Chairman Phil Mendelson

Councilmember Charles Allen

Councilmember Vincent C. Gray

Councilmember Anita Bonds

Councilmember Mary M. Cheh

Councilmember Jack Evans

Councilmember David Grosso

Councilmember Kenyan R. McDuffie

Councilmember Brianne K. Nadeau

Councilmember Elissa Silverman

Councilmember Brandon T. Todd

Councilmember Robert C. White, Jr.

Councilmember Trayon White

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the Women's Health and Cancer Rights Federal Law Conformity Act of 2000 to require insurers to cover preventive services for women without cost-sharing.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Defending Access to Women's Health Care Services Emergency Declaration Resolution of 2017".

Sec. 2. (a) On March 23, 2010, the Patient Protection and Affordable Care Act ("ACA") was signed into law by President Barack Obama. The ACA and its implementing regulations, guidelines, and recommendations prohibit cost-sharing for a variety of women's preventive health care services, including breast and cervical cancer screening; breastfeeding services and supplies; screening for gestational diabetes; screening and counseling for sexually transmitted infections and HIV; the full-range of FDA-approved contraceptives; well-woman visits; and screening and counseling for interpersonal and domestic violence.

(b) Since the ACA's passage, 9.5 million previously uninsured women have health care coverage, and 55 million women now have access to preventive health care.

(c) The rates of teen births, abortions, and unintended pregnancies have dropped. The teen birth rate in the United States is at a record low of below 25 births per 1,000 teen females. Abortion rates dropped 26 percent between 2008 and 2014. The proportion of pregnancies in the United States that were unintended dropped 6 percent between 2006 and 2013.

(d) The law's prohibition on cost-sharing for contraceptives affords women of reproductive age better access to effective forms of contraception, such as intrauterine devices ("IUDs"), patches, and oral contraceptive pills. Use of long-acting reversible contraceptives, such as the IUD, more than tripled between 2007 and 2012, and since the November 2016 general election, data show a 19 percent increase in the number of doctor's visits related to IUDs.

(e) Insurers must also offer breast-feeding support and equipment, such as pumps, without cost-sharing. Studies have shown that employers recoup two to three dollars for every dollar they

spend on workplace lactation resources due to greater employee productivity, less turnover, and less time mothers must take off to care for sick children.

(f) Access to preventive services saves women and District taxpayers money and improves health outcomes. For example, in 2013, women in the United States saved nearly $1.4 billion dollars in out-of-pocket costs for oral contraception, and the most recently available data from 2010 indicated that the District government spent $13.3 million on unintended pregnancies.

(g) If the ACA is repealed, many low- and moderate-income women, young women, and women of color in the District may have to choose between making ends meet and staying healthy. By enshrining the ACA's covered women's preventive services in District law, this emergency legislation will ensure that, in the event that the ACA or its implementing regulations, recommendations, or guidelines are repealed or rescinded, women in the District of Columbia will not face a gap in coverage.

(h) Similar permanent legislation (Bill 22-0106, the Defending Access to Women's Health Care Services Amendment Act of 2017) is pending before the Council, and the Committee on Health held a public hearing on the bill on March 20, 2017.

(g) The Council has historically expanded access to women's health care services, including contraception. In passing this emergency legislation, it will continue those efforts, notwithstanding threats by the federal government that jeopardize the health of District women.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Defending Access to Women's Health Care Services Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
Office of the Budget Director

Jennifer Budoff
Budget Director

FISCAL IMPACT STATEMENT

TO: **The Honorable Phil Mendelson**
Chairman, Council of the District of Columbia

FROM: **Jennifer Budoff - Budget Director**

DATE: **April 3, 2017**

SHORT TITLE: **"Defending Access to Women's Health Care Services Emergency Amendment Act of 2017"**

TYPE: **Emergency/Temporary**

REQUESTING OFFICE: **Councilmember Charles Allen**

Conclusion
This emergency/temporary measure does not have an impact on the District's budget or the financial plan, as there currently is no cost associated with implementing this legislation. The mandate for preventive health services for women that is created by this emergency/temporary legislation already exists in the Patient Protection and Affordable Care Act (ACA) and the vast majority of it already exists in the District's Medicaid State Plan.[1] The District already pays for health plans which provide these preventive services for District government employees, DC Healthcare Alliance Program ("the Alliance") customers, and the local match for Medicaid recipients.

