

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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1           SECTION 1. Chapter 32A of the General Laws is hereby amended by adding the  
2 following section:-

3           Section 28. (a) Coverage offered by the commission to an active or retired employee of  
4 the commonwealth insured under the group insurance commission shall provide coverage for the  
5 following services and contraceptive methods:

6                   (i) Food and Drug Administration, FDA, approved contraceptive drugs, devices  
7 and other products; provided, however, that coverage shall not be required for male condoms or  
8 FDA-approved oral contraceptive drugs that do not have a therapeutic equivalent; and provided  
9 further, that:

10                           (A) if the FDA has approved 1 or more therapeutic equivalents of a  
11 contraceptive drug, device or product, the commission shall not be required to include all such  
12 therapeutically equivalent versions in its formulary as long as at least 1 is included and covered  
13 without cost-sharing and in accordance with this section; and

14                           (B) if there is a therapeutic equivalent of a drug, device or other product  
15 for an FDA-approved contraceptive method, the commission may provide coverage for more

16 than 1 drug, device or other product and may impose cost-sharing requirements as long as at  
17 least 1 drug, device or other product for that method is available without cost-sharing; provided,  
18 however, that if an individual's attending provider recommends a particular FDA-approved  
19 contraceptive based on a medical determination with respect to that individual, regardless of  
20 whether the contraceptive has a therapeutic equivalent, the insurer shall provide coverage,  
21 subject to the commission's utilization management procedures, for the prescribed contraceptive  
22 drug, device or product without cost-sharing;

23 (ii) FDA-approved emergency contraception available over-the-counter, whether  
24 with a prescription or dispensed consistent with the requirements of section 19A of chapter 94C;

25 (iii) prescription contraceptives intended to last: (A) for not more than a 3-month  
26 period for the first time the prescription contraceptive is dispensed to the covered person; and (B)  
27 for not more than a 12-month period for any subsequent dispensing of the same prescription,  
28 which may be dispensed all at once or over the course of the 12-month period, regardless of  
29 whether the covered person was enrolled in a plan or policy under this chapter at the time the  
30 prescription contraceptive was first dispensed; provided, however, that the insured may not fill  
31 more than one 12-month prescription in a single dispensing per plan year;

32 (iv) voluntary female sterilization procedures;

33 (v) patient education and counseling on contraception; and

34 (vi) follow-up services related to the drugs, devices, products and procedures  
35 covered under this subsection including, but not limited to, management of side effects,  
36 counseling for continued adherence and device insertion and removal.

37 (b) (1) Coverage provided under this section shall not be subject to any deductible,  
38 coinsurance, copayment or any other cost-sharing requirement, except as provided for in  
39 subclauses (A) and (B) of clause (i) of subsection (a) or as otherwise required under federal law.  
40 Coverage offered under this section shall not impose unreasonable restrictions or delays in the  
41 coverage; provided, however, that reasonable medical management techniques may be applied to  
42 coverage within a method category, as defined by the FDA, but not across types of methods.

43 (2) Benefits for an enrollee under this section shall be the same for the enrollee's  
44 covered spouse and covered dependents.

45 (c) Nothing in this section shall be construed to exclude coverage for contraceptive drugs,  
46 devices, products and procedures as prescribed by a provider for reasons other than contraceptive  
47 purposes, including, but not limited to, decreasing the risk of ovarian cancer, eliminating  
48 symptoms of menopause or providing contraception that is necessary to preserve the life or  
49 health of the enrollee or the enrollee's covered spouse or covered dependents.

50 (d) The commission shall ensure plan compliance with this chapter.

51 (e) Nothing in this section shall be construed to require the commission to cover  
52 experimental or investigational treatments.

53 (f) For purposes of this section, the following words shall have the following meanings  
54 unless the context clearly requires otherwise:

55 "Provider", an individual or facility licensed, certified or otherwise authorized or  
56 permitted by law to administer health care in the ordinary course of business or professional  
57 practice acting within the scope of their license.

58           “Therapeutic equivalent”, a contraceptive drug, device or product that is: (i) approved as  
59 safe and effective; (ii) pharmaceutically equivalent to another contraceptive drug, device or  
60 product in that it contains an identical amount of the same active drug ingredient in the same  
61 dosage form and route of administration and meets compendial or other applicable standards of  
62 strength, quality, purity and identity; and (iii) assigned the same therapeutic equivalence code as  
63 another contraceptive drug, device or product by the FDA.

