[First Reprint]

SENATE, No. 3452

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 17, 2024

Sponsored by:
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District 29 (Essex and Hudson)

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SYNOPSIS

Requires health insurance and Medicaid coverage for family planning and reproductive health care services; prohibits adverse actions by medical malpractice insurers in relation to performance of legally protected health care services.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 24, 2024, with amendments.

An Act concerning insurance coverage for [1]family planning and[1] reproductive health care and revising and supplementing various parts of the statutory law.

Be It Enacted *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) The Legislature finds and declares that:

a. Given the historic and continued attacks on abortion access and reproductive health care at the federal level and in other states, it is critical that New Jersey take legislative action to ensure that all individuals in the State are able to exercise their fundamental rights to choose to use or refuse contraception or sterilization, to carry a pregnancy, to give birth, or to have an abortion, regardless of where [1][the][1] they are domiciled.

b. New Jersey has historically provided stronger protections for reproductive rights and [1]bodily[1] autonomy than are provided by other states and the federal government. The New Jersey Supreme Court has made clear through several holdings, including *Right to Choose v. Byrne*, 91 N.J. 287 (1982), and *Planned Parenthood of Cent. N.J. v. Farmer*, 165 N.J. 609 (2000), that Article I, paragraph 1 of the New Jersey Constitution protects the right to abortion and reproductive autonomy to an extent that exceeds the protections established under the United States Constitution. In 2022, New Jersey codified the fundamental constitutional right to reproductive autonomy, including the right to abortion, and has restored and allocated State funding to support reproductive health care services.

c. The Legislature is committed to ensuring that all individuals in the State can fully exercise their right to reproductive autonomy and can access affordable and timely reproductive health care services. It is imperative to ensure that every person present in the State has the freedom to choose whether, when, and how to bear children on their own terms.

d. Access to reproductive health care is critical for the health and economic security of all people in New Jersey, providing all individuals in the State with the opportunity to lead healthier and more productive lives. To effectively vindicate the right to abortion and reproductive autonomy enshrined in State law, New Jersey must address barriers to access.

e. Financial barriers and costs associated with reproductive health care services can prevent people from accessing appropriate and necessary care. These costs can threaten individuals' financial security and negatively impact their long-term economic prospects. Cost barriers associated with reproductive health care often have a disparate impact on people

who already experience barriers to health care access, including young people, people of color, people with disabilities, people with a low income, people living in rural areas, immigrants, and transgender or non-binary individuals.

f. A person's income level or their type of insurance should never prevent them from having access to a full range of reproductive health care. The absence of funding should never be a reason that someone present in New Jersey does not exercise their fundamental right to reproductive autonomy, including abortion.

g. Health care practitioners should not be constrained from providing necessary or appropriate reproductive health care. Medically unnecessary regulations discourage practitioners from offering reproductive health care, including abortions, which effectively reduces the number of licensed providers, diminishes the availability of legal abortion providers, and creates harmful barriers and delays to care without providing any benefit to patients. Extensive scientific study has shown that abortion care is a safe medical intervention, safer than childbirth as well as many common medical procedures.

h. [1]Individuals' ability to choose their family size and the timing of children has led to notable health and socio-economic benefits. Smaller families and better child spacing contribute to lower rates of infant and child mortality, improved economic conditions for women and their families, and enhanced maternal health.

i.[1] Given New Jersey's high priority to the preservation of health, the State has a significant interest in ensuring that every person in New Jersey can access reproductive health care, including abortion services. The Legislature is committed to addressing barriers to receiving and providing reproductive health care in the State. It shall therefore be the policy of this State to enable all qualified health care practitioners to provide abortion services in the State, and to advance insurance coverage and other methods through which to ensure that reproductive health care is accessible and affordable to all people present in New Jersey.

2. (New section) As used in this act:

"Abortion" means any medical treatment intended to induce the termination of a pregnancy and services rendered to facilitate the termination which may include follow-up care, except for the purpose of producing a live birth. "Abortion" includes, but is not limited to, "aspiration abortion" and "medication abortion," as defined in this section.

"Aspiration abortion" means a procedure that terminates a pregnancy utilizing manual or electric suction to empty the uterus.

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefits plans in this State.

"Covered person" means a person, or dependents of a person, on whose behalf a carrier offering the plan is obligated to pay benefits or provide services pursuant to the health benefits plan.

