



COLORADO

**Department of
Regulatory Agencies**

Division of Insurance

Via Email

Deputy Administrator and Director Dr. Ellen Montz
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Baltimore, Maryland 21244

November 7, 2022

Re: Coverage of Sexually Transmitted Infections Screening and Contraceptives

Dear Director Montz,

In 2021, the Colorado State legislature passed SB21-016 concerning services related to preventive health care, specifically testing for sexually transmitted infections (STIs) regardless of gender and contraception without cost sharing. The legislation also directs the Division of Insurance (Division) to determine whether these provisions would be subject to state defrayal and to seek the Department of Health & Human Services' (HHS) input on this determination. For the reasons set forth below, the Division has determined that the requirements in SB21-016 are not new mandates requiring state defrayal under the Affordable Care Act.

Counseling, Prevention and Screening for Sexually Transmitted Infections Regardless of Gender Without Cost-sharing

This requirement does not constitute a new coverage mandate. Counseling, prevention and screening of STIs are covered services; this provision only affects the cost sharing structure for those services. In the preamble to its 2012 Essential Health Benefits proposed regulation, HHS explained that it interpreted "state required benefits" to be specific to care, treatment, and services and further explained that state rules related to provider types, cost sharing, or reimbursement methods do not trigger the requirement for the state to defray the cost.¹ In the final rule, HHS confirmed that "state-required benefits" include "the care, treatment and services" that an issuer must provide to its enrollees, not to other state laws that do not relate to specific benefits.²

¹Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, Proposed rule. 77 Fed. Reg. 70644, 70647 (Nov. 26, 2012).

<https://www.govinfo.gov/content/pkg/FR-2012-11-26/pdf/2012-28362.pdf>

²Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, 78 Fed. Reg. 12834, 12838 (Feb. 25, 2013).

<https://www.govinfo.gov/content/pkg/FR-2013-02-25/pdf/2013-04084.pdf>



Notably, most of the United States Preventive Services Task Force (USPSTF) recommendations for STI counseling, prevention and screening are gender neutral. For example, there is a USPSTF recommendations for behavioral counseling for all sexually active adolescents and for adults who are at increased risk of STIs. There is no gender limitation. Likewise, there are no gender restrictions for HIV and syphilis screening.

In its proposed Section 1557 non-discrimination regulations, the federal government specifically noted discrimination based on sex is prohibited, which includes “discrimination on the basis of sex stereotypes, sex characteristics, including intersex traits, pregnancy or related conditions; sexual orientation; and gender identity.”³ As HHS has indicated, even if this coverage was considered a new mandate, there is no requirement to defray the cost of benefits to comply with the ACA or another federal requirement, such as anti-discrimination requirements.

Contraception Coverage

SB21-016 also provides coverage for contraception without cost sharing. Contraception is defined as “a medically acceptable drug, device, or procedures used to prevent pregnancy.”

The Departments of Labor, Health & Human Services, and Treasury (Departments) issued Frequently Asked Questions on July 28, 2022 explaining that:

if a individual’s attending provider determines that a particular service or FDA-approved, cleared, or granted contraceptive product is medically appropriate for a specific individual, a plan or issuer must cover that service or product for that individual without cost-sharing, whether or not the service or product is specifically identified in the current FDA Birth Control Guide.⁴

The guidance further indicates that the provider must defer to the determination of the attending physician regarding which service or product is considered medically appropriate. Thus, even if a particular contraceptive product is not covered by a carrier, there is still an expectation to provide such coverage without cost sharing if determined medically appropriate.

The Division is interpreting and implementing SB21-016 on contraception products consistent with this guidance from the Departments. In addition, to the extent that the law is interpreted to include vasectomies, vasectomies are part of the benchmark plan and this law does not change the coverage, but simply changes the cost sharing structure for such services, and therefore, as explained above, does not require defrayal.

³ *Nondiscrimination in Health Programs and Activities, Notice of Proposed Rulemaking. Proposed*

45 C.F.R. § 92.101. 87 Fed. Reg. 47824 (Aug. 4, 2022). <https://www.govinfo.gov/content/pkg/FR-2022-08-04/pdf/2022-16217.pdf>

⁴ *FAQs about Affordable Care Act Implementation Part 54* (July 28, 2022). <https://www.cms.gov/files/document/faqs-part-54.pdf>



For the reasons described above, the Division does not believe this law requires state defrayal under the ACA. Thank you for your consideration of the Division's position; please let us know if you have any questions, or would like to discuss this matter further with the Division.

Sincerely,

A handwritten signature in blue ink, appearing to be 'KH' followed by a stylized flourish.

Kate Harris
Deputy Commissioner of Life and Health

cc: Rebecca Bucchieri, CMS

