



# HOUSE OF REPRESENTATIVES

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February 20, 2024

*Testimony of Rep. Poppy Arford introducing*

### **LD 2203 “An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Contraceptives”**

*Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services*

Senator Bailey, Representative Perry, and distinguished members of the Joint Standing Committee on HCIFS, my name is Poppy Arford and I proudly represent the people of State House District 101, the western part of Brunswick. Thank you for your consideration of **LD 2203, An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Contraceptives**.

#### **Expansion of what is already covered.**

This bill expands on the current State “coverage for contraceptives” statute by requiring that health insurances, regulated by the State of Maine, provide coverage for nonprescription contraception approved by the U.S. Food and Drug Administration (FDA) for over the counter (OTC) sale. This must be done in the same manner that current law requires for prescription contraception including no out-of-pocket payment commonly referred to as “first dollar coverage.” The plan member who purchases a nonprescription contraceptive must be provided with two purchase options. One, to make the purchase at a pharmacy without a payment required at the point of sale. Two, to make the purchase with a payment at the point of sale and submit a claim for reimbursement to the insurer. This would be done at non-pharmacy retailers. The provisions of this bill, if passed into law, will apply beginning January 1, 2025.

#### **Inspired by the FDA approval of Opill.**

On July 13, 2023, the FDA approved the birth control pill, Opill, for nonprescription use to prevent pregnancy. The Director of the FDA’s Center for Drug Evaluation and Research stated, “Today’s approval marks the first time a nonprescription daily oral contraceptive will be an available option for millions of people in the United States ... Approval of this progestin-only oral contraceptive pill

District 101: Brunswick (part)

provides an option for consumers to purchase contraceptive medicine without a prescription at drug stores, convenience stores and grocery stores, as well as online.”

I stand before you today as I was inspired by this announcement to submit a bill for consideration this session that would require first dollar coverage for Opill and other FDA-approved, nonprescription, OTC contraceptives. People depend on these products to prevent unwanted pregnancies and plan their families. Maine people have a right to a full range of affordable, nonprescription reproductive health products. Considering the fact that almost half of the annual 6 million pregnancies in the U.S. are unintended, supporting availability of OTC contraceptive choices such as Opill, that do not require a prescription, is a policy I invite you all to consider supporting.

**We will not be the first States to expand coverage for two nonprescription OTC contraceptives.**

At least six other states, including California, Maryland, New Jersey, New Mexico, New York, and Washington have passed their own versions of LD 2203. More States are considering it in the wake of the Opill announcement. You may access further information on these State laws in the “Sources and Resources” section below.

**Affirming the right to access affordable, safe, effective contraception.**

Affirming the right to the full range of affordable, accessible contraception is critical to the well-being of Maine people. Considering the number of unintended pregnancies, we can understand how this might be a critical need for many people. In fact, the research tells us that unintended pregnancies have a disproportionately negative impact on low-income women, women of color, immigrant women, young women, and women who are already disadvantaged in their access to economic resources. In fact, the potential negative consequences include the following; increased risk of maternal depression, maternal substance use, increased relationship stress between mother and partner, and tragically, increased rates of child neglect and abuse. We are working hard in Maine to prevent such outcomes. Let us work together to pass LD 2203 and expand choices for Maine people needing access to affordable, effective FDA-approved contraceptives.

Thank you for your time and attention. I appreciate it and am happy to answer questions. There are reproductive healthcare professionals with us this afternoon who will also be available to answer your questions.

