

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 21-009

BY SENATOR(S) Jaquez Lewis, Buckner, Danielson, Gonzales, Kolker, Pettersen, Rodriguez, Bridges, Coleman, Donovan, Fenberg, Fields, Ginal, Hansen, Lee, Moreno, Story, Winter, Zenzinger;
also REPRESENTATIVE(S) Caraveo, Benavidez, Duran, Gonzales-Gutierrez, Hooton, Jodeh, Lontine, Michaelson Jenet, Mullica, Ortiz, Titone, Valdez D., Valdez A., Woodrow, Bacon, Bird, Boesenecker, Cutter, Esgar, Exum, Froelich, Gray, Herod, Jackson, Kennedy, Kipp, McCluskie, McCormick, McLachlan, Sirota, Sullivan, Young.

CONCERNING THE CREATION OF A REPRODUCTIVE HEALTH CARE PROGRAM,
AND, IN CONNECTION THEREWITH, PROVIDING CONTRACEPTIVE
METHODS AND COUNSELING SERVICES TO PARTICIPANTS AND MAKING
AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Undocumented immigrants in the United States face many barriers to accessing health care and contraceptives. Policies and protocols block many immigrants from affordable health coverage, including

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

programs that their tax dollars support. Immigrant Latinx are more likely to work in industries that do not offer health coverage and are less likely to afford costly private insurance. The inability to gain insurance coverage due to a person's immigration status is a critical barrier. Nationally, 38% of Latinas are uninsured, at double the rate of the next racial or ethnic group, and a quarter of Latinas live in poverty. In Colorado, Latinx have the highest uninsured rate at 27% of the state's population.

(b) Forty-five percent of all pregnancies in the United States are unintended, with greater proportions among adolescents, young people, racial and ethnic minorities, and those with lower levels of education and income. Approximately half of unintended pregnancies are among people who were not using contraception at the time they became pregnant. Fifty percent of Latina pregnancies are unintended, and Latina youth experience pregnancy at roughly twice the rate of their white counterparts.

(c) In addition to increasing the risk of poor maternal and infant outcomes, unintended pregnancies in 2010 resulted in \$21 billion in federal health care expenditures. Family planning services and supplies comprise only 0.03% of overall medicaid program expenditures. Oral contraceptives reduce unintended pregnancies and save taxpayers billions of dollars in health care expenditures. In 2013, the federal centers for disease control and prevention (CDC) published the "U.S. Selected Practice Recommendations for Contraceptive Use", adapted from evidence-based guidance developed by the World Health Organization (WHO) to be used by policy makers, program managers, and the scientific community when developing family planning guidance at any level.

(d) The effectiveness of a contraceptive method depends on both the inherent efficacy of the method itself and on how consistently and correctly it is used. Both consistent and correct use can vary greatly with age, income, desire to prevent or delay pregnancy, and culture. The WHO and CDC have urged policymakers to reduce barriers such as unnecessary screening and testing, inability to receive the contraceptive on the same day as the visit, waiting until the woman's next menstrual cycle, and restricting the number of pill packs provided.

(e) The CDC recommends that patients are prescribed or provided a one-year supply at the initial and return visits, depending on the woman's preference and anticipated use. A systematic review suggests that providing

a greater number of pill packs is associated with increased continuation, fewer pregnancy tests, fewer pregnancies, and lower cost per client. Studies that compared the provisions of one pill pack versus twelve and thirteen pill packs or three pill packs versus seven pill packs found increased continuation of oral contraceptive use among women provided with more pill packs. Women who receive a one-year supply or more of oral contraceptives are 30% less likely to experience an unintended pregnancy than those who receive one- or three-month supplies at a time.

(f) During the COVID-19 pandemic, it is crucial that family planning services remain accessible while keeping providers and patients safe. The needs of various populations must be considered, including adolescents, essential workers, and those who face issues around childcare, transportation, and affordability. Additionally, providers may want to implement alternative models for providing contraception, including telehealth and pharmacy-prescribed contraceptives.

(2) Therefore, the general assembly declares it is important for Colorado to administer a reproductive health care program that provides contraceptive methods and counseling services to eligible individuals regardless of their citizenship or immigration status.

