TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 32 COVERAGE FOR CONTRACEPTION

13.10.32.1 ISSUING AGENCY: Office of Superintendent of Insurance ("OSI").
[13.10.32.1 NMAC - N, XX/XX/2020]

13.10.32.2 SCOPE:

A. Applicability. This rule applies to every insurer who issues an individual or group health insurance policy, health care plan or certificate of health insurance that provides a prescription drug benefit for a resident of this state. Herein, each such insurer is referred to as "Insurer."

B. Exceptions. This rule does not apply to:

(1) An excepted benefits plan as defined in Section 59A-23G-2 NMSA 1978.

(2) Medicare supplemental health insurance as defined by Section 1882(g)(1) of the Federal Social Security Act; or

(3) Any coverage supplemental to the coverage provided pursuant to Chapter 55 of Title 10 USCA and similar supplemental coverage provided to coverage pursuant to a group health plan.
[13.10.32.2 NMAC - N, XX/XX/2020]

13.10.32.3 STATUTORY AUTHORITY: Sections 59A-22-42, 59A-23.7.14, 59A-46-44 and 59A-47-45.5 NMSA 1978.
[13.10.32.3 NMAC - N, XX/XX/2020]

13.10.32.4 DURATION: Permanent.
[13.10.32.4 NMAC - N, XX/XX/2020]

13.10.32.5 OBJECTIVE: To clarify contraceptive coverage requirements.
[13.10.32.5 NMAC - N, XX/XX/2020]

13.10.32.6 EFFECTIVE DATE: October 1, 2020, unless a later date is cited at the end of a section.
[13.10.32.6 NMAC - N, XX/XX/2020]

13.10.32.7 DEFINITIONS:

A. Unless inconsistent with a term defined in this rule, or the usage of a term in this rule, the definitions in 13.10.29 NMAC apply.

B. "provider" means, in addition to the definition in Paragraph 13 of Subsection P of 13.10.29 NMAC, pharmacists authorized to prescribe hormonal contraception directly to patients pursuant to Section 14 of 16.19.26. NMAC.
[13.10.32.7 NMAC - N, XX/XX/2020]

13.10.32.8 COVERAGE REQUIREMENTS:

A. Oral contraceptives. An insurer satisfies its obligation to cover a sufficient number and assortment of oral contraceptives to reflect the variety of oral contraceptives approved by the federal food and drug administration only if its plan covers contraceptive pills of differing hormone combinations at differing strengths that reflect the variety of unique combinations approved by the federal food and drug administration.

B. Clinical services. Insurers are required to cover without cost sharing all of the clinical services described in Paragraph 3 of Subsection A of Section 59A-22-42 NMSA 1978, including consultations, examinations, procedures, ultrasound, anesthesia, patient education, counseling, device insertion and removal, follow-up care and side-effects management. Included under clinical services are reversal or cessation of contraception from the contraceptive method categories identified by the federal food and drug administration including reversal of tubal ligation and vasectomy.

C. Immediate Post-Partum Long Acting Reversible Contraception. Included in the description of clinical services covered by this rule is immediate (pre-discharge) post-partum long acting reversible contraception.

D. Six-Month Dispensing. An insurer shall provide coverage and shall reimburse a health care provider or dispensing entity on a per unit basis for dispensing a six-month supply of contraceptives, provided that the contraceptives are prescribed and self-administered. Nothing in this rule shall be construed to require a

health care provider to prescribe six months of contraceptives at one time or permit an insurer to limit coverage or impose cost sharing for an alternate method of contraception if an insured changes contraceptive methods before exhausting a previously dispensed supply.

E. Coverage for Prescription Contraceptive Drugs and Devices. An insured, an insured's designee, or an insured's health care provider may submit a request to an insurer for coverage of a non-covered contraceptive drug or device pursuant to Subsections C and D of Section 59A-22-42 NMSA 1978. Such request shall indicate whether the covered contraceptive drug or device is not available or is medically inadvisable for the insured. An insurer may require that the request for coverage be in writing.If the insured's health care provider determines that the use of a non-covered drug or device is warranted, the health care provider's determination shall be final

F. Sexually transmitted infections. An insurer is obligated to provide contraceptives for the prevention of sexually transmitted infections.

G. Confidentiality of services. An insurer shall maintain confidentiality of claims and services pursuant to state and federal law, including the Domestic Abuse Insurance Protection Act, Sections 59A-16B-1 et seq. NMSA 1978.

[13.10.32.8 NMAC - N, XX/XX/2020]

13.10.32.9 PROVIDER ACCESS:

A. Access. If an insurer's plan limits coverage of contraceptive services and supplies to in-network providers, the Insurer shall establish and maintain a network for these services and supplies that meets the access and adequacy standards set forth in state and federal network adequacy law.

B. Limited access requirements. If an insurer's plan network lacks a sufficient number or type of participating providers or facilities to provide a particular covered contraceptive service or supply in a timely manner appropriate for the covered person's condition, the insurer shall allow the covered person to obtain the covered service or supply from a provider or facility within reasonable proximity of the covered person at no greater cost than if the service or supply were obtained from in-network providers and facilities. Timelines for approval of benefits shall follow those outlined in Subsection 11 of 13.10.17 NMAC.

[13.10.32.9 NMAC - N, XX/XX/2020]

13.10.32.10 REIMBURSEMENT FOR SERVICES OR SUPPLIES WHERE PRESCRIPTION NOT REQUIRED: An insurer's website and evidence of coverage handbook shall clearly explain the process a covered person shall use to submit a claim for reimbursement for the purchase of non-prescription contraception or supplies. The reimbursement process is subject to these requirements:

A. Timeline for submission. An insurer shall allow a covered person at least 90 days from the date that person obtains covered contraceptive services or supplies to submit a request for reimbursement of the associated expense.

B. Reimbursement timeline. An insurer shall reimburse a covered person within 30 days of receipt of a timely and complete reimbursement request submitted electronically, by email, or by fax, and within 45 days of receipt of a timely and complete reimbursement request submitted by U.S. mail.

(1) A reimbursement request that is transmitted electronically, via email, or fax, pursuant to the insurer's instructions, is deemed received by the Insurer on the date of receipt, unless the covered person receives notice of a transmission error.

(2) A reimbursement request that is submitted via US mail is deemed to be received by the Insurer upon delivery.

C. Completed request. A request for reimbursement is complete if it contains the covered person's name and address, their plan identification number, and a paid receipt explicitly delineating the purchased services or supplies.

D. Claims forms. An insurer may require a covered person to use a specific claim form for a reimbursement request.

[13.10.32.10 NMAC - N, XX/XX/2020]

13.10.32.11 COVERAGE DISPUTES: A dispute between an insurer and a covered person concerning a request to grant coverage for a contraceptive supply or service shall be processed in accordance with Sections 59A-23-12.1, 59A-47-47.1, 59A-22B-5, 59A-22-42, or 59A-46-52 NMSA 1978, as applicable, or 13.10.17 NMAC.

[13.10.32.11 NMAC - N, XX/XX/2020]

13.10.32.12 TRANSPARENCY OF COVERAGE:

A. Forms. An insurer shall provide each covered person with a contraceptive coverage summary that clearly explains the scope of contraceptive coverage and how to access this benefit. The coverage summary must include the following information:

(1) whether covered services or supplies are available from in-network and out-of-network providers;

(2) whether there are any limitations on contraceptive services or supplies;

(3) that the coverage required shall not be subject to:

(i) cost sharing for insureds, except as described for certain brand-name contraceptives;

(ii) utilization review;

(iii) prior authorization or step-therapy requirements; or

(iv) any other restrictions or delays on the coverage;

(4) if elected by the insurer, that brand-name pharmacy drugs or items are subject to cost sharing when at least one generic or therapeutic equivalent is covered within the same method of contraception without patient cost sharing, unless the insured's health care provider determines that a particular drug or item is medically necessary; and

(5) that coverage will be provided for a six-month supply of prescribed and self-administered contraceptives.

B. Drug formulary requirements. An insurer shall identify on its publicly available drug formulary any cost-sharing free contraceptive supply.

[13.10.32.12 NMAC - N, XX/XX/2020]

13.10.32.13 NONDISCRIMINATION: An Insurer who is legally obligated to provide contraceptive supplies or services shall do so without discriminating against the covered person on the basis of race, color, national origin, sex, sexual orientation, gender expression or identity, marital status, age, citizenship, immigration status, or disability. This includes, but is not limited to, providing coverage for of any method of over-the-counter contraception without regard to the sex, or gender identity or expression, of the covered person.

[13.10.32.13 NMAC - N, XX/XX/2020]

13.10.32.14 RULES FOR HSA QUALIFYING PLANS: An insurer who issues a health benefit plan that qualifies as a health savings account ("HSA-qualifying plan") is subject to this rule. A deductible under an HSA-qualifying plan for over-the-the counter contraceptive supplies or services and voluntary male sterilization shall not exceed the minimum amount required to preserve the covered person's ability to claim tax exempt contribution and withdrawals from the covered person's health savings.

[13.10.32.14 NMAC - N, XX/XX/2020]

13.10.32.15 PENALTIES: In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the Insurance Code, a penalty for any violation of this rule may be imposed against an insurer in accordance with Sections 59A-1-18 and 59A-46-25 NMSA 1978.

[13.10.32.15 NMAC - N, XX/XX/2020]

13.10.32.16 SEVERABILITY: If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected.

[13.10.32.16 NMAC - N, XX/XX/2020]

History of 13.10.32 NMAC: [RESERVED]