64           SECTION 2. Chapter 118E of the General Laws is hereby amended by inserting after  
65 section 10J the following section:-

66           Section 10K. (a) The division and its contracted health insurers, health plans, health  
67 maintenance organizations, behavioral health management firms and third-party administrators  
68 under contract to a Medicaid managed care organization or primary care clinician plan shall  
69 provide coverage for the following services and contraceptive methods:

70           (i) Food and Drug Administration, FDA, approved contraceptive drugs, devices  
71 and other products; provided, however, that coverage shall not be required for male condoms or  
72 FDA-approved oral contraceptives that do not have a therapeutic equivalent; and provided  
73 further, that:

74           (A) if the FDA has approved 1 or more therapeutic equivalents of a  
75 contraceptive drug, device or product, the division shall not be required to include all such  
76 therapeutically equivalent versions in its formulary as long as at least 1 is included and covered  
77 without cost-sharing and in accordance with this section;

78           (B) if there is a therapeutic equivalent of a drug, device or other product  
79 for an FDA-approved contraceptive method, the division may provide coverage for more than 1

80 drug, device or other product and may impose cost-sharing requirements as long as at least 1  
81 drug, device or other product for that method is available without cost-sharing; provided,  
82 however, that if an individual's attending provider recommends a particular FDA-approved  
83 contraceptive based on a medical determination with respect to that individual, regardless of  
84 whether the contraceptive has a therapeutic equivalent, the division shall provide coverage,  
85 subject to the division's utilization management procedures, for the prescribed contraceptive  
86 drug, device or product without cost-sharing; and

87 (C) appeals of an adverse determination of a request for coverage of an  
88 alternative FDA-approved contraceptive drug, device or other product without cost-sharing shall  
89 be subject to the grievance process under section 47 of chapter 118E;

90 (ii) FDA-approved emergency contraception available over-the-counter, whether  
91 with a prescription or dispensed consistent with the requirements of section 19A of chapter 94C;

92 (iii) prescription contraceptives intended to last: (A) for not more than a 3-month  
93 period for the first time the prescription contraceptive is dispensed to the covered person; and (B)  
94 for not more than a 12-month period for any subsequent dispensing of the same prescription,  
95 which may be dispensed all at once or over the course of the 12-month period, regardless of  
96 whether the covered person was enrolled with the division at the time the prescription  
97 contraceptive was first dispensed; provided, however, that the insured may not fill more than one  
98 12-month prescription in a single dispensing per plan year;

99 (iv) voluntary female sterilization procedures;

100 (v) patient education and counseling on contraception; and

101 (vi) follow-up services related to the drugs, devices, products and procedures  
102 covered under this subsection including, but not limited to, management of side effects,  
103 counseling for continued adherence and device insertion and removal.

104 (b) (1) Coverage provided under this section shall not be subject to any deductible,  
105 coinsurance, copayment or any other cost-sharing requirement, except as provided for in  
106 subclauses (A) and (B) of clause (i) of subsection (a) or as otherwise required under federal law.  
107 Coverage provided under this section shall not impose unreasonable restrictions or delays in the  
108 coverage; provided, however, that reasonable medical management techniques may be applied to  
109 coverage within a method category, as defined by the FDA, but not across types of methods.

110 (2) Benefits for an enrollee under this section shall be the same for the enrollee's  
111 covered spouse and covered dependents.

112 (c) Nothing in this section shall be construed to exclude coverage for contraceptive drugs,  
113 devices, products and procedures prescribed by a provider for reasons other than contraceptive  
114 purposes including, but not limited to, decreasing the risk of ovarian cancer, eliminating  
115 symptoms of menopause or providing contraception that is necessary to preserve the life or  
116 health of the enrollee or the enrollee's covered spouse or covered dependents.

117 (d) Nothing in this section shall be construed to deny or restrict the division's authority to  
118 ensure its contracted health insurers, health plans, health maintenance organizations, behavioral  
119 health management firms and third-party administrators under contract to a Medicaid managed  
120 care organization or primary care clinician plan are in compliance with this chapter.

121 (e) Nothing in this section shall be construed to require the division to cover experimental  
122 or investigational treatments.

123 (f) For purposes of this section, the following words shall have the following meanings  
124 unless the context clearly requires otherwise:

125 “Provider”, an individual or facility licensed, certified or otherwise authorized or  
126 permitted by law to administer health care in the ordinary course of business or professional  
127 practice acting within the scope of their license.

