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*Testimony of Rep. Poppy Arford presenting*

**LD 163, An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Oral Hormonal Contraceptives and Nonprescription Emergency Contraceptives**

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

Senator Bailey, Representative Mathieson and respected members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services, my name is Poppy Arford, and I am honored to represent the people of State House District 101, the western part of Brunswick. I appreciate your consideration of **LD 163, An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Oral Hormonal Contraceptives and Nonprescription Emergency Contraceptives**.

**Expansion of what is already covered**

This bill expands on Maine's current "coverage for contraceptives" law by requiring that health insurance policies regulated by the State of Maine provide coverage for U.S. Food and Drug Administration (FDA) approved nonprescription oral hormonal and emergency contraceptives, available for over-the-counter (OTC) sale.

This coverage must be provided in the same manner as current law requires for prescription contraceptives, including no out-of-pocket payment, commonly referred to as "first-dollar coverage". Also, the plan member wishing to purchase either of these nonprescription contraceptives must be provided with the option to purchase at the pharmacy counter with first-dollar coverage or to make the purchase at the pharmacy counter with a payment. The insurer must provide a process for the member to then submit a receipt, provided by the pharmacy, for reimbursement.

## **Resubmittal of LD 2203 with a technical change**

LD 163 is almost identical to LD 2203, a bill with the same title and substance which I sponsored last session. I have brought it back, as after seeing enactment in both the House and the Senate, LD 2203 was one of the thirty-five bills sent to the Governor's desk last May 10th. Due to the timing of their arrival, the thirty-five bills sat on the Governor's desk until they “Died in Possession of the Governor Upon Conclusion of the 131st Legislature”.

I say almost identical as the amended bill I am presenting this morning strikes language from Section 4 stating that a pharmacist “may use a standing order to facilitate billing for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive”.

I am offering this technical amendment in recognition of the reality that billing protocols change – and have in fact evolved since last spring when LD 2203 was drafted and the first FDA approved nonprescribed oral hormonal contraceptive “Opill” would soon become available in Maine. Since then pharmacies, in other states that have passed laws mandating this insurance coverage, are successfully billing insurers using their NPI number in addition to standing orders. This fall, the National Council of Prescription Drug Plans, which creates national standards for electronic prescribing is scheduled to publish new guidance for the pharmacy billing of the nonprescription OTC contraceptives that this bill addresses. Due to this, including any reference to a specific billing mechanism in LD 163 is no longer needed or advisable.

## **We are not the first state to mandate coverage of OTC contraceptives**

Regarding other states, there are currently at least ten that have passed laws to mandate insurance coverage of non-prescribed OTC contraceptives. They include California, Colorado, Delaware, Illinois, Maryland, New Jersey, New Mexico, New York, Oregon, and Washington. While there are some differences in these laws, they all have in common the requirement that state-regulated private insurers cover OTC contraceptives without a prescription. At least half of these also explicitly prohibit cost-sharing, requiring “first-dollar coverage” just as LD 163 proposes to do here in Maine.

## **Affirming Maine's tradition of providing access to safe, affordable contraceptives**

Maine lawmakers have repeatedly supported expanding timely access to safe, comprehensive, affordable contraceptives (i.e. LD 1954). This is critically important as the meeting the need for accessible, affordable, safe contraceptives is necessary to ensure the reproductive health and well-being of Maine people. As you consider this need, please keep in mind that unintended pregnancy has a disproportionately negative impact on low-income women, rural women, women of color, immigrant women and young women – women who are already disadvantaged in their access to economic resources. The potential negative consequences of unintended pregnancy include increased risk of

maternal depression, maternal substance use, increased relationship stress between parents, and tragically, increased rates of child neglect and abuse.

I will close by noting that ensuring access to affordable, safe, contraceptives is established policy in Maine. As such, I am asking you, my respected colleagues, to consider the merits of LD 163 and vote the bill OTP-AM. Considering the fact that almost half of the 6 million-plus pregnancies in the U.S. each year are unintended, the option to use OTC contraceptives that do not require a doctor's visit to obtain a prescription is an example of patient-centered reproductive health care policy - which is worthy of our support.

Thank you for your time and attention. I appreciate your thoughtful response and am happy to answer any questions you may have. There are also reproductive health care experts testifying on LD 163 – who are excellent sources to answer your questions. Thank you, again.

#### **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.
- L.D. 2203, An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Oral Hormonal Contraceptives (131<sup>st</sup> Legislature)  
<https://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280091854>
- L.D. 1954, An Act To Ensure Access to Prescription Contraceptives (Effective 1/1/2023)  
[www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0691&item=4&snum=130](http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0691&item=4&snum=130)
- Emergency Contraception. US Dept. of Health and Human Services, Office of Women's Health.
- State Contraception Policies, NCSL (Oct. 2024) (OTC Coverage States include California, Maryland, New Jersey, New Mexico, New York, and Washington)
- 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>
- CMS Contraceptive Coverage Requirements Under Section 2713 of the Public Health Service Act [www.cms.gov/ccio/resources/training-resources/downloads/contraceptive-coverage-slides-ppt.pdf](http://www.cms.gov/ccio/resources/training-resources/downloads/contraceptive-coverage-slides-ppt.pdf)
- FDA Approves First Nonprescription Daily Oral Contraceptive (7/13/23)  
[www.fda.gov/news-events/press-announcements/fda-approves-first-nonprescription-daily-oral-contraceptive](http://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)  
[www.newscentermaine.com/article/news/health/reproductive-health-care-over-the-counter-birth-control/97-fee3eea3-501c-4afe-9539-d64279ed7be6](http://www.newscentermaine.com/article/news/health/reproductive-health-care-over-the-counter-birth-control/97-fee3eea3-501c-4afe-9539-d64279ed7be6)

**LD 163**  
**SPONSOR'S AMENDMENT**  
**Proposed by Rep. Arford**  
**FOR HCIFS REVIEW 2/5/25 PUBLIC HEARING**

*[CHANGES FROM ORIGINAL AMENDMENT SHOWN IN HIGHLIGHTED STRIKE THROUGH;  
SEE CHANGES MADE IN SEC. 2, SEC. 5, SEC. 8 AND SEC. 11]*

**DRAFT PROPOSED COMMITTEE AMENDMENT:**  
**LD 163, An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Oral Hormonal Contraceptives and Nonprescription Emergency Contraceptives**

Amend the bill as follows:

**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, nonprescription oral hormonal contraceptives and nonprescription emergency 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~~ in accordance with the requirements of this section. 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 nonprescription oral hormonal contraceptives and nonprescription emergency 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 and nonprescription oral hormonal 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 for prescribed contraceptive supplies.

D. A prescription is not required to obtain a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive.

**LD 163**  
**SPONSOR'S AMENDMENT**  
**Proposed by Rep. Arford**  
**FOR HCIFS REVIEW 2/5/25 PUBLIC HEARING**

E. A nonprofit hospital or medical service organization or nonprofit health care service organization shall establish mechanisms to ensure that an enrollee who seeks coverage for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at a pharmacy has the option to obtain the nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at the point of sale without payment of any cost-sharing amount or to make the purchase at the pharmacy through an out-of-pocket payment at the point of sale and submit a claim for reimbursement. The pharmacy may use a standing order to facilitate billing for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive in accordance with this paragraph.

**Sec. 3. 24 MRSA §2332-J, sub-§5** is enacted to read:

**5. Rules.** The superintendent may adopt rules as necessary to implement the requirements of this section, including rules related to mechanisms to ensure coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives and rules regarding notice to enrollees about how to access coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives. Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

**Sec. 4. 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, nonprescription oral hormonal contraceptives and nonprescription emergency 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 in accordance with the requirements of this section.~~ 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. 5. 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 nonprescription oral hormonal contraceptives and nonprescription emergency 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

**LD 163**  
**SPONSOR'S AMENDMENT**  
**Proposed by Rep. Arford**  
**FOR HCIFS REVIEW 2/5/25 PUBLIC HEARING**

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 and nonprescription oral hormonal 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 for prescribed contraceptive supplies.

E. A prescription is not required to obtain a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive.

F. An insurer shall establish mechanisms to ensure that an enrollee who seeks coverage for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at a pharmacy has the option to obtain the nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at the point of sale without payment of any cost-sharing amount or to make the purchase through an out-of-pocket payment at the point of sale and submit a claim for reimbursement to the insurer. The pharmacy may use a standing order to facilitate billing for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive in accordance with this paragraph.

Sec. 6. 24-A MRSA §2756, sub-§4 is enacted to read:

**4. Rules.** The superintendent may adopt rules as necessary to implement the requirements of this section, including rules related to mechanisms to ensure coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives and rules regarding notice to enrollees about how to access coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives. Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 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, nonprescription oral hormonal contraceptives and nonprescription emergency 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~~ in accordance with the requirements of this section. 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 §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,

**LD 163**  
**SPONSOR'S AMENDMENT**  
**Proposed by Rep. Arford**  
**FOR HCIFS REVIEW 2/5/25 PUBLIC HEARING**

"contraceptive supplies" means all contraceptive drugs, devices and products approved by the federal Food and Drug Administration to prevent an unwanted pregnancy, including nonprescription oral hormonal contraceptives and nonprescription emergency 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 and nonprescription oral hormonal 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 for prescribed contraceptive supplies.

E. A prescription is not required to obtain a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive.

F. An insurer shall establish mechanisms to ensure that an enrollee who seeks coverage for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at a pharmacy has the option to obtain the nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at the point of sale without payment of any cost-sharing amount or to make the purchase at the pharmacy through an out-of-pocket payment at the point of sale and submit a claim for reimbursement to the insurer. The pharmacy may use a standing order to facilitate billing for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive in accordance with this paragraph.

Sec. 9. 24-A MRSA §2847-G, sub-§5 is enacted to read:

5. Rules. The superintendent may adopt rules as necessary to implement the requirements of this section, including rules related to mechanisms to ensure coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives and rules regarding notice to enrollees about how to access coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives. Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

Sec. 10. 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, nonprescription oral hormonal contraceptives and nonprescription emergency 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 in accordance with the requirements of this section. 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

**LD 163**  
**SPONSOR'S AMENDMENT**  
**Proposed by Rep. Arford**  
**FOR HCIFS REVIEW 2/5/25 PUBLIC HEARING**

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. 11. 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 nonprescription oral hormonal contraceptives and nonprescription emergency 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 and nonprescription oral hormonal 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 for prescribed contraceptive supplies.

E. A prescription is not required to obtain a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive.

F. A health maintenance organization shall establish mechanisms to ensure that an enrollee who seeks coverage for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at a pharmacy has the option to obtain the nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at the point of sale without payment of any cost-sharing amount or to make the purchase at the pharmacy through an out-of-pocket payment at the point of sale and submit a claim for reimbursement to the health maintenance organization. The pharmacy may use a standing order to facilitate billing for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive in accordance with this paragraph.

**Sec. 12. 24-A MRSA §4247, sub-§5** is enacted to read:

**5. Rules.** The superintendent may adopt rules as necessary to implement the requirements of this section, including rules related to mechanisms to ensure coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives and rules regarding notice to enrollees about how to access coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives. Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

**Sec. 13. 24-A MRSA §4302, sub-§1, ¶A**, as amended by PL 2009, c. 439, Pt. A, §2, is further amended to read:



**LD 163**  
**SPONSOR'S AMENDMENT**  
**Proposed by Rep. Arford**  
**FOR HCIFS REVIEW 2/5/25 PUBLIC HEARING**

A. Coverage provisions, benefits and any exclusions by category of service, type of provider and, if applicable, by specific service, including but not limited to the following types of services, exclusions and limitations:

- (1) Health care services excluded from coverage;
- (2) Health care services requiring copayments or deductibles paid by enrollees;
- (3) Restrictions on access to a particular provider type;
- (4) Health care services that are or may be provided only by referral; ~~and~~
- (5) Childhood immunizations as recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention and the American Academy of Pediatrics; and
- (6) Coverage requirements for contraceptive supplies, as defined in section 4247, subsection 4, and the procedures an enrollee must follow to access coverage for over-the-counter contraceptive supplies and nonprescription contraceptives at a pharmacy without an out-of-pocket cost at the point of sale or by submitting a claim for reimbursement;

**Sec. 14. 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, 2026. For purposes of this Act, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

**Sec. 15. Department of Professional and Financial Regulation, Bureau of Insurance review.** The Department of Professional and Financial Regulation, Bureau of Insurance shall monitor compliance of health insurance carriers with the requirements for coverage of nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives set forth in this Act and any rules adopted by the bureau to implement the requirements of this Act, including any complaints or barriers to implementation. The bureau shall also review any federal guidance developed in response to the "Request for Information" regarding a proposed regulation to extend the application of the preventive services requirements under Section 2713 of the federal Public Health Service Act to over-the-counter preventive items and services available without a prescription by a health care provider, including contraceptive supplies. No later than November 4, 2026, the bureau shall provide a report to the joint standing committee of the Legislature having jurisdiction over health coverage, insurance and financial services matters with an update on implementation of the requirements of this Act, including recommendations for legislation to improve implementation, and on the status of any proposed federal regulations related to coverage of nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives by health insurance carriers. The joint standing committee of the Legislature having jurisdiction over health coverage, insurance and financial services matters may report out legislation based on the report to the 133rd Legislature in 2027.

### SUMMARY

This bill expands the requirements in current law for coverage of contraceptives to include nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives approved by the federal Food and Drug Administration. The bill provides that a prescription is not required for insurance coverage for nonprescription oral hormonal contraceptives and nonprescription emergency

**LD 163**  
**SPONSOR'S AMENDMENT**  
**Proposed by Rep. Arford**  
**FOR HCIFS REVIEW 2/5/25 PUBLIC HEARING**

contraceptives and requires insurers to establish mechanisms to ensure that an enrollee who purchases a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive at a pharmacy has the option to make the purchase ~~pursuant to a standing order issued for billing purposes~~ 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, 2026.

The bill requires health insurance carriers to notify enrollees, at least annually, of the coverage requirements for contraceptive supplies and the procedures an enrollee must follow to access coverage for nonprescription oral hormonal contraceptives and nonprescription emergency contraceptives at a pharmacy without an out-of-pocket cost at the point of sale or by submitting a claim for reimbursement. The bill also authorizes the Department of Professional and Financial Regulation, Bureau of Insurance to adopt rules to implement the provisions and also requires the bureau to monitor implementation by health insurance carriers and to report to the joint standing committee of the Legislature having jurisdiction over health coverage, insurance and financial services matters no later than November 4, 2026.

*The amendment strikes language in the bill authorizing a pharmacist to use a standing order to facilitate billing for a nonprescription oral hormonal contraceptive or nonprescription emergency contraceptive.*