

Governor Phil Murphy

ICYMI: NJ Department of Banking and Insurance Finds Need for Regulatory Action to Require Coverage for Abortion Services in Regulated Markets

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TRENTON – The New Jersey Department of Banking and Insurance announced that it has released a study on access to comprehensive reproductive health care that found a need for regulatory action to require coverage for abortion services under health benefits plans regulated by the department, and has begun the formal rulemaking process to implement the requirement. The department performed this study as part of the implementation of the historic Freedom of Reproductive Choice Act (<https://nj.gov/governor/news/news/562022/approved/20220113a.shtml>) signed by Governor Phil Murphy earlier this year, which codifies the constitutional right to freedom of reproductive choice in New Jersey.

“The results of the Department of Banking and Insurance’s study confirm what we have long known to be true – that rights without access mean nothing,” **said Governor Murphy**. “In light of the study’s findings, the Department has begun the process of establishing a requirement that will ensure access to abortion services without exceptions limiting coverage. I applaud the health benefits boards for beginning the process for earlier implementation of this requirement and encourage them to vote to finalize the earlier date to ensure more of our residents can access the care they both need and deserve as soon as possible.”

“When undertaking this study, there were a variety of considerations that the department took into account, such as medical evidence, cost impacts, practices in other states, social impacts, and the regulatory environment,” **said Commissioner Marlene Caride**. “Based on the study’s findings, there is a need for a clear regulation to provide for abortion coverage under state-regulated health benefits plans. The department has begun the formal rulemaking process to establish the coverage requirement and ensure comprehensive insurance coverage for reproductive care across all plans in the department’s regulated markets, and has requested that insurers in the individual and small employer markets implement the change as quickly as possible. We are encouraged by the action taken and look forward to implementation of the change for 2023.”

Under the rules process in the Administrative Procedures Act, the requirement could take effect next plan year, on January 1, 2024. However, the department requested that insurance companies in the individual market, which include those offering plans through Get Covered New Jersey, the State’s Official Health Insurance Marketplace, off the marketplace, and the small employer market, implement the change as soon as possible to make coverage for abortion services, without exceptions, effective for the start of the 2023 plan year on January 1, 2023.

At the department’s request, the Individual Health Coverage Program board voted yesterday to propose the change, thus beginning the process of implementing the change. The Small Employer Health Program board also voted today to begin the process. After a 20-day public comment period, both boards are expected to hold a final vote in late December to adopt the change to make the requirement effective January 1, 2023.

Currently, health insurance coverage for abortion services in the regulated markets is neither explicitly prohibited nor required by state or federal law. However, in the most regulated markets, the individual and small employer markets, all carriers currently provide some type of coverage for abortion. Carriers in these markets may opt to limit such coverage to cases of rape, incest or the life of the woman.

A regulation to require uniform comprehensive abortion coverage across the regulated markets is consistent with the rights protected in the Freedom of Reproductive Choice Act. The department’s study found that requiring insurance coverage for abortion, without exceptions that limit coverage, will not increase premiums in any material way, contributes to access to the full range of reproductive healthcare, increases transparency, and would be consistent with actions taken in other states.

As part of its study pursuant to the Act, the department requested specific information and conducted an analysis of available data on the cost and possible impacts to insurance coverage if coverage for abortion were required in the regulated markets. Carriers in the individual and small employer markets in New Jersey were asked to provide the impact of covering all abortions as part of their 2023 rate filings. Carriers estimated a range of zero impact to .1% of premium. Therefore, enacting an abortion coverage requirement would not be expected to materially impact insurance rates in the regulated markets.

The Act also recognizes the right of certain religious employers to request an exclusion under a health insurance contract if the required coverage conflicts with the religious employer’s bona fide religious beliefs and practices. Therefore, the regulation proposed by the department would incorporate such an exception.

In preparation of the study, the department accepted public comment on access to comprehensive reproductive care, coverage of reproductive services and related health impacts. In response, hundreds of comments were submitted and reviewed by the department.

The State of New Jersey has regulatory authority over certain health insurance markets. Specifically, the department regulates the individual, small employer and the fully-insured large employer health insurance markets, often referred to as the “regulated markets.” The individual market includes plans offered on the marketplace, through Get Covered New Jersey, the State’s Official Health Insurance Marketplace, and off the marketplace.

The department began the regulatory process on November 23rd to advance the requirement that state-regulated plans cover abortion services without exceptions that limit coverage, by beginning the advance notice process (<https://nj.gov/dobi/proposedrulesynopsis221123.pdf>) that makes public and seeks comment on the proposal prior to its publication in the New Jersey Register, which provides for a 60-day public comment period. Simultaneously, the Individual Health Coverage and Small Employer Health Benefits Program boards are moving

forward with implementing the requirement for the individual and small employer markets, effective January 1, 2023. The requirement would take effect in the large employer market after the rules process under the Administrative Procedure Act is completed in 2023.

The study may be found here: <https://nj.gov/dobi/P.L.2021c.375report.pdf>
<https://nj.gov/dobi/P.L.2021c.375report.pdf>.

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