[1]"Family planning and reproductive health care services" means essential health benefits for maternity and newborn care pursuant to P.L.2019, c.354 (C.17B:27A-7.26 et al.) and shall include the following services:

(1) abortion;

(2) emergency services, which shall mean medical screening, examination, and evaluation for mothers and newborns by a physician and surgeon, or, to the extent permitted by applicable law, by other appropriate licensed persons to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery, if within the scope of that person's license, necessary to relieve or eliminate the emergency medical condition, within the capability of the facility;

(3) family planning counseling, which shall mean comprehensive reproductive health care services, including contraception, pregnancy detection, and options counseling;

(4) family planning lab tests, including genetic testing and coverage for patients to see a licensed genetic counselor;

(5) inpatient hospital care, laboratory, and ultrasound services for pregnancy-related services during pregnancy and during the postpartum period and for newborns; and

(6) well-baby medical care.

"Family planning and reproductive health care services" shall not include child birth for the purposes of this section.[1]

"Medication abortion" means the use, prescription, order, dispensing, administration, or any combination thereof as applicable, of a medication or a combination of medications to induce termination of pregnancy.

"Pregnancy" means the period of the human reproductive process beginning with the implantation of a fertilized egg.

"Religious employer" means an organization that is referred to in section 6033(a)(3)(A)(i) or (iii) of the federal Internal Revenue Code of 1986 (26 U.S.C. s.6033), as amended, and organized and operates as a nonprofit entity.

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3. (New section) a. A contract that provides hospital or medical expense benefits and is delivered, issued, executed, or renewed in this State by a carrier or is approved for issuance or renewal in this State by the Commissioner of Banking and Insurance, on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), shall provide coverage for [1][abortion] family planning and reproductive health care services, as defined by section 2 of P.L. , c. (C.) (pending before the Legislature as this bill)[1].

b. (1) A contract subject to this section shall not impose a deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage required under this section. [1]For services as described in paragraphs (4) and (5) of the definition of "family planning and reproductive services," as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), a carrier may impose a cost-sharing requirement if those services are provided by an out-of-network provider.[1]

(2) A contract that meets the requirements of a catastrophic plan, as defined in 45 C.F.R. s.156.155, shall be exempt from paragraph (1) of this subsection.

(3) For benefits offered in conjunction with a high-deductible health plan, the contract shall not provide benefits until the expenditures applicable to the deductible under the plan have met the amount of the minimum annual deductibles in effect for self-only and family coverage under section 223(c)(2)(A)(i) of the federal Internal Revenue Code (26 U.S.C. s.223(c)(2)(A)(i)) for self-only and family coverage, respectively. Once the foregoing expenditure amount has been met under the plan, coverage for benefits shall begin and the provisions in paragraph (1) of this subsection shall be in effect.

c. A contract shall not impose any restrictions or delays on, and shall not require prior authorization for, the coverage required under this section.

d. Notwithstanding the provisions of subsections a. through c. of this section to the contrary, if the Commissioner of Banking and Insurance concludes that enforcement of this section may adversely affect the allocation of federal funds to this State, the commissioner may grant an exemption to the requirements of this section, but only to the minimum extent necessary to ensure the continued receipt of federal funds.

e. [1][A religious employer may request, and a carrier shall grant, an exclusion under the contract for the coverage required by this section if the required coverage conflicts with the religious employer's bona fide religious beliefs and practices. A religious employer that obtains an exclusion shall provide written

notice thereof to covered persons and prospective covered persons, and a carrier shall provide notice to the Commissioner of Banking and Insurance, in the form and manner determined by the commissioner. The provisions of this subsection shall not authorize a carrier to exclude coverage for care that is necessary to preserve the life or health of a covered person] This section shall not apply to any coverage subject to an exclusion granted to a religious employer pursuant to section 3 of P.L.2021, c.375 (C.26:2S-39)[1].

4. (New section) a. The State Health Benefits Commission shall [1][ensure that every contract providing hospital or medical expense benefits, which is purchased by the commission on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), provides coverage] provide benefits[1] for [1][abortions] family planning and reproductive health care services[1], as defined by section [1][1] 2[1] of P.L. , c. (C.) (pending before the Legislature as this bill).

b. [1][A contract subject to this section shall not impose a] The benefits required pursuant to this section shall be provided without any[1] deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage required under this section. [1]For services as described in paragraphs (4) and (5) of the definition of "family planning and reproductive services," as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), a carrier may impose a cost-sharing requirement if those services are provided by an out-of-network provider.[1] For a qualifying high-deductible health plan for a health savings account, the commission shall establish the plan's cost-sharing for the coverage provided pursuant to this section at the minimum level necessary to preserve the covered person's ability to claim tax-exempt contributions and withdrawals from the covered person's health savings account under 26 U.S.C. s.223.

c. [1][A contract] The State Health Benefits Commission[1] shall not impose any restrictions or delays on, and shall not require prior authorization for, the coverage required under this section.