## SOURCES AND RESOURCES:

- Current Maine Statute §2756. Coverage for contraceptives [Title 24-A Maine Insurance Code Chapter 33: Health Insurance Contracts §2756. Coverage for contraceptives.](#)
- State Private Insurance Coverage Requirements for OTC Contraception Without a Prescription (OTC Coverage States include California, Maryland, New Jersey, New Mexico, New York, and Washington). [https://www.kff.org/other/state-indicator/state-private-insurance-coverage-requirements-for-otc-contraception-without-a-prescription/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D](#)
- Washington Chapter 119, Reproductive Health Plan Coverage. Effective June 7, 2018. [https://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6219-S.SL.pdf](#)
- California Contraceptive Equity Act [https://pluralpolicy.com/app/legislative-tracking/bill/details/state-ca-20212022-sb523/1035100](#)
- California new laws for 2024: Cheaper vasectomies and birth control (1/1/2024) [https://calmatters.org/health/2024/01/vasectomy-birth-control-new-california-laws-2024/](#)
- CMS Contraceptive Coverage Requirements Under Section 2713 of the Public Health Service Act [https://www.cms.gov/cciiio/resources/training-resources/downloads/contraceptive-coverage-slides-ppt.pdf](#)
- FAQs ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 64 (2024) [https://www.cms.gov/files/document/faqs-part-64.pdf](#)
- FDA Decisional Memorandum New Drug Application for Full Prescription-to-Nonprescription Switch of Norgestrel Tablets 0.075 mg [https://www.accessdata.fda.gov/drugsatfda\\_docs/nda/2023/017031Orig1s041SumR.pdf](#)
- FDA Approves First Nonprescription Daily Oral Contraceptive (7/13/23) [https://www.fda.gov/news-events/press-announcements/fda-approves-first-nonprescription-daily-oral-contraceptive](#)
- Maine health care providers applaud over-the-counter birth control approval (7/19/23) [https://www.newscentermaine.com/article/news/health/reproductive-health-care-over-the-counter-birth-control/97-fee3eea3-501c-4afe-9539-d64279ed7be6](#)
- Insurance Coverage of OTC Oral Contraceptives: Lessons from the Field [https://www.kff.org/womens-health-policy/report/insurance-coverage-of-otc-oral-contraceptives-lessons-from-the-field/?utm\\_campaign=KFF-2023-Womens-Health-Policy-WHP&utm\\_medium=email&\\_hsmi=2&\\_hsenc=p2ANqtz--nFrTL9NsVmZ1HwRK6gwpnQ2iYwL\\_SdtvqkMr4UyJeuVON5-sLN4EDrdeAz0JpQ0U2PIfYsGW2sQmwtiPMVFwEueF6g&utm\\_content=2&utm\\_source=hs\\_email](#)

**DRAFT PROPOSED COMMITTEE AMENDMENT: LD 2203, An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Oral Hormonal Contraceptives**

Amend the bill by striking out the title and inserting in its place the following:

**An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Contraceptives**

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

**Sec. 1. 24 MRSA §2332-J, sub-§1**, as enacted by PL 1999, c. 341, §1 and affected by §5, is amended to read:  
**1. Coverage requirements.** All individual and group nonprofit hospital and medical services plan policies and contracts and all nonprofit health care plan policies and contracts that provide coverage for prescription drugs or outpatient medical services must provide coverage for all prescription contraceptives approved by the federal Food and Drug Administration or for outpatient contraceptive services, in accordance with the requirement of this section respectively, to the same extent that coverage is provided for other prescription drugs or outpatient medical services. For purposes of this section, the term "outpatient contraceptive services" means consultations, examinations, procedures, and medical services provided on an outpatient basis and related to the use of contraceptive methods to prevent an unintended pregnancy. This section may not be construed to apply to prescription drugs or devices that are designed to terminate a pregnancy.

**Sec. 2. 24 MRSA §2332-J, sub-§4**, as enacted by PL 2021, c. 609, §1, is amended to read:

**4. Coverage of contraceptive supplies.** Coverage required under this section must include coverage for contraceptive supplies in accordance with the following requirements. For purposes of this section, contraceptive supplies" means all contraceptive drugs, devices and products approved by the federal Food and Drug Administration to prevent an unwanted pregnancy, including non-prescription contraceptives.