128 “Therapeutic equivalent”, a contraceptive drug, device or product that is: (i) approved as  
129 safe and effective; (ii) pharmaceutically equivalent to another contraceptive drug, device or  
130 product in that it contains an identical amount of the same active drug ingredient in the same  
131 dosage form and route of administration and meets compendial or other applicable standards of  
132 strength, quality, purity and identity; and (iii) assigned the same therapeutic equivalence code as  
133 another contraceptive drug, device or product by the FDA.

134 SECTION 3. Section 47W of chapter 175 of the General Laws, as appearing in the 2016  
135 Official Edition, is hereby amended by adding the following 7 subsections:

136 (d) An individual policy of accident and sickness insurance issued under section 108 that  
137 provides benefits for hospital expenses and surgical expenses and any group blanket policy of  
138 accident and sickness insurance issued under section 110 that provides benefits for hospital  
139 expenses and surgical expenses delivered, issued or renewed by agreement between the insurer  
140 and the policyholder, within or outside the commonwealth shall provide benefits for residents of  
141 the commonwealth and all group members having a principal place of employment in the  
142 commonwealth coverage for all of the following services and contraceptive methods:

143 (i) Food and Drug Administration, FDA, approved contraceptive drugs, devices  
144 and other products; provided, however, that coverage shall not be required for male condoms or

145 FDA-approved oral contraceptive drugs that do not have a therapeutic equivalent; and provided  
146 further, that:

147 (A) if the FDA has approved 1 or more therapeutic equivalents of a  
148 contraceptive drug, device or product, a policy of accident and sickness insurance shall not be  
149 required to include all such therapeutically equivalent versions in its formulary as long as at least  
150 1 is included and covered without cost-sharing and in accordance with this subsection;

151 (B) if there is a therapeutic equivalent of a drug, device or other product  
152 for an FDA-approved contraceptive method, a policy of accident and sickness insurance may  
153 provide coverage for more than 1 drug, device or other product and may impose cost-sharing  
154 requirements as long as at least 1 drug, device or other product for that method is available  
155 without cost-sharing; provided, however, that if an individual's attending provider recommends a  
156 particular FDA-approved contraceptive based on a medical determination with respect to that  
157 individual, regardless of whether the contraceptive has a therapeutic equivalent, the policy of  
158 accident and sickness insurance shall provide coverage, subject to that policy's utilization  
159 management procedures, for the prescribed contraceptive drug, device or product without cost-  
160 sharing; and

161 (C) appeals of an adverse determination of a request for coverage of an  
162 alternative FDA-approved contraceptive drug, device or other product without cost-sharing shall  
163 be subject to the expedited grievance process under section 13 of chapter 176O;

164 (ii) FDA-approved emergency contraception available over-the-counter, whether  
165 with a prescription or dispensed consistent with the requirements of section 19A of chapter 94C;



166 (iii) prescription contraceptives intended to last for: (A) not more than a 3-month  
167 period for the first time the prescription contraceptive is dispensed to the covered person; and (B)  
168 for not more than a 12-month period for any subsequent dispensing of the same prescription,  
169 which may be dispensed all at once or over the course of the 12-month period, regardless of  
170 whether the covered person was enrolled in the policy at the time the prescription was first  
171 dispensed; provided, however, that a corporation shall not be required to provide coverage for  
172 more than one 12-month prescription in a single dispensing per plan year;

173 (iv) voluntary female sterilization procedures;

174 (v) patient education and counseling on contraception; and

175 (vi) follow-up services related to the drugs, devices, products and procedures  
176 covered under this subsection including, but not limited to, management of side effects,  
177 counseling for continued adherence and device insertion and removal.

178 (e) (1) Coverage provided under subsection (d) shall not be subject to any deductible,  
179 coinsurance, copayment or any other cost-sharing requirement, except as provided for in  
180 subclauses (A) and (B) of clause (i) of subsection (d) or as otherwise required under federal law.  
181 Coverage offered under said subsection (d) shall not impose unreasonable restrictions or delays in  
182 the coverage, in accordance with the requirements of chapter 176O; provided, however, that  
183 reasonable medical management techniques may be applied to coverage within a method  
184 category, as defined by the FDA, but not across types of methods.

185 (2) Benefits for an enrollee under subsection (d) shall be the same for the  
186 enrollee's covered spouse and covered dependents.