5. (New section) a. The School Employees' Health Benefits Commission shall [1][ensure that every contract providing hospital or medical expense benefits, which is purchased by the commission on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), provides coverage] provide benefits[1] for [1][abortions] family planning and

reproductive health care services[1], as defined by section [1][1] 2[1] of P.L. , c. (C.) (pending before the Legislature as this bill).

b. [1][A contract subject to this section shall not impose a] The benefits required pursuant to this section shall be provided without any[1] deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage required under this section. [1]For services as described in paragraphs (4) and (5) of the definition of "family planning and reproductive services," as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), a carrier may impose a cost-sharing requirement if those services are provided by an out-of-network provider.[1] For a qualifying high-deductible health plan for a health savings account, the commission shall establish the plan's cost-sharing for the coverage provided pursuant to this section at the minimum level necessary to preserve the covered person's ability to claim tax-exempt contributions and withdrawals from the covered person's health savings account under 26 U.S.C. s.223.

c. [1][A contract] The School Employees' Health Benefits Commission[1] shall not impose any restrictions or delays on, and shall not require prior authorization for, the coverage required under this section.

6. (New section) Notwithstanding any State law or regulation to the contrary, the Department of Human Services shall ensure that expenses incurred for [1][abortion services] family planning and reproductive health care services, as defined pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill),[1] shall be provided with no cost-sharing to persons served under the Medicaid program, established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

b. Any copayment, coinsurance, or deductible that may be required pursuant to the contract for services covered pursuant to subsection a. of this section shall not apply. [1]For services as described in paragraphs (4) and (5) of the definition of "family planning and reproductive services," as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), a carrier may impose a cost-sharing requirement if those services are provided by an out-of-network provider.[1]

c. The department may take any administrative action necessary to effectuate the provisions of this section, including modifying or amending any applicable contract or promulgating, amending, or repealing any guidance, guidelines, or rules, which

rules or amendments thereto shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed 12 months, and may, thereafter, be amended, adopted or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

7. Section 2 of P.L.2021, c.375 (C.10:7-2) is amended to read as follows:

2. a. Every individual present in the State, including, but not limited to, an individual who is under State control or supervision, shall have the fundamental right to: choose or refuse contraception or sterilization; and choose whether to carry a pregnancy, to give birth, or to terminate a pregnancy. The New Jersey Constitution recognizes the fundamental nature of the right to reproductive choice, including the right to access contraception, to terminate a pregnancy, and to carry a pregnancy to term, shall not be abridged by any law, rule, regulation, ordinance, or order issued by any State, county, or local governmental authority. Any law, rule, regulation, ordinance, or order, in effect on or adopted after the effective date of this act, or any part thereof, that is determined to have the effect of limiting the constitutional right to freedom of reproductive choice and that does not conform with the provisions and the express or implied purposes of this act, shall be deemed invalid and shall have no force or effect.

b. If the State provides, directly or by contract, hospital or medical benefits for pregnancy-related care through any program administered or funded in whole or in part by the State, the State shall also provide a pregnant individual otherwise eligible for the program with substantially equivalent benefits to permit the individual to voluntarily terminate the individual's pregnancy.

c. A physician or other health care professional, acting within the professional's lawful scope of practice and in compliance with all generally applicable regulations, shall be authorized to provide and assist in the provision of reproductive health care services in this State.

d. Nothing in P.L.2021, c.375 (C.10:7-1 et seq.) shall effect or limit in anyway an advanced practice clinician who is licensed, certified, or otherwise authorized by law to practice in this State from performing aspiration abortion, providing medication abortion, or managing the spontaneous termination of a pregnancy.

e. A public entity shall not, in regulating or providing benefits, facilities, services, or information, deny or interfere with an individual's fundamental reproductive rights pursuant to

subsection a. of this section or discriminate against an individual on the basis of the individual's exercise of fundamental reproductive rights pursuant to subsection a. of this section.

f. (1) All rules and regulations promulgated by the Department of Human Services as of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), or parts thereof, which limit coverage for abortion services based on the type of facility or health care professional that provides the services, or which are otherwise inconsistent or in conflict with the provisions or express or implied purposes of P.L.2021, c.375 (C.10:7-1 et seq.) including, but not limited to, relevant parts or subparts of N.J.A.C.10:54-5.43 and N.J.A.C.10:66-2.16 shall be void and have no force or effect following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), provided that nothing in this subsection shall be construed to limit a professional licensing board or regulatory agency from establishing through regulation the qualifications or standards of care for its licensees with respect to the performance of reproductive health care services.

(2) The rules and regulations adopted by the Commissioner of Human Services, pursuant to this section, shall include, but need not be limited to, rules and regulations permitting electronic billing for abortion services, which rules and regulations shall be promulgated by January 1, 2025.

g. The provisions of this section shall be enforceable under the "New Jersey Civil Rights Act," P.L.2004, c.143 (C.10:6-1 et seq.) or in any other manner provided by law.

h. As used in this section:

"Abortion" means any medical treatment intended to induce the termination of a pregnancy and services rendered to facilitate the termination which may include follow-up care, except for the purpose of producing a live birth. "Abortion" includes, but is not limited to, "aspiration abortion" and "medication abortion," as defined in this section.

"Advanced practice clinician" means an advanced practice nurse licensed pursuant to P.L.1991, c.377 (C.45:11-45 et seq.); a physician assistant licensed pursuant to P.L.1991, c.378 (C.45:9-27.10 et seq.); a certified nurse midwife; and a certified midwife licensed pursuant to R.S.45:10-1 et seq.

"Aspiration abortion" means a procedure that terminates a pregnancy utilizing manual or electric suction to empty the uterus.

"Health care professional" means a physician and other health care professionals licensed pursuant to Title 45 of the Revised Statutes, and a hospital and other health care facilities licensed pursuant to Title 26 of the Revised Statutes.

"Medication abortion" means the use, prescription, order, dispensing, administration, or any combination thereof as applicable, of a medication or a combination of medications to induce termination of pregnancy.

"Pregnancy" means the period of the human reproductive process beginning with the implantation of a fertilized egg.

"Public entity" means the State and any county, municipality, district, public authority, public agency, or other political subdivision or public body in the State.

"Reproductive health care services" includes all medical, pharmaceutical, surgical, counseling or referral services performed by a licensed health care professional relating to the human reproductive system, including, but not limited to, services relating to pregnancy, contraception, managing infertility, or the termination of a pregnancy.

(cf: P.L.2021, c.375, s.2)

8. Section 17 of P.L.2004, c.17 (C.17:30D-22) is amended to read as follows:

17. a. Notwithstanding any other law or regulation to the contrary, an insurer authorized to transact medical malpractice liability insurance in this State shall not increase the premium of any medical malpractice liability insurance policy based on a claim of medical negligence or malpractice against the insured if the insured is dismissed from an action alleging medical malpractice within 180 days of the filing of the last responsive pleading.

b. An insurer authorized to transact medical malpractice liability insurance in this State shall not take any adverse action, including but not limited to, loss or denial of coverage, or imposition of sanctions, fines, penalties, or rate increases, against an insured licensed, certified, or registered in this State for providing or facilitating a legally protected health care activity based on the fact that the patient receiving the service is a resident of a state where those services are illegal, or based on a revocation of an insured's license from another state or other disciplinary action by another state that resulted from an insured's providing, authorizing, participating in, referring, or assisting in a legally protected health care activity, if the revocation or disciplinary action was based on a violation of the other state's law prohibiting the legally protected health care activity.

c. As used in this section:

"Gender-affirming health care services" means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, relating

to the treatment of gender dysphoria and gender incongruence. "Gender-affirming health care services" does not include sexual orientation change efforts as defined by section 2 of P.L.2013, c.150 (C.45:1-55).

"Legally protected health care activity" means providing, seeking, receiving, assisting with, or inquiring about reproductive health care services or gender-affirming health care services that are lawful in this State, regardless of the patient's location.

"Reproductive health care services" includes all medical, pharmaceutical, surgical, counseling or referral services provided by a licensed health care professional relating to the human reproductive system, including, but not limited to, services relating to pregnancy, contraception, or the termination of a pregnancy.

(cf: P.L.2004, c.17, s.17)

9. The following sections are repealed:

1[Section 3 of P.L.2021, c.375 (C.26:2S-39);**]1**

Section 4 of P.L.2021, c.375 (C.52:14-17.29hh); and

Section 5 of P.L.2021, c.375 (C.52:14-17.46.6q).

10. a. Sections 1 through **1[**3**]** 6**1** shall take effect on the first day of the third month next following the date of enactment and **1**section 3**1** shall apply to all policies, plans, and contracts delivered, issued, executed, or renewed on or after the effective date, except the Department of Banking and Insurance may take anticipatory administrative action as may be necessary to implement the provisions.

b. Sections **1[**4**]** 7**1** through 9 shall take effect immediately, except that the amendment made in section 7 to subsection b. of section 2 of P.L.2021, c.375 (C.10:7-2) shall take effect on the sixth month next following the date of enactment.