- A. Coverage must be provided without any deductible, coinsurance, copayment, or other cost-sharing requirement.
- B. If the federal Food and Drug Administration has approved one or more therapeutic equivalents of a contraceptive supply, an insurer is not required to cover all those therapeutically equivalent versions in accordance with this subsection, as long as at least one is covered without any deductible, coinsurance, copayment, or other cost-sharing requirement in accordance with this subsection.
- C. Coverage must be provided for the furnishing or dispensing of prescribed contraceptive supplies intended to last for a 12-month period, which may be furnished or dispensed all at once or over the course of the 12 months at the discretion of the health care provider.
- D. A prescription may not be required for an over-the-counter contraceptive supply.
- E. With respect to a non prescription contraceptive, a nonprofit hospital or medical service organization or nonprofit health care plan shall establish mechanisms to ensure that an enrollee who purchases a nonprescription contraceptive has the option either to make the purchase at a pharmacy at the point of sale or to make the purchase at another retail establishment with a payment at the point of sale and submit a claim for reimbursement to the nonprofit hospital or medical service organization or nonprofit health care plan.

**Sec. 3. 24-A MRSA §2756, sub-§1**, as enacted by PL 1999, c. 341, §2 and affected by §5, is amended to read:

**1. Coverage requirements.** All individual health policies and contracts, except accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care and other limited benefit health insurance policies and contracts, that provide coverage for prescription drugs or outpatient medical services must provide coverage for all prescription contraceptives approved by the federal Food and Drug Administration or for outpatient contraceptive services, in accordance with the requirement of this section respectively, to the same extent that coverage is provided for other prescription drugs or outpatient medical services. For purposes of this section, the term "outpatient contraceptive services" means consultations, examinations, procedures, and medical services provided on an outpatient basis and related to the use of contraceptive methods to prevent an unintended pregnancy. This section may not be construed to apply to prescription drugs or devices that are designed to terminate a pregnancy.

**Sec. 4. 24-A MRSA §2756, sub-§3**, as amended by PL 2021, c. 609, §2, is further amended to read:

**3. Coverage of contraceptive supplies.** Coverage required under this section must include coverage for contraceptive supplies in accordance with the following requirements. For purposes of this section, "contraceptive supplies" means all contraceptive drugs, devices and products approved by the federal Food and Drug Administration to prevent an unwanted pregnancy, including non-prescription contraceptives.

A. Coverage must be provided without any deductible, coinsurance, copayment, or other cost-sharing requirement.

B. If the federal Food and Drug Administration has approved one or more therapeutic equivalents of a contraceptive supply, an insurer is not required to cover all those therapeutically equivalent versions in accordance with this subsection, as long as at least one is covered without any deductible, coinsurance, copayment, or other cost-sharing requirement in accordance with this subsection.

D. Coverage must be provided for the furnishing or dispensing of prescribed contraceptive supplies intended to last for a 12-month period, which may be furnished or dispensed all at once or over the course of the 12 months at the discretion of the health care provider.

D. A prescription may not be required for an over-the-counter contraceptive supply.

E. With respect to a non prescription contraceptive, an insurer shall establish mechanisms to ensure that an enrollee who purchases a nonprescription contraceptive has the option either to make the purchase at a pharmacy at the point of sale or to make the purchase at another retail establishment with a payment at the point of sale and submit a claim for reimbursement to the insurer.

**Sec. 5. 24-A MRSA §2847-G, sub-§1**, as enacted by PL 1999, c. 341, §3 and affected by §5, is amended to read:

**1. Coverage requirements.** All group insurance policies and contracts, except accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care and other limited benefit health insurance policies and contracts that provide coverage for prescription drugs or outpatient medical services must provide coverage for all prescription contraceptives approved by the federal Food and Drug Administration or for outpatient contraceptive services, in accordance with the requirement of this section respectively, to the same extent that coverage is provided for other prescription drugs or outpatient medical services. For purposes of this section, the term "outpatient contraceptive services" means consultations, examinations, procedures, and medical services provided on an outpatient basis and related to the use of contraceptive methods to prevent an unintended pregnancy. This section may not be construed to apply to prescription drugs or devices that are designed to terminate a pregnancy.

**Sec. 6. 24-A MRSA §2847-G, sub-§4**, as amended by PL 2021, c. 609, §3, is further amended to read:

**4. Coverage of contraceptive supplies.** Coverage required under this section must include coverage for contraceptive supplies in accordance with the following requirements. For purposes of this section, "contraceptive supplies" means all contraceptive drugs, devices and products approved by the federal Food and Drug Administration to prevent an unwanted pregnancy, including non-prescription contraceptives.