SECTION 2. In Colorado Revised Statutes, **add** 25.5-2-103 as follows:

25.5-2-103. Reproductive health care program - report - rules - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONTRACEPTIVE METHODS AND COUNSELING SERVICES" MEANS:

(I) ANY FDA-APPROVED CONTRACEPTIVE DRUG, DEVICE, OR PRODUCT;

(II) SERVICES RELATED TO THE ADMINISTRATION AND MONITORING OF FDA-APPROVED CONTRACEPTIVE DRUGS, DEVICES, AND PRODUCTS, INCLUDING MANAGEMENT OF SIDE EFFECTS;

(III) COUNSELING SERVICES FOR CONTINUED ADHERENCE TO A PRESCRIBED REGIMEN;

(IV) DEVICE INSERTION AND REMOVAL; AND

(V) ANY OTHER CONTRACEPTIVE METHODS AND COUNSELING SERVICES IDENTIFIED BY THE HEALTH RESOURCES AND SERVICES ADMINISTRATION IN THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OR THE WOMEN'S PREVENTIVE SERVICES GUIDELINES AS OF DECEMBER 17, 2019.

(b) "ELIGIBLE INDIVIDUAL" MEANS AN INDIVIDUAL WITH REPRODUCTIVE CAPACITY, REGARDLESS OF GENDER, CITIZENSHIP, OR IMMIGRATION STATUS, WHO WOULD BE ELIGIBLE TO ENROLL IN THE MEDICAL ASSISTANCE PROGRAM; EXCEPT THAT THE INDIVIDUAL IS NOT A CITIZEN OF THE UNITED STATES AND IS NOT CONSIDERED AN ELIGIBLE NONCITIZEN PURSUANT TO 8 U.S.C. SECS. 1611 AND 1612 AND SECTION 25.5-5-101 (2)(b).

(c) "FDA" MEANS THE FEDERAL FOOD AND DRUG ADMINISTRATION.

(d) "PARTICIPANT" MEANS AN ELIGIBLE INDIVIDUAL ENROLLED IN THE REPRODUCTIVE HEALTH CARE PROGRAM.

(e) "PHARMACIST" MEANS A LICENSED PHARMACIST WHO HAS ENTERED INTO A COLLABORATIVE PHARMACY PRACTICE AGREEMENT PURSUANT TO SECTION 12-280-602 TO PRESCRIBE AND DISPENSE HORMONAL CONTRACEPTIVE PATCHES AND ORAL HORMONAL CONTRACEPTIVES.

(f) "PROVIDER" HAS THE SAME MEANING AS SET FORTH IN SECTION 25.5-4-103 (19)(a).

(2) ON AND AFTER JANUARY 1, 2022, THE STATE DEPARTMENT SHALL ADMINISTER A REPRODUCTIVE HEALTH CARE PROGRAM, REFERRED TO IN THIS SECTION AS THE "PROGRAM", THAT PROVIDES CONTRACEPTIVE METHODS AND COUNSELING SERVICES TO PARTICIPANTS.

(3) UPON THE PARTICIPANT'S INITIAL AND FOLLOW-UP VISITS TO THE PARTICIPANT'S PROVIDER, AND UNLESS THE PARTICIPANT REQUESTS A SHORTER PERIOD OF TIME, THE PROGRAM SHALL COMPLY WITH THE FEDERAL CENTERS FOR DISEASE CONTROL AND PREVENTION'S SELECTED PRACTICE RECOMMENDATIONS FOR CONTRACEPTIVE USE BY ENSURING THE PARTICIPANT IS OFFERED AT LEAST A ONE-YEAR SUPPLY OF EITHER:

(a) THE REQUESTED CONTRACEPTIVE DRUG, DEVICE, OR PRODUCT OR ONE OR MORE THERAPEUTIC EQUIVALENTS OF THE REQUESTED DRUG, DEVICE, OR PRODUCT, IF THE THERAPEUTIC EQUIVALENT IS AVAILABLE AND APPROVED BY THE FDA; OR

(b) AN ALTERNATIVE CONTRACEPTIVE DRUG, DEVICE, OR PRODUCT, IF A CONTRACEPTIVE DRUG, DEVICE, OR PRODUCT IS DEEMED MEDICALLY INADVISABLE BY THE PARTICIPANT'S PROVIDER.

