



NATIONAL  
WOMEN'S  
LAW CENTER

EXPANDING THE POSSIBILITIES

# state of **birth control** coverage: health plan violations of the affordable care act

## **ABOUT THE CENTER**

The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's equality and opportunity. The Center focuses on major policy areas of importance to women and their families, including economic security, education, employment and health, with special attention given to the concerns of low-income women.

For more information about the Center or to make a tax-deductible contribution to support the Center's work, please visit: [www.nwlc.org](http://www.nwlc.org) or call the Development office at 202-588-5180.


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## **DISCLAIMER**

While text and citations are, to the best of the authors' knowledge, current as this report was prepared, there may be subsequent developments—including changes to the plan documents or new administrative guidance—that could alter the information provided herein.

This report does not consist of an exhaustive list of violations in health plans and is not meant to be used to inform consumers about their personal health coverage. In addition, this report does not constitute legal advice; individuals and organizations considering legal action should consult with their own legal counsel before deciding on a course of action.



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# Introduction

**THE AFFORDABLE CARE ACT'S (ACA) REQUIREMENT THAT INSURANCE COMPANIES COVER BIRTH CONTROL WITHOUT OUT-OF-POCKET COSTS IS ALREADY POSITIVELY AFFECTING THE LIVES OF MILLIONS** of women and families across the country. Prior to the ACA's birth control coverage benefit, cost was a significant barrier to women getting preventive services like birth control.<sup>1</sup> This contributed to the nation's unintended pregnancy rate, and had consequences for women and their families' long-term health and economic well-being.

Since the ACA's birth control benefit went into effect, more than 48 million women no longer face cost barriers to accessing birth control.<sup>2</sup> Research shows that two-thirds of women using oral birth control and nearly three quarters of women using the vaginal contraceptive ring are no longer paying out-of-pocket for these methods.<sup>3</sup> In 2013, women saved more than \$483 million in out-of-pocket costs for birth control, or an average of \$269 per woman.<sup>4</sup> And, women have told the National Women's Law Center (the Center) that this change has significantly affected their lives. They are no longer choosing between birth control and paying for other necessities, like groceries, and are continuing their education and advancing their careers because of this landmark law. Indeed, access to birth control has benefits for the health of women and children, improves women's ability to control whether and when they will have a child, and fosters women's ability to participate in education and the workforce on an equal footing with men. It is also an incredibly popular part of the ACA, with nearly 70% of people supporting the requirement.<sup>5</sup>

There are some women, however, whose insurance companies are still charging them out-of-pocket costs for their birth control in ways that do not comply with the ACA.<sup>6</sup> The National Women's Law Center operates a

## COVERHER HOTLINE

The Center has been collecting stories from women since the ACA's birth control benefit first went into effect in August 2012. Through the CoverHer hotline and associated website (1-866-745-5487, [coverher@nwlc.org](mailto:coverher@nwlc.org) or [www.coverher.org](http://www.coverher.org)), the Law Center assists women who are having trouble securing coverage for birth control without out-of-pocket costs. CoverHer provides resources that help women understand the birth control coverage requirement, as well as information and resources to assist women in filing appeals with their insurance company and filing complaints with the government agency that regulates their plan. To date, nearly 2,800 individuals have contacted CoverHer, and over 75,000 individuals have accessed the related online resources.

Women who have contacted CoverHer and used its resources have succeeded in getting their birth control covered. Some women have used the information to work with their employer's benefits staff and insurance broker to fix the coverage. Often, the benefits staff has been instrumental in assisting women with appeals, communicating with the issuer or third-party administrator, and ultimately fixing the coverage violation. Some women have used the CoverHer template appeal letters to successfully change their plan's coverage policy and get reimbursed for past charges. Some women have filed successful complaints with the government agency that regulates their plan to change the plan's policy and obtain reimbursement.

*All hotline calls are confidential. Not every person who contacts the hotline discloses their location. Records for specific women's experiences referenced in this report are on file with the National Women's Law Center.*

*The Center gratefully acknowledges Bayer HealthCare's support of the CoverHer project.*

nationwide hotline, CoverHer, which women can call when they face problems accessing the birth control benefit to which they are entitled. Through this hotline, the Center has heard from women in *every state in the country*. These women have spent hours on the phone with their insurance company trying to find out why they still have to pay for their birth control. They often are given conflicting information about their coverage by the insurance company. And, too often, the insurance company tells them their method of birth control simply is not covered, or that they should switch birth control methods if they do not want to pay out-of-pocket for the method prescribed for them. These women should be benefiting from the ACA already, but their insurance companies' impermissible coverage policies are preventing them from doing so.

In addition to reports received through the CoverHer hotline, the National Women's Law Center reviewed over 100 plan documents from issuers in the new marketplaces in 15 states, reviewed publicly-available documents on insurance company websites, and corresponded with insurance companies. This research has uncovered three major trends in the ways insurance companies are not complying with the birth control benefit:

- **Insurance companies are still not providing coverage for *all* FDA-approved methods of birth control, or they impose out-of-pocket costs on them;**
- **Insurance companies limit their coverage to generic birth control; and,**
- **Insurance companies fail to cover the services associated with birth control without out-of-pocket costs, including counseling or follow-up visits.**

In addition to these three major trends, the research and review of CoverHer contacts have unearthed several other violations of the ACA's birth control benefit, such as plans not having a required waiver process, failing to cover sterilization for dependents, imposing age limits on coverage, and other policies that in effect deny coverage of birth control.

