prescription drug
11 plan and that provide benefits for outpatient services provided
12 by a health care professional may not exclude or restrict
13 outpatient contraceptive services for covered persons for
14 prescription contraceptives or prescription devices.

§33-16E-5. Extraordinary surcharges prohibited.

1 A health insurance plan is prohibited from:

2 (1) Imposing deductibles, copayments, other cost-sharing
3 mechanisms, or waiting periods for prescription contraceptive
4 drugs or devices greater than deductibles, copayments, other
5 cost-sharing mechanisms or waiting periods for other covered
6 prescription drugs or devices.

7 (2) Imposing deductibles, copayments, other cost-sharing
8 mechanisms or waiting periods for outpatient contraceptive
9 services greater than such deductibles, copayments, other cost-
10 sharing mechanisms or waiting periods for other covered
11 outpatient services.

§33-16E-6. Additional prohibitions.

1 A health insurance plan is prohibited from:

2 (1) Denying eligibility, enrollment or renewal of coverage
3 to any individual because of their use or potential use of
4 contraceptives.

5 (2) Providing monetary payments or rebates to covered
6 persons to encourage them to accept less than the minimum
7 protections available under this section.

8 (3) Penalizing, or otherwise reducing or limiting the
9 reimbursement of a health care professional because such
10 professional prescribed contraceptive drugs or devices, or
11 provided contraceptive services.

12 (4) Providing incentives, monetary or otherwise, to a
13 health-care professional to induce such professional to withhold
14 contraceptive drugs, devices or services from covered persons.


§33-16E-7. Religious employer exemption.

1 (a) Notwithstanding any other provision of this article, a
2 religious employer may exclude or restrict from any health-care
3 insurance plan contract benefits for any prescription contracep-
4 tive drugs and devices that are contrary to the religious em-
5 ployer's religious tenets.

6 (b) Nothing in this article shall be construed to exclude
7 coverage for prescription contraceptive supplies ordered by a
8 health-care provider with prescriptive authority for reasons
9 other than contraceptive purposes, such as decreasing the risk
10 of ovarian cancer or eliminating symptoms of menopause, or
11 for prescription contraception that is necessary to preserve the
12 life or health of an enrollee.

13 (c) The health insurer for every religious employer that
14 invokes the exemption provided under this section shall provide
15 written notice to prospective enrollees prior to enrollment with
16 the plan, listing the contraceptive health-care services the
17 employer refuses to cover for religious reasons. The health
18 insurer shall make available for purchase at the prevailing
19 group rate a rider that provides prescription contraceptive drugs
20 and devices.

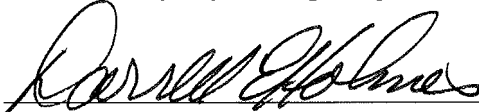
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

Originating in the House.

In effect ninety days from passage.

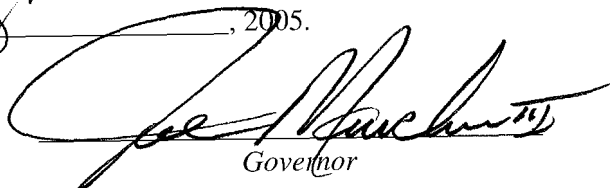

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 4th
day of May, 2005.


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:35 am