A. Coverage must be provided without any deductible, coinsurance, copayment, or other cost-sharing requirement.

B. If the federal Food and Drug Administration has approved one or more therapeutic equivalents of a contraceptive supply, an insurer is not required to cover all those therapeutically equivalent versions in accordance with this subsection, as long as at least one is covered without any deductible, coinsurance, copayment, or other cost-sharing requirement in accordance with this subsection.

D. Coverage must be provided for the furnishing or dispensing of prescribed contraceptive supplies intended to last for a 12-month period, which may be furnished or dispensed all at once or over the course of the 12 months at the discretion of the health care provider.

E. A prescription may not be required for an over-the-counter contraceptive supply.

F. With respect to a non prescription contraceptive, an insurer shall establish mechanisms to ensure that an enrollee who purchases a nonprescription contraceptive has the option either to make the purchase at a

pharmacy at the point of sale or to make the purchase at another retail establishment with a payment at the point of sale and submit a claim for reimbursement to the insurer.

**Sec. 7. 24-A MRSA §4247, sub-§1**, as reallocated by RR 1999, c. 1, §37, is amended to read:

**1. Coverage requirements.** All health maintenance organization individual and group health contracts that provide coverage for prescription drugs or outpatient medical services must provide coverage for all prescription contraceptives approved by the federal Food and Drug Administration or for outpatient contraceptive services, respectively, to the same extent that coverage is provided for other prescription drugs or outpatient medical services. For purposes of this section, the term "outpatient contraceptive services" means consultations, examinations, procedures, and medical services provided on an outpatient basis and related to the use of contraceptive methods to prevent an unintended pregnancy.

This section may not be construed to apply to prescription drugs or devices that are designed to terminate a pregnancy.

**Sec. 8. 24-A MRSA §4247, sub-§4**, as amended by PL 2021, c. 609, §4, is further amended to read:

**4. Coverage of contraceptive supplies.** Coverage required under this section must include coverage for contraceptive supplies in accordance with the following requirements. For purposes of this section, "contraceptive supplies" means all contraceptive drugs, devices and products approved by the federal Food and Drug Administration to prevent an unwanted pregnancy, including non-prescription contraceptives.

A. Coverage must be provided without any deductible, coinsurance, copayment, or other cost-sharing requirement.

B. If the federal Food and Drug Administration has approved one or more therapeutic equivalents of a contraceptive supply, a health maintenance organization is not required to cover all those therapeutically equivalent versions in accordance with this subsection, as long as at least one is covered without any deductible, coinsurance, copayment, or other cost-sharing requirement in accordance with this subsection.

D. Coverage must be provided for the furnishing or dispensing of prescribed contraceptive supplies intended to last for a 12-month period, which may be furnished or dispensed all at once or over the course of the 12 months at the discretion of the health care provider.

E. A prescription may not be required for an over-the-counter contraceptive supply.

F. With respect to a non prescription contraceptive, a health maintenance organization shall establish mechanisms to ensure that an enrollee who purchases a nonprescription contraceptive has the option either to make the purchase at a pharmacy at the point of sale or to make the purchase at another retail establishment with a payment at the point of sale and submit a claim for reimbursement to the health maintenance organization.

**Sec. 9. Application.** This Act applies to all policies, contracts and certificates executed, delivered, issued for delivery, continued, or renewed in this State on or after January 1, 2025. For purposes of this Act, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

## SUMMARY

This amendment replaces the bill. The amendment expands the requirements in current law for coverage of contraceptives to include non-prescription contraceptives approved by the federal Food and Drug Administration. The amendment provides that a prescription is not required for an over-the counter contraceptive supply and requires insurers to establish mechanisms to ensure that an enrollee who purchases a nonprescription contraceptive has the option either to make the purchase at a pharmacy without a payment required at the point of sale or to make the purchase with a payment at the point of sale and submit a claim for reimbursement to the insurer. The requirements apply beginning January 1, 2025.