The goal of this report is to highlight these problems so that all stakeholders – insurance companies, the federal government, state regulators – are aware of the barriers women still face in getting the preventive health care services they need and to which the ACA guarantees them coverage. It will take attention and effort to make sure this critical new benefit is implemented properly. To that end, this report includes recommendations for various stakeholders. Insurance companies must closely examine their policies and be sure that they are in compliance. Additionally, the federal government must issue further clarifying guidance about the birth control benefit. And, both state and federal agencies must enforce the ACA, both in approving insurance companies' plans and in handling consumer complaints about insurance company practices. These steps will go a long way to ensuring that the promise of the birth control benefit becomes a reality for women across the country.

# The Affordable Care Act's birth control coverage benefit

## THE HEALTH BENEFITS OF BIRTH CONTROL ARE

**WELL-DOCUMENTED.** Birth control is highly effective at reducing unintended pregnancy, which can have severe negative health consequences for both women and children.<sup>7</sup> It also allows women to space their pregnancies, which improves the health of both women and their children.<sup>8</sup> Additionally, improving women's ability to control whether and when they will have a child fosters women's ability to participate in education and the workforce on an equal footing with men. Birth control is such a core part of women's lives that 99% of sexually active women have used birth control at some point.<sup>9</sup> However, prior to the ACA's requirement, many women found cost an insurmountable barrier to getting access to birth control or the birth control method recommended by their health care provider.<sup>10</sup>

The ACA's birth control coverage benefit is part of the law's preventive health services coverage provision, which is designed to enable individuals to avoid preventable conditions and improve health overall by increasing access to preventive care and screenings.<sup>11</sup> This provision requires health insurance plans to provide coverage for certain preventive services without out-of-pocket costs, including a set of preventive services for women.<sup>12</sup> To determine which women's preventive services would be covered without out-of-pocket costs, the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services commissioned the Institute of Medicine (IOM) to study gaps in coverage of women's preventive services and to recommend which additional women's preventive services should be included. After conducting its analysis, the IOM recommended eight preventive services for women, including well-woman visits,

## IN THEIR OWN WORDS: WHY BIRTH CONTROL WITHOUT OUT-OF-POCKET COSTS MATTERS TO WOMEN

**Expanding birth control options** "I am grateful for the ability to choose the form of contraception that works best for me. I could not afford the up-front cost of an IUD without health care reform. Since the IUD is much more effective than the pill, I am able to more effectively manage my reproductive health." – *Woman in New York*

**Financial security** "Thanks to zero copay birth control, I can get the medication I need without having to go without groceries for a week." – *Woman in Virginia*

**Advancing education and career** "Now that birth control is free under Obamacare, my husband and I have a lot more security. We know that we'll be able to decide when to start a family at a time that's good for both of our studies and careers." – *Woman in Illinois*

**Benefiting the whole family** "I am thankful that my husband and I can have the children we can afford to love and invest in, at the appropriate time of our choosing, when we are financially stable and emotionally ready." – *Woman in Michigan*

breastfeeding support and supplies, and “the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity.”<sup>13</sup> HRSA adopted the recommendations set forth in the IOM Report.<sup>14</sup> The ACA's birth control coverage requirement means that plans cannot charge out-of-pocket costs for birth control, sterilization, and related education and counseling.

### **ALL FDA-APPROVED METHODS OF BIRTH CONTROL MUST BE COVERED WITHOUT OUT-OF-POCKET COSTS**

There are currently twenty unique FDA-approved birth control methods, delineated in the FDA's Birth Control Guide, and each of these unique methods for women must be covered under the ACA.<sup>15</sup> The federal government has reiterated in guidance that plans must cover all of the FDA-approved birth control methods for women.<sup>16</sup> The guidance clarifies that health insurance plans and issuers cannot limit their birth control coverage to only oral contraceptives.<sup>17</sup> It explicitly states that plans and issuers must cover FDA-approved intrauterine devices (IUDs) and implantable contraceptives.<sup>18</sup> The guidance is also clear that FDA-approved over-the-counter contraceptive methods, when prescribed for women, must be covered without out-of-pocket costs.<sup>19</sup> The Department of Health and Human Services has also publicly acknowledged that plans and issuers must cover the vaginal contraceptive ring and the contraceptive patch.<sup>20</sup>

### **COUNSELING AND OTHER BIRTH CONTROL-RELATED SERVICES MUST BE COVERED WITHOUT OUT-OF-POCKET COSTS**

The benefit covers not only the cost of a birth control drug or device, but also the services related to receiving the birth control – such as office visits, counseling, or medical services related to insertion of a birth control method or to a sterilization procedure. The guidance makes clear that other related services, such as follow-up visits, management of side effects, counseling for continued adherence, and device removal must be covered without cost sharing.<sup>21</sup>

### **INSURANCE COMPANIES MAY USE LIMITED “REASONABLE MEDICAL MANAGEMENT”**

Under the regulations implementing the preventive health services, insurance companies are allowed to use “reasonable medical management techniques” to determine the “frequency, method, treatment, or setting for which a recommended preventive service will be available without cost sharing requirements to the extent not specified in a recommendation or guideline.”<sup>22</sup> But these medical management techniques are not unlimited. For example, the Administration has stated that an allowed “reasonable medical management technique” is imposing out-of-pocket costs on a branded drug when the insurance company covers an available generic equivalent.<sup>23</sup> If a generic version is not available, however, the guidance requires the insurance company to provide coverage for the branded drug without out-of-pocket costs.<sup>24</sup>

The guidance also requires every insurance company to have a waiver process that would enable women to have insurance coverage of the birth control method – at no out-of-pocket costs – that she and her provider determine is medically appropriate.<sup>25</sup> Additionally, if the insurer does not have a provider in its network that can provide a preventive service, including birth control, it cannot impose out-of-pocket costs when a person accesses the service from an out-of-network provider.<sup>26</sup>

# Insurance companies fail to comply with the birth control benefit

**UNFORTUNATELY, NOT EVERY WOMAN WHO SHOULD BE GETTING COVERAGE OF HER BIRTH CONTROL WITHOUT OUT-OF-POCKET COSTS HAS BEEN ABLE TO ACCESS THIS IMPORTANT BENEFIT.** The Center has documented this through the review of publicly available documents from some of the nation's largest health insurance issuers, and correspondence with some of these companies about their coverage policies. In addition, since the birth control benefit went into effect on August 1, 2012, the Center has received calls and emails through our CoverHer hotline from women whose plans continue to impose cost sharing on their birth control.<sup>27</sup>

The Center has identified three major categories of insurance plan non-compliance:

- Some plans are not providing coverage for *all* FDA-approved methods of birth control, or they impose out-of-pocket costs on them;
- Some plans will only cover generic birth control; and,
- Some plans impose costs on the services associated with birth control methods.

In addition, the Center has identified several other policies which deny coverage of birth control without out-of-pocket costs. Insurance companies using these practices are violating the ACA's birth control benefit and leaving women without full access to a critical benefit.

## PLANS FAIL TO COVER ALL FDA-APPROVED BIRTH CONTROL METHODS OR IMPOSE OUT-OF-POCKET COSTS

The FDA has approved 20 unique birth control methods, and the ACA requires that insurance companies cover each unique method without out-of-pocket costs.

However, several major insurance companies' birth control coverage policies are violating the law. In some cases they are imposing costs on birth control, and in some cases, they are denying coverage completely.

Most commonly, the coverage problems are for the vaginal contraceptive ring, the contraceptive patch, and long-acting reversible contraceptive methods, such as an IUD. It is notable that in many of these cases, the insurance plans cover other birth control methods without out-of-pocket costs, and sometimes even suggest that a woman switch methods if she does not want any out-of-pocket costs. However, birth control methods are not interchangeable. When a plan places a cost barrier between a woman and her prescribed method of birth control, she is less likely to use birth control consistently or correctly, thereby increasing her risk of unintended pregnancy. Furthermore, a particular method is prescribed for a woman by her health care provider based on health needs. When insurance companies impermissibly fail to cover all FDA-approved birth control methods or impose out-of-pocket costs on some birth control methods, it can interfere with health care providers' decisions about the best care for a woman.

The coverage policies detailed below not only fail to comply with the ACA, but recreate the cost barriers that existed prior to the ACA that contribute to increased risk of unintended pregnancy.

## Plans Fail to Cover Birth Control Methods

The Center's review of plan documents found multiple instances of plans that simply did not cover all FDA-approved birth control methods:

- An issuer in South Dakota does not cover the contraceptive implantable rod.<sup>28</sup>

- An issuer in California fails to cover ella, a unique emergency contraceptive method.<sup>29</sup>
- An issuer in Wisconsin specifically excludes coverage of contraceptive sponges.<sup>30</sup>
- Two issuers in Nevada and one issuer in Alabama fail to cover sterilization by imposing impermissible limits on coverage.<sup>31</sup>
- Ten issuers in Maine, Minnesota, Ohio, Rhode Island, and Wisconsin exclude all over-the-counter (OTC) contraceptive methods.<sup>32</sup> The FDA identifies several types of over-the-counter methods of birth control as unique birth control methods, and plans must cover them without out-of-pocket costs when prescribed. These OTC exclusions raise particular concerns about women's access to forms of emergency contraception which are available over-the-counter.

## IN THEIR OWN WORDS: WOMEN WHO STILL PAY OUT-OF-POCKET FOR BIRTH CONTROL

"I had an IUD put in last fall based on information provided to me by my physician, in consultation with my insurance company, that the procedure would be fully covered. Shortly after I received a bill in the mail for the full amount saying that the claim had been denied by my health insurance company. The insurance company says I can appeal their decision by writing a letter telling them how the decision 'made me feel.'"

– Woman in District of Columbia

## Plans Impose Out-of-Pocket Costs on Birth Control Methods

CoverHer contacts and the Center's investigation identified several instances of plans imposing out-of-pocket costs on birth control methods, in violation of the ACA:

- A major insurance company did not include the contraceptive patch or the vaginal contraceptive ring on its list of drugs covered without out-of-pocket costs in 2014.<sup>33</sup> In explaining why it failed to cover these two unique FDA-approved methods of birth control as required by the ACA, the company noted that it divides birth control into five "methods": barrier; hormonal; implantable; emergency; and, permanent methods. Under this categorization, the company includes the vaginal contraceptive ring and the contraceptive patch in their "hormonal methods" category. Because the company covers other "hormonal methods" without out-of-pocket costs – most notably oral contraceptives – it refused to cover the ring and the patch.<sup>34</sup> In 2014, several women used CoverHer resources to appeal the company's refusal to cover the ring. In the first weeks of January 2015 these women contacted the hotline again to say that they had finally gotten the coverage required by the ACA. In 2015, the company has started to cover the ring without out-of-pocket costs, creating a sixth "method" on its list: vaginal ring.<sup>35</sup> However, it continues to fail to cover the contraceptive patch.<sup>36</sup>
- A second major insurance company's list of drugs covered without out-of-pocket costs did not include the contraceptive ring or the contraceptive patch in 2014. Publicly available documents on the company's website in 2014, including the company's "No Cost Preventive Medications by Drug Category" pamphlet, simply do not include these methods on the list.<sup>37</sup> In 2015, the company's "No Cost Preventive Medications by Drug Category" pamphlet indicates that it continues to deny coverage of the vaginal contraceptive ring.<sup>38</sup>
- A third major insurance company's lists of drugs covered without out-of-pocket costs do not include the vaginal contraceptive ring or the contraceptive patch. In explaining why it fails to cover these two FDA-approved methods of contraception as required by the ACA, the company stated that it divides birth control into five "methods": barrier; hormonal; implantable; emergency;

## IN THEIR OWN WORDS: WOMEN WHO STILL PAY OUT-OF-POCKET FOR BIRTH CONTROL

"My healthcare is through the marketplace. I was under the impression that birth control is considered preventive care and should be covered under my insurance. I pay \$32 monthly for this coverage. I have PCOS and I am obese so I am not a candidate for many other birth control methods."  
– Woman in Virginia

"They told me that my employer has chosen the 'advantage list' of approved drugs that are required to be covered by the federal government at 100%. She claims that the Nuvaring is not included on that list. I felt like I was talking to a wall. Where can I go from here? I'm starting to think I am going to just have to pay." – Woman in California

"She told me that my group in my health insurance plan can pick what birth controls they want to cover and mine is not on the list. I thought that all contraceptives had to be covered without cost sharing as part of the ACA. Can you please clarify this for me? I am extremely frustrated and I feel like I am not being told the whole truth."  
– Woman in New York

and, permanent methods. Because the company covers other "hormonal methods" – most notably oral birth control – it refuses to cover the ring and the patch. Currently,<sup>39</sup> this insurance company maintains three lists of preventive drugs covered without out-of-pocket costs. It has not added coverage of the vaginal contraceptive ring to any of those lists to comply with the ACA.<sup>40</sup> Two of the three lists include the contraceptive patch.<sup>41</sup>

- Some independently operated plans across the country refuse to cover the vaginal contraceptive ring without out-of-pocket costs. Women who contact the CoverHer

hotline routinely report that customer service representatives at these insurance companies tell them that they have the option of having the pill covered without out-of-pocket costs or paying to get the ring.<sup>42</sup>

- Women also report that some independently operated plans fail to cover certain long-acting reversible contraceptive methods. One woman reported that her plan would not cover the IUD with copper without out-of-pocket costs.<sup>43</sup> For some women, the IUD with copper is one of only a few birth control options they can use because of underlying health conditions for which taking hormones are contraindicated.

The Center's review of plan documents uncovered additional examples of plans impermissibly imposing out-of-pocket costs on birth control.

- Plan documents from Ohio show that one plan requires women to pay out-of-pocket for over-the-counter birth control methods, but will reimburse women for those costs.<sup>44</sup>
- Two insurance companies in Connecticut impose out-of-pocket costs on sterilization services.<sup>45</sup>
- Two insurance companies in Ohio impose out-of-pocket costs on IUDs and injectable contraceptives.<sup>46</sup>
- An insurance company in Maryland applied the deductible to birth control in its catastrophic plan.<sup>47</sup>

## PLANS WRONGLY LIMIT THEIR COVERAGE TO GENERIC BIRTH CONTROL

Many women have reported to the CoverHer hotline that their insurance plan will only cover generic birth control. This is an impermissible coverage exclusion that has two major effects on women's access to the birth control prescribed for her. First, there are several birth control methods for which there is no generic equivalent, including the IUD with copper, the IUD with progestin, and the vaginal contraceptive ring. Second, there are certain types of oral birth control that do not yet have a generic equivalent, and must be covered under the ACA. In both instances, the "generic only" policy bars women from getting coverage of an "FDA-approved method of contraception" without cost-sharing. As noted above, federal guidance addresses this by allowing plans to only cover generics, except in

cases in which no generic equivalent is available. In that case, plans must cover the brand-name birth control.

These types of “generic only” policies mean that a cost barrier between women and some birth control methods continues to exist, contrary to the ACA’s requirement. Failure to cover birth control that doesn’t have a generic equivalent can leave women without access to the method of birth control best suited for them and specifically prescribed by their health care provider. Women in plans with this type of impermissible coverage policy are not fully benefiting from the ACA.

The plans below impermissibly limit coverage to generics only:

- There are several examples of independently operated insurance companies that have “generic only” coverage policies, including in Alabama and Florida. The company in Alabama indicates that for pharmacy contraceptive methods only generics are covered. The plan in Florida only provides coverage of birth control without out-of-pocket costs for “certain *generic* contraceptive medications or devices (e.g., oral contraceptives, emergency contraceptive, and diaphragms.)”<sup>48</sup>
- Five other insurance companies in the 15 states examined in the Center’s plan document review have similar impermissible “generic only” coverage policies.<sup>49</sup>

### PLANS FAIL TO COVER SERVICES ASSOCIATED WITH BIRTH CONTROL AND STERILIZATION

Women who contact the CoverHer hotline have reported that insurance plans refuse to cover services associated with birth control and sterilization without imposing out-of-pocket costs. The Center’s review of plan documents confirmed this impermissible practice in several plans. Services that plans have refused to cover without out-of-pocket costs include birth control counseling services, follow-up visits and services, and necessary tests. If a plan denies coverage without out-of-pocket costs for these types of services, it can put the woman at risk for complications, for example if she is unable to have a follow-up appointment after her IUD insertion to confirm it has been placed correctly. These types of policies can

even prevent a woman from accessing her birth control altogether, such as if she cannot afford to pay for the office visits that are required every 12 weeks for birth control injections. When insurance companies impermissibly impose costs on the services necessary to obtain birth control, they recreate the cost barriers that existed prior to the ACA. As a result, while a woman may have coverage of the specific birth control method her health care provider prescribes, it can remain out of reach.

### Birth Control Counseling Services

Despite the fact that the birth control coverage benefit explicitly includes coverage of “patient education and counseling,” some plans impose out-of-pocket costs for these services or place impermissible limits on them. The Center’s plan document review discovered these examples of plans refusing to fully cover birth control education and counseling:

- Multiple plans offered by one insurance company in Colorado in 2015 require out-of-pocket costs, copayments, and/or deductibles for family planning counseling.<sup>50</sup>
- An insurance company in Florida requires office visit charges for birth control management, patient education, and counseling.<sup>51</sup>
- An insurance company in Ohio limits birth control counseling to two visits per year.<sup>52</sup>

### Services Associated with Provider-Administered Birth Control

Prior to the ACA, some of the most effective birth control methods that are administered by health care providers were out of reach for many women because of their high upfront costs. Women have reported to the Center that removing cost barriers to long-acting reversible contraceptives (LARCs), like IUDs, has enabled them to choose this very effective method, which would not have been possible prior to the ACA. LARCs have higher upfront costs than other birth control. Without insurance coverage, IUDs can cost between \$500 and \$1000 upfront, which can be nearly a month’s salary for a woman working a minimum wage job.<sup>53</sup> Prior to the ACA, these costs prevented some women from choosing a LARC.<sup>54</sup> However, even after the birth control benefit removed the cost barriers to these more effective methods, some women are still

being billed for costs associated with LARCs. Women then face hundreds of dollars in unexpected and unallowable medical costs.

Women have reported this problem to CoverHer, and the Center's review of plan documents confirms this problem:

- An insurance company in Missouri required a woman to pay \$228.31 in out-of-pocket costs for her follow-up visit, including a routine ultrasound, after she received an IUD.<sup>55</sup> The plan covered the device and insertion, but when she returned for the follow-up visit to ensure the IUD was properly placed, her plan imposed a co-pay on the follow-up visit and required her to meet her deductible before covering the costs of the ultrasound.
- An insurance company in South Dakota will only cover IUD placement and removal once every five years.<sup>56</sup> This could result in impermissible charges for women, such as a woman who removes her IUD in order to become pregnant, and wants an IUD after the birth of her child.
- An insurance company in California requires out-of-pocket costs for the physician office visits for injectable contraception.<sup>57</sup> These visits must occur every 12 weeks, which could become a financial burden for a woman.
- This same insurance company in California requires office visit costs for diaphragm fitting.<sup>58</sup>

### Services Associated with Sterilization

Other women have reported being charged for services associated with sterilizations, such as the test to confirm that a sterilization procedure was successful. The non-surgical sterilization procedure is not considered complete, and women must continue using other birth control methods, until testing confirms the initial procedure was successful. Women have told the CoverHer hotline that they are shocked by these unanticipated costs, and some women have told the CoverHer hotline that they did not undergo the confirmation test because of the out-of-pocket costs. These women are left in limbo with a procedure that “may or may not be complete,” as one woman told CoverHer.

Reports to the CoverHer hotline and the Center's review of plan documents have found that plans continue to charge women for services associated with sterilizations:

- After covering one woman's sterilization procedure completely, a major insurance company required her to pay \$1,600 for her follow-up confirmation test.<sup>59</sup>
- An insurance company applied a total of \$8,600 to a woman's deductible and subjected her to co-payments for her sterilization.<sup>60</sup> While the plan covered the charges for a woman's gynecologist to perform a sterilization procedure, it imposed out-of-pocket costs on the other items and services associated with it, including the necessary anesthesia.
- An issuer in Alabama limits coverage of sterilization confirmation tests to two tests per lifetime, even though multiple tests may be needed for the procedure to be confirmed as successful.<sup>61</sup>

### PLANS HAVE OTHER IMPERMISSIBLE POLICIES

In addition to the three major trends discussed above, the Center's review of plan documents, reports received on CoverHer, and correspondence with insurance companies identified other violations of the birth control coverage benefit:

#### Failure to have a process to waive out-of-pocket costs

No plan that was reviewed for this report had a clear process to waive out-of-pocket costs when a woman's medical provider has determined a specific method or brand is medically appropriate for her. This is reflective of the experiences of women who contact the CoverHer hotline. For example, when a woman needs a brand-name birth control because she has had adverse reactions to a generic equivalent, the plan must have a waiver process so that she can access the brand-name version that is medically appropriate for her. Women are sometimes told by their insurance company that the plan does not need a waiver process, and she is left without coverage. Often, women are told to go through a prior authorization process, but when their health care provider submits the form, there is no record of it at the insurance company, or the coverage is approved, but she still has out-of-pocket costs.

### Failing to cover sterilization for dependents

An insurance company in South Dakota excludes sterilization for “dependent children” – which includes adults up to the age of 26.<sup>62</sup> The ACA’s birth control benefit encompasses all women of reproductive capacity. This provision violates the law and would leave many women without coverage of this procedure.

### Imposing age limits on birth control coverage

An insurance company in Colorado limits coverage of birth control to women under 50.<sup>63</sup> Many women over the age of 50 continue to need birth control to prevent pregnancies.<sup>64</sup> Women who contact the CoverHer hotline with this problem often previously had coverage of their birth control without out-of-pocket costs, but when they turned 50 suddenly had a copay, had to meet a deductible, or had no coverage of their birth control. The ACA requires coverage of *all* women with reproductive capacity – these types of age restrictions violate that requirement.

### Policies that in effect delay or deny coverage of birth control

When a plan uses medical management techniques that have the effect of delaying or denying coverage of a birth control method, the plan does not comply with the ACA. For example, an insurance company in Nevada requires a health practitioner to determine that oral contraceptive drugs are not medically appropriate before it will provide coverage for other FDA-approved birth control methods.<sup>65</sup> An insurance company in Connecticut requires prior authorization for all birth control, which adds an improper barrier to all birth control so that no birth control is available without additional steps by a provider.<sup>66</sup> Two insurance companies in Minnesota create similar obstacles to access all methods through step-therapy and medical necessity tests.<sup>67</sup> In these instances, a woman may not be able to get coverage for the method of birth control that she and her medical provider have determined is appropriate for her, and is required by law. This could lead to women forgoing birth control altogether or using an inappropriate method, which could lead to less effective or less consistent use.

## IN THEIR OWN WORDS: WOMEN WHO STILL PAY OUT-OF-POCKET FOR BIRTH CONTROL

“So far they said they only have to cover ‘Tier One’ prescriptions. So, I asked what that meant and they said generic. They said she can be put on another generic medication so it’s paid for but on ‘my plan’ they only cover part of the prescription. They suggested again I have her prescription switched. [My daughter is] only 15 and the first time to be on birth control. I don’t feel I should have to ‘experiment’ with other medications because they are trying to sidestep the law.” – *Woman in Iowa*

# Recommendations

**WHILE MANY WOMEN ARE RECEIVING COVERAGE OF BIRTH CONTROL WITHOUT OUT-OF-POCKET COSTS,** the Center's documentation of insurance companies' practices shows that not all plans are complying with the law. To make certain that every woman gets the coverage guaranteed to her under the ACA, insurance companies and state and federal governments can take several steps to guarantee that plans comply with the law.

## ISSUERS: BRING COVERAGE INTO COMPLIANCE

- Insurance companies should carefully **examine the coverage they provide to ensure it complies** with the ACA's birth control benefit.
- Specifically, plans and issuers must carefully examine their birth control coverage to **ensure that they are covering all FDA-approved birth control methods for women without out-of-pocket costs** as required by the law. Based on the Center's findings, they should pay particular attention to their coverage of the contraceptive patch, the contraceptive ring, over-the-counter methods, brand name methods, and services associated with birth control.

## FEDERAL REGULATORS: ENFORCE THE LAW AND EDUCATE THE PUBLIC

- The Departments of Health and Human Services and Labor and the Treasury must **issue regulations that make unmistakably clear what plans must do to comply with the ACA's birth coverage requirement.** For example, the Departments must **specify that all birth control methods for women** identified in the FDA's Birth Control Guide must be covered without out-of-pocket costs. The Departments should **reiterate that plans must cover without out-of-pocket costs**

**brand-name birth control without a generic equivalent.** The Departments should also reiterate that **plans must cover all services associated with birth control.**

- The Departments must **robustly enforce** the ACA's birth control requirement. For example, women in self-funded coverage regulated by the Department of Labor reported to the CoverHer.org hotline that the Department was unable to resolve their complaints about coverage of the vaginal contraceptive ring. The federal government can **improve its enforcement at two critical points.** First, when the Departments take on the role of reviewing plan documents, the Departments must ensure that the plans provide coverage of every FDA-approved birth control method without cost sharing. Also, where the Departments are tasked with enforcing the birth control coverage requirement, such as in states that have declared they will not enforce the ACA or for self-funded health plans, the Departments must do so.
- The Departments should **undertake greater efforts to ensure that every woman guaranteed coverage of birth control without out-of-pocket costs under the ACA knows about the requirement.** Without knowledge of this part of the law, women will not have the information they need to make the Departments aware of implementation problems. The Departments must ensure that the public has the knowledge it needs to report violations of the ACA.

## STATES ENSURING WOMEN GET THE COVERAGE THEY DESERVE

After finding violations in plans in Connecticut, the Law Center, with Planned Parenthood of Southern New England, notified regulators in Connecticut. The state subsequently issued a clarifying bulletin about the birth control coverage requirement. Specifically, the bulletin directed issuers to ensure that sterilization and over-the-counter birth control are covered without out-of-pocket costs. The bulletin is an important step towards ensuring that insurance companies clearly understand the requirements of the law and do not impose inappropriate costs on women.

### STATE REGULATORS: ENFORCE THE LAW

- **Prior to approving** any plan to be offered as insurance coverage in the state, either on the marketplace or through an employer, the state agency tasked with reviewing the plan must ensure that the plan provides coverage of every FDA-approved birth control method without out-of-pocket costs. This would ensure that women would never enroll in a plan that is not compliant with the law. States should be doing this already.
- Should a woman be charged inappropriate cost sharing for birth control and file a complaint with the state, the state **must deal with her complaint swiftly and appropriately**. Several women reported to the CoverHer.org hotline that they had filed complaints with their state insurance commissioners about their plans' failure to cover the vaginal contraceptive ring or the contraceptive patch. However, in several states, the commissioner simply reiterated a health plan's coverage policy without consideration of the ACA's birth control requirement. These commissioners have not addressed the women's complaints or resolved the issue as it should be resolved under the ACA.

# Conclusion

## THE ACA'S BIRTH CONTROL BENEFIT IS CRITICAL

to making sure that women are able to access the preventive health care they need. Millions of women across the country are already benefiting from the law, in terms of their health and the impact it has on their families and lives. But some plans are not fully in compliance, leaving women without the coverage to which they are entitled. Identifying problems is the first step, but it is attention and dedicated efforts by various stakeholders that will guarantee that every woman receives the full promise of the ACA's birth control coverage benefit.

# Endnotes

- 1 Evidence suggests that even moderate co-payments can cause individuals to forgo needed preventive care, particularly those with low and moderate incomes. Geetesh Solanki & Helen Halpin Schaffler, *Cost-sharing and the utilization of clinical preventive services*, 17 Am. J. Preventive Med. 127 (1999); Amal N. Trivedi et al., *Effect of Cost Sharing on Screening Mammography in Medicare Health Plans*, 358 New Eng. J. Med. 375 (2008).
- 2 U.S. Dep't of Health and Human Svcs., Asst. Sec. for Planning and Evaluation, *Increased Coverage of Preventive Services with Zero Cost Sharing Under the Affordable Care Act* (Jun. 27, 2014), available at [http://aspe.hhs.gov/health/reports/2014/preventiveservices/ib\\_preventiveservices.pdf](http://aspe.hhs.gov/health/reports/2014/preventiveservices/ib_preventiveservices.pdf).
- 3 Adam Sonfield et al., *Impact of the federal contraceptive coverage guarantee on out-of-pocket payments for contraceptives: 2014 update*, 91 Contraception 44 (2015) available at [http://www.contraceptionjournal.org/article/S0010-7824\(14\)00687-8/pdf](http://www.contraceptionjournal.org/article/S0010-7824(14)00687-8/pdf).
- 4 IMS Inst. for Healthcare Informatics, *Medicine Use and Shifting Costs of Healthcare: A Review of the Use of Medicines in the United States in 2013*, (2014), available at [http://www.plannedparenthoodadvocate.org/2014/IIHI\\_US\\_Use\\_of\\_Meds\\_for\\_2013.pdf](http://www.plannedparenthoodadvocate.org/2014/IIHI_US_Use_of_Meds_for_2013.pdf).
- 5 Michelle H. Moniz, et al., *Attitudes about Mandated Coverage of Birth Control Medication and Other Health Benefits in a U.S. National Sample*, 311 J. of the Am. Medical Ass'n 2539-41 (June 2014).
- 6 This report uses the term "insurance companies" throughout to refer to both group and individual health plans.
- 7 Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps* (National Academies Press) (2011), available at <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>.
- 8 *Id.*
- 9 Kimberly Daniels et al., *Contraceptive Methods Women Have Ever Used: United States, 1982–2010*, National Health Statistics Reports No. 62, 4 (Feb. 14, 2013), available at <http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>.
- 10 Brief of the Guttmacher Institute and Professor Sara Rosenbaum as Amici Curiae Supporting the Government at 16, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014) (Nos. 13-354 & 13-356).
- 11 Inst. of Med., *supra* note 7, at 16-18.
- 12 The Affordable Care Act defines "cost-sharing" to include "deductibles, coinsurance, copayments, or similar charges." (42 U.S.C. § 18022(c)(3)(A)(i).)
- 13 Inst. of Med., *supra* note 7, at 109-10.
- 14 U.S. Dep't of Health and Human Svcs., Health Res. and Svcs. Admin., *Women's Preventive Services Guidelines* (Aug. 1, 2011), available at <http://www.hrsa.gov/womensguidelines/>. The requirement to cover all FDA-approved contraceptive methods and sterilization procedures without cost sharing went into effect for ungrandfathered health plans in the first plan year starting on or after on Aug. 1, 2012. The requirement also applies to coverage offered through the Medicaid expansion via regulations.
- 15 FDA Birth Control Guide available online at <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM356451.pdf>. In its brief to the Supreme Court in *Hobby Lobby v. Sebelius*, the government cites to the FDA Birth Control Guide as the list of contraceptive methods required to be covered under the ACA's birth control coverage requirement. Brief for the petitioner at 6, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014) (Nos. 13-354 & 13-356).
- 16 U.S. Dep't of Health and Human Svcs., U.S. Dep't of Labor, and U.S. Treasury, *FAQs on Affordable Care Act Implementation XII*, Question 14 (Feb. 20, 2013), available at <http://www.dol.gov/ebsa/faqs/faq-aca12.html> [hereinafter *FAQs*]. In the guidance, the Departments of Health and Human Services and Labor and the Treasury emphasize that the HRSA Guidelines "ensures women have access to the *full range* of FDA-approved contraceptive methods." (emphasis added).
- 17 *Id.*, at Question 14.
- 18 *Id.*, at Questions 14 and 17.
- 19 *Id.*, at Question 4.
- 20 Michelle Andrews, *Consumers Expecting Free 'Preventive' Care Sometimes Surprised by Charges*, Kaiser Health News, Jan. 21, 2014, available at <http://www.kaiserhealthnews.org/Stories/2014/January/21/Michelle-Andrews-Consumers-Expecting-Free-Preventive-Care.aspx>. ("The pill, the ring and the patch are different types of hormonal methods," said an HHS official in an e-mail. "It is not permissible to cover only the pill, but not the ring or the patch.")
- 21 *FAQs*, *supra* note 16, at Question 16.
- 22 45 C.F.R. 147.130 (2014).
- 23 *FAQs*, *supra* note 16, at Question 14.
- 24 *Id.*
- 25 *Id.*
- 26 *Id.*, at Question 3.

- 27 For the sake of readability, this report refers to all findings in present tense, although insurance companies may no longer offer some of the 2014 plans or may have corrected some of the 2014 violations. The issues identified from the plan documents are limited to what is publicly available. Unfortunately for the plans reviewed, formularies are unavailable. Thus, the coverage issues identified for any specific plan in this report are not necessarily exhaustive and other issues may exist, including in the formulary or how the plan administers its policies.
- 28 Sanford Health Plan, offered in South Dakota in 2014.
- 29 LA Care, offered in California in 2014 and 2015, defines “emergency contraceptive drugs” as those which have the same medication as “regular birth control drugs.” However, ella does not contain the same active ingredients as any other birth control drugs.
- 30 Physicians Plus, offered in Wisconsin in 2014.
- 31 Two issuers in Nevada, Nevada Health Co-op and United Healthcare, offered in 2014, exclude coverage of re-sterilization following a reversal of sterilization. An issuer in Alabama limits coverage of sterilization to one procedure per lifetime. BlueCross BlueShield, offered in Alabama in 2015. Yet, if a prior sterilization procedure has been reversed, and a woman has reproductive capacity, the plan must cover a subsequent sterilization procedure under the ACA. Sterilization is the second-most used form of birth control, with 15.5% of all women relying on it. Ctrs. for Disease Control and Prevention, Nat’l Ctr for Health Statistics, *NCHS Data Brief No. 173, Current Contraceptive Status Among Women Aged 15-44: United States, 2011-2013* (Dec. 2014).
- 32 Anthem BlueCross BlueShield and Anthem BlueCross BlueShield Multi-State Plan, offered in Maine in 2014; Preferred One offered in Minnesota in 2014; CareSource, CoventryHealthAmerica, Healthspan, and Molina all offered in Ohio in 2014, and Anthem BlueCross BlueShield, offered in Ohio in 2014 and 2015; BlueCross BlueShield of Rhode Island in 2014; Arise Health Plan, offered in Wisconsin in 2014.
- 33 Aetna’s 2014 Women’s Contraceptive Drugs and Devices List on file with National Women’s Law Center. The FDA categorizes the contraceptive patch and the vaginal contraceptive ring each as a unique method of birth control. Each method delivers hormones that prevent pregnancy in a way different than other birth control methods: the patch is transdermal; the ring is inserted in the vagina and releases hormones that are absorbed. Delivery method is one factor providers take into consideration when prescribing birth control.
- 34 Correspondence on file with National Women’s Law Center.
- 35 Aetna 2015 Women’s Contraceptive Drugs and Devices List. [https://pbm.aetna.com/wps/portal/FRAMED\\_UNAUTH\\_MEDICATION\\_SEARCH\\_TOOL](https://pbm.aetna.com/wps/portal/FRAMED_UNAUTH_MEDICATION_SEARCH_TOOL) (last visited April 13, 2015).
- 36 *Id.*
- 37 Cigna 2014 No Cost Preventive Medications by Drug Category on file with National Women’s Law Center.
- 38 Cigna 2015 No-Cost Preventive Medications by Drug Category, [http://www.cigna.com/pdf/866548-2015-preventive-mediations-ifp.pdf?WT.z\\_nav=cgi-bin%2F5-tier-pdl%2F5-tier-drug-list.cgi%3BLeftRail%3BResources%3B2015%20No%20Cost%20Preventive%20Medication](http://www.cigna.com/pdf/866548-2015-preventive-mediations-ifp.pdf?WT.z_nav=cgi-bin%2F5-tier-pdl%2F5-tier-drug-list.cgi%3BLeftRail%3BResources%3B2015%20No%20Cost%20Preventive%20Medication) (last visited April 13, 2015).
- 39 Correspondence with UnitedHealthcare on file with National Women’s Law Center.
- 40 UnitedHealthcare Advantage, Traditional, and Signature Value Preventive Drug Lists, <https://www.myuhc.com/member/preLog-inPharmacyInfoLayout.do> (last visited April 16, 2015).
- 41 *Id.*
- 42 Women most often report this happening with insurance provided by BlueCross BlueShield companies.
- 43 An Anthem BlueCross BlueShield plan in Oklahoma.
- 44 Aetna, offered in Ohio in 2015.
- 45 HealthyCT, offered in Connecticut in 2014 (cost-sharing applied to sterilization services provided by a doctor); ConnectiCare, offered in Connecticut in 2014 and in 2015.
- 46 Kaiser, offered in Ohio in 2014, and Healthspan, offered in Ohio in 2015. Plan documents indicate that the cost of the IUD is determined to be the lesser of the monthly co-payment multiplied by the number of months the IUD is effective according to the manufacturer or \$200. Additionally, the cost to the enrollee of injectable contraceptives is the monthly co-payment multiplied by the number of months the injection is effective according to the manufacturer but cannot exceed the cost of the contraceptive itself.
- 47 Kaiser Permanente, offered in Maryland in 2014. The issuer corrected this violation.
- 48 Florida Blue documents on file with National Women’s Law Center.
- 49 Saint Mary’s Health First offered in Nevada in 2014 and Prominence HealthFirst offered in Nevada in 2015; Summa in Ohio in 2014 and 2015; Sanford Health Plan, offered in South Dakota in 2014; and, Arise Health Plan, offered in Wisconsin in 2014. In 2015, plan documents for Sanford Health Plan in South Dakota and Arise Health Plan in Wisconsin were not available.
- 50 Kaiser 601, Kaiser 701, and Kaiser 901, offered in Colorado in 2015.
- 51 Assurant, offered in Florida in 2015.
- 52 Aetna, offered in Ohio in 2015.

- 53 Planned Parenthood IUD webpage, <http://www.plannedparenthood.org/health-topics/birth-control/iud-4245.htm> (last visited April 17, 2015), and Brief of the Guttmacher Institute and Professor Sara Rosenbaum, *supra* note 10.
- 54 Stacie B. Dusetzina et al., *Cost of Contraceptive Methods to Privately Insured Women in the United States*, 23 *Women's Health Issues* e69, e70 (2013).
- 55 Anthem BlueCross BlueShield.
- 56 Sanford Health Plan, offered in South Dakota in 2014.
- 57 LA Care, offered in California in 2014 and 2015.
- 58 *Id.*
- 59 UnitedHealthcare, state unknown.
- 60 Anthem BlueCross, state unknown.
- 61 BlueCross BlueShield, offered in Alabama in 2015.
- 62 Sanford Health Plan, offered in South Dakota in 2014.
- 63 Colorado HealthOP, offered in Colorado in 2015. The plan documents are unclear whether this limitation applies to all contraceptives, or only over-the-counter methods.
- 64 The average age of menopause, when a woman is no longer able to become pregnant, is 51. U.S. Dep't of Health & Human Svcs, Nat'l Inst. of Health, *Menopause: Time for a Change* (Jan. 2008), available at <http://www.nia.nih.gov/health/publication/menopause-time-change/introduction-menopause>.
- 65 Saint Mary's Health First, offered in Nevada in 2014.
- 66 ConnectiCare, offered in Connecticut in 2015.
- 67 Health Partners and Medica, offered in Minnesota in 2014.





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