The emergency/temporary measure has the potential for imposing new costs on the District in the future, but at this point such costs are unknown and unforeseeable. There are two areas in which this legislation could create fiscal impact vulnerabilities for the District in the future.

The first area of future vulnerability is for increasing the cost of providing health coverage to District government employees and the Alliance customers. If the ACA is repealed and Section 2713(1) and (4) are not included in the replacement bill, Section 2.3 of the temporary/emergency measure could hypothetically create a fiscal impact. Under this scenario, should the U.S. Preventive Services Task Force (USPSTF) or the Health Resources and Services Administration (HRSA) add new recommendations for preventive health services for women that are not already

[1] Department of Health Care Finance, Medicaid State Plan, accessed 31 March 2017, retrieved from https://dhcf.dc.gov/page/medicaid-state-plan.

covered by the District employees' health plans or the Alliance, the emergency/temporary measure would require that the District expand the preventive health services for women that do not require cost sharing for District employees and Alliance customers. Expanding the range of preventive services could impose a fiscal impact on the District, but there is not enough information at this point in time to forecast potential impacts on the District's budget and financial plan.

The second area of fiscal impact vulnerability is the local Medicaid match. While the ACA provides an open-ended requirement of HRSA-recommended coverage guidelines, the requirement established in Section 2.3 of the temporary/emergency measure could be construed to be broader than what is legislatively mandated under the ACA and may reach beyond what is currently covered in the Medicaid State Plan or current contractual requirements. However, since the preventive services described in the temporary/emergency measure are already mostly covered under current Medicaid requirements, the DC Department of Health Care Finance (DHCF) believes that it is unlikely that these services would impose additional costs on the District. Even if the federal government removes mandatory coverage of essential health benefits or Alternative Benefit Plans under an American Health Care Act of 2017 (H.R. 1628)-like proposal, the option to cover these benefits with reimbursement from Medicaid would likely remain, so the District would retain the option for federal reimbursement and no new costs would arise. The only way this could impose new costs would be if federal law prohibited Medicaid coverage of essential health benefits, but the DHCF believes that such a scenario is unlikely to occur. Furthermore, if federal law prohibited covering these essential health benefits, this law would preempt the District's temporary/emergency measure.

In the event that Section 2713(1) and (4) is repealed from federal law, the emergency/temporary measure could also have a fiscal impact on privately-provided individual and group health plans. However, changes to the cost of privately-provided individual and group health plans would not have a direct impact on the District's budget or financial plan.

Background

This emergency/temporary legislation amends the Women's Health and Cancer Rights Federal Law Conformity Act of 2000 so as to create a mandate on individual and group health plans and prescription drug insurance plans sold in the District as well as health insurance coverage offered through Medicaid and the Alliance. The legislation stipulates that insurance plans must provide coverage for certain preventative health services for women. Further, these insurance providers may not impose cost sharing on their plan participants for these preventative health services for women. Examples of these cost sharing mechanisms are copayments, coinsurances, and deductibles.

The emergency/temporary measure defines preventative health services for women as those preventive services that insurers are already required to provide to women without any cost sharing requirements under Section 2713(1) and (4) of the ACA, as approved on March 23, 2010, and those specified by associated implementing regulations and guidelines, as of April 4, 2017. These preventive health services for women are as follows:

1) **Evidence-based items or services that receive an "A" or "B" recommendation from the USPSTF.**