(4) A PARTICIPANT'S CHOICE OF A CONTRACEPTIVE DRUG, DEVICE, OR PRODUCT MUST NOT BE INFRINGED UPON AND MUST NOT REQUIRE PRIOR AUTHORIZATION, STEP THERAPY, OR OTHER UTILIZATION CONTROL TECHNIQUES FOR MEDICALLY APPROPRIATE CONTRACEPTIVE DRUGS, DEVICES, OR PRODUCTS APPROVED BY THE FDA.

(5) THE STATE BOARD SHALL ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SECTION, INCLUDING RULES SPECIFYING THE MANNER IN WHICH ELIGIBLE INDIVIDUALS WILL BE NOTIFIED ABOUT THE PROGRAM AND THE MANNER IN WHICH ELIGIBLE INDIVIDUALS MAY ENROLL IN THE PROGRAM.

(6) THE STATE DEPARTMENT SHALL PROVIDE CONTRACEPTIVE METHODS AND COUNSELING SERVICES TO PARTICIPANTS WITHOUT IMPOSING ANY COST-SHARING REQUIREMENTS.

(7) BEGINNING IN STATE FISCAL YEAR 2023-24, THE STATE DEPARTMENT SHALL ANALYZE AND REPORT THE COST-EFFECTIVENESS OF THE PROGRAM TO THE PUBLIC THROUGH THE ANNUAL HEARING, PURSUANT TO THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2. AT A MINIMUM, THE REPORT MUST INCLUDE:

(a) THE TOTAL NUMBER OF ELIGIBLE INDIVIDUALS;

(b) THE TOTAL NUMBER OF PARTICIPANTS ENROLLED IN THE PROGRAM, DISAGGREGATED BY RACE, ETHNICITY, GENDER IDENTITY, AND INCOME LEVEL;

(c) THE COST OF PROVIDING CONTRACEPTIVE METHODS AND COUNSELING SERVICES TO PARTICIPANTS;

(d) THE PARTICIPANTS' PREFERRED METHOD OF CONTRACEPTIVE METHODS; AND

(e) THE COST SAVINGS REALIZED DUE TO AVOIDED UNINTENDED PREGNANCIES, INCLUDING AVOIDED HOSPITAL COSTS.

SECTION 3. In Colorado Revised Statutes, 25.5-5-102, **amend** (1)(h) as follows:

25.5-5-102. Basic services for the categorically needy - mandated services. (1) Subject to the provisions of subsection (2) of this section and section 25.5-4-104, the program for the categorically needy shall include the following services as mandated and defined by federal law:

(h) Family planning, INCLUDING A ONE-YEAR SUPPLY OF ANY FEDERAL FOOD AND DRUG ADMINISTRATION-APPROVED CONTRACEPTIVE DRUG, DEVICE, OR PRODUCT, UNLESS THE RECIPIENT REQUESTS A SUPPLY COVERING A SHORTER PERIOD OF TIME;

SECTION 4. In Colorado Revised Statutes, 25.5-1-201, **add** (1)(f.5) as follows:

25.5-1-201. Programs to be administered by the department of health care policy and financing. (1) The department of health care policy and financing shall administer the following programs and perform the following functions:

(f.5) THE REPRODUCTIVE HEALTH CARE PROGRAM THAT PROVIDES CONTRACEPTIVE METHODS AND COUNSELING SERVICES, AS SPECIFIED IN SECTION 25.5-2-103;

SECTION 5. Appropriation. (1) For the 2021-22 state fiscal year, \$4,125,347 is appropriated to the department of health care policy and financing. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$232,463 for use by the executive director's office for personal services, which amount is based on an assumption that the office will require an additional 3.4 FTE;

(b) \$36,400 for use by the executive director's office for operating expenses;

(c) \$1,061,596 for Medicaid management information system maintenance and projects;

(d) \$273,792 for Colorado benefits management systems, operating and contract expenses;

(e) \$699,001 for county administration;

(f) \$1,822,095 for use by other medical services for reproductive health care for individuals not eligible for Medicaid.

(2) For the 2021-22 state fiscal year, \$273,792 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of health care policy and financing under subsection (1)(d) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of health care policy and financing.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO