Testimony Neither For Nor Against

LD 2203, An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Contraceptives (Revised Title)

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Distinguished members of the Health Coverage, Insurance and Financial Services Committee, my name is Kim Cook and I am an attorney and founder of Government Strategies. I represent Community Health Options, Maine's nonprofit CO-OP health insurance company. Community Health Options exists for the benefit of its Members and our mission which is to provide affordable, high-quality benefits that promote health and wellbeing. We offer our testimony to provide relevant information and our perspective on provisions of LD 2023 as amended.

Opill Coverage

Community Health Options supports first dollar coverage of Opill at the pharmacy counter by both public and private health plans. Opill presents a significant advancement in terms of access to safe and effective contraception especially when taken together with Maine's new law allowing pharmacists to prescribe hormonal contraceptives directly to patients.

LD 2203 would only mandate private insurance coverage which reaches approximately 30% of Maine people. We commend Representative Arford for her statement in her testimony in introducing LD 2203 in which she states:

> 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.

Mandating first dollar coverage only for those with access to private insurance, however, falls short of this laudable goal. Given that nearly as many people in Maine have coverage through MaineCare as do through the state-regulated insurance market, expanding this bill to MaineCare would effectively nearly double the population with access to Opill without financial barriers.[1] **We urge the Committee to consider expanding this mandated benefit to MaineCare coverage as well.**

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[1] As of October 2023, MaineCare/CHIP had 370,638 members or 26.5% of Maine's population (1.396 Million). See https://www.medicaid.gov/state-overviews/stateprofile.html?state=maine. Maine's individual and employer-based insurance market accounts for approximately 28% of health coverage in Maine. See https://legislature.maine.gov/doc/5023 (2019).

Coverage for other Over-the-Counter (OTC) Contraceptives

LD 2203, as amended, would require first dollar coverage for a 12-month supply of all FDA approved contraceptives without a prescription and regardless of the location of the purchase (i.e., at the Point of Sale at the pharmacy counter or through reimbursement to an enrollee). **Mandating coverage for OTC medicines and products is new (outside of COVID tests during the state of emergency) and poses administrative complexities and the potential for fraud, waste and abuse.** Given the extent of the expansion in coverage proposed in LD 2203, we strongly recommend the Committee request the Bureau complete a mandate study for coverage of OTC contraceptives (except Opill) to explore what the potential impact might be on premiums, and provide details of how other states have operationalized payment for such coverage taking into consideration administrative costs and prevention of fraud, waste and abuse. Below we have provided further information for your consideration.

First, it is important to consider that the federal government issued a request for information (RFI) last October seeking comments regarding coverage of a range of OTC preventive items and services including, but not limited to, contraceptives.[2] This RFI sought comments regarding (1) the potential challenges associated with providing such coverage, (2) whether and how providing such coverage would benefit consumers, and (3) potential burdens that plans and issuers would face if required to provide such coverage. This RFI shows that expanding coverage for OTC contraceptives among other products is being given serious consideration at the federal level and shows that benefits and challenges are being considered.

Second, we reviewed the statutes in the six states mentioned by proponents as providing coverage for OTC contraceptives on a first dollar basis without a prescription: California, Maryland, New Jersey, New Mexico, New York, and Washington. **Our review of the cited statutory sections found some important variation among these states and from the amended bill language presented at the public hearing for LD 2203.** We bring this variation to your attention to highlight the different approaches, complexities and operational considerations that deserve your attention as you consider expanding coverage to OTC medication and products. **These variations range from requiring a prescription, to requiring coverage only for female contraceptives, to requiring coverage only at in-network pharmacies or at the pharmacy counter.** We have provided excerpts of that statutory language illustrating these approaches in Attachment A. We also noted that while New Mexico, New York and Washington appear to offer coverage as broad as LD 2203, these states do not appear to address how coverage is operationalized in statute, i.e., whether coverage is required only at the pharmacy counter or by after-the-fact submission of a claim by the enrollee.

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[2] https://www.federalregister.gov/documents/2023/10/04/2023-21969/request-for-information-coverage-of-over-the-counter-preventive-services

We urge the committee to carefully consider some additional operational issues as well. For example, in order for the pharmacy to directly bill the insurer, it is common that a National Provider Identifier (NPI) number needs to be entered. In the case of OTC contraceptives, will the pharmacist need to use their own NPI or will the state issue a blanket NPI number for pharmacists to use when billing OTC contraceptives.[3] Another policy options to consider is whether the pharmacy law should be changed to allow pharmacists to prescribe OTC contraceptives, as was done last year for certain prescription contraceptives. Coverage of OTC contraceptives is evolving with little consistency across the country and there are lessons to be gleaned from the various approaches.

Given the variation even among the six states with the broadest mandated benefits for contraceptives, and the operational complexities and concerns, we urge the Committee to send OTC contraceptives (except Opill at the pharmacy counter) for a mandate study by the Bureau of Insurance.

However, If the committee chooses not to seek a mandate study, we strongly urge the Committee to adopt language similar to Maryland and New Jersey (see Attachment A) so that OTC contraceptives are covered at the pharmacy counter with direct billing to the carrier.

Thank you for your consideration of our testimony. We will be available at your work session if you have any questions.

[3] See https://www.kff.org/policy-watch/considerations-covering-over-the-counter-contraception/

Attachment A

Variations within States with Broad Coverage Mandates

(as cited by proponents)

California: CA Health & Safety Code Section 1367.25(1)(A)

"… all FDA-approved contraceptive drugs, devices, and products ***for women***, including all FDA-approved contraceptive drugs, devices, and products available over the counter, ***as prescribed by the enrollee's provider***" (emphasis added)

Maryland: Md. Code Ann., ins. § 15-826.1(e)

(e) (1) Subject to paragraph (2) of this subsection, an entity subject to this section:

(i) shall provide coverage without a prescription for all contraceptive drugs approved by the U.S. Food and Drug Administration and available by prescription and over the counter; and

(ii) may not apply a copayment or coinsurance requirement for a contraceptive drug dispensed without a prescription under item (i) of this paragraph that exceeds the copayment or coinsurance requirement for the contraceptive drug dispensed under a prescription.

(2) An entity subject to this section:

(i) ***may only be required to provide point–of–sale coverage under paragraph (1)(i) of this subsection at in–network pharmacies***; and

(ii) *may limit the frequency with which the coverage required under paragraph (1)(i) of this subsection is provided*.

(emphasis added)

New Jersey: NJ. Stat. Ann. § 17B:27A-7.12

7. a. An individual health benefits plan required pursuant to section 3 of P.L.1992, c.161 (C.17B:27A-4) shall provide coverage for expenses incurred in the purchase of prescription female contraceptives, and the following services, drugs, devices, products, and procedures ***on an in-network basis***:

(1) Any contraceptive drug, device or product approved by the United States Food and Drug Administration, which coverage shall be subject to all of the following conditions:

(a) If there is a therapeutic equivalent of a contraceptive drug, device or product approved by the United States Food and Drug Administration, coverage shall be provided for either the requested contraceptive drug, device or product or for one or more therapeutic equivalents of the requested drug, device or product.

(b) Coverage shall be provided without a prescription for all contraceptive drugs available for over-the-counter sale that are approved by the United States Food and Drug Administration.

(emphasis added)