The USPSTF current "A" and "B" recommendations for women include: alcohol misuse screening and counseling, aspirin and statin preventive medication, and healthy diet and physical activity counseling for adults with a cardiovascular risk; breast, cervical, colorectal, and lung cancer screenings; breast cancer preventive medications and BRCA risk assessment and genetic testing/counseling for women with an elevated breast cancer risk; and screenings for blood pressure, chlamydia, gonorrhea, depression, diabetes, hepatitis B, HIV, intimate partner violence, obesity, osteoporosis, tuberculosis, and syphilis. The USPSTF further recommends fall prevention for older adults, and counseling for sexually transmitted infections, skin cancer risk reduction behavior, and tobacco use. For pregnant or breastfeeding women, the USPSTF recommends breastfeeding interventions; folic acid supplementation; aspirin for preeclampsia prevention; and screenings for Rh incompatibility, gestational diabetes mellitus, and bacteriuria.[2]

2) **Evidenced-informed preventive services and screenings recommended by HRSA's Women's Preventive Services Guidelines that are not already covered by the USPSTF.**

The HRSA's Women's Preventive Services Guidelines recommends that adolescent and adult women receive female-controlled contraceptives. The Guidelines include all female-controlled contraceptive methods that are approved by the U.S. Food and Drug Administration, as well as effective family planning practices and sterilization procedures. HRSA also recommends that women receive annual well-women checkups.[3]

All insurance coverage sold in the District currently covers the preventive health services for women without a cost sharing requirement that is described in Section 2713(1) and (4) of the ACA and associated implementing rules and regulations. However, the emergency/temporary legislation allows for the inclusion of additional preventive services identified after April 4, 2017 by the USPSTF and the HRSA's Women's Preventive Services Guidelines.

Nearly all of the coverage requirements created under this emergency/temporary bill are also already required under the District's Medicaid and Alliance coverage. The Medicaid expansion population is subject to Section 2713 requirements under the essential health benefits required for Alternative Benefit Plans that are required to be established under the ACA for the Medicaid expansion group, documented in Supplement 3.1L of the District's Medicaid State Plan. The State Plan (Supplement 1 to Attachment 3.1A, Section 13A and Sections 20.A, B, and C) requires coverage of diagnostic, screening, and preventive clinical services that are assigned a

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[2] U.S. Preventive Services Task Force, *USPSTF A and B Recommendations*, accessed 30 March 2017, retrieved from https://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations/.

[3] Health Resources and Services Administration, *Women's Preventive Services Guidelines*, accessed 31 March 2017, retrieved from https://www.hrsa.gov/womensguidelines2016/index.html. U.S. Food and Drug Administration, *Birth Control Guide*, accessed 3 April 2017, retrieved from https://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM517406.pdf.

grade of "A" or "B" by the USPSTF; approved vaccines recommended by the Advisory Committee on Immunization Practices; preventive care and screening of infants, children and adults recommended by the HRSA' Bright future program; and additional preventive services for women recommended by the Institute of Medicine. It also requires coverage of preventive services recommended by a physician or other licensed practitioner of the healing arts acting within scope of practice and extended services for pregnant women, including pregnancy related and post-partum services, services for any condition that may complicate pregnancy, and tobacco cessation services. The Alliance program is contractually bound to follow comparable standards under the District's contracts with managed care organization.

OFFICE OF THE GENERAL COUNSEL
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MEMORANDUM

TO: **Councilmember Charles Allen**

FROM: **Ellen A. Efros, General Counsel** EE

DATE: **April 4, 2017**

RE: **Legal Sufficiency Determination for Defending Access to Women's Health Care Services Emergency Amendment Act of 2017**

The measure is legally and technically sufficient for Council consideration.

This measure amends, on an emergency basis, the Women's Health and Cancer Rights Federal Law Conformity Act of 2000 to require an individual health plan or group health plan, a health insurer offering health insurance coverage for prescription drugs, and health insurance coverage through Medicaid and the DC Alliance program to provide coverage for, and not impose any cost sharing requirements on, women for specified preventative health services required to be covered under section 2713 of the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 131; 42 U.S.C. § 300gg-13).

This measure has no effect unless relevant provisions of the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 141; 42 U.S.C. § 18001 *et. seq*), and implementing regulations and guidelines are modified or repealed.

I am available if you have any questions.