

Insurance Coverage of Contraceptives

BACKGROUND: In June 2012, the U.S. Supreme Court upheld the Patient Protection and Affordable Care Act of 2010 (ACA). The ACA, drawing upon recommendations developed by the Institute of Medicine and adopted by the U.S. Department of Health and Human Services (DHHS), requires new private health plans written on or after August 1, 2012 to cover contraceptive counseling and services and all U.S. Food and Drug Administration-approved methods without out-of-pocket costs to patients. For many plans, this requirement takes effect in January 2013. However, existing plans are exempt from the requirement so long as no significant negative changes, such as cutting benefits or raising cost-sharing, are made to them; DHHS has projected that most of these plans will likely lose this protected status within a few years. The agency has also approved an exemption for some religious employers, similar to the exemption included in several state laws. In addition, DHHS has delayed enforcement of the requirement for many other religiously affiliated employers until August 2013 and has proposed an additional “accommodation” for entities not eligible for the religious exemption. Regulations to implement this accommodation have yet to be released.

Currently, almost all insurance plans cover prescription drugs, but some still do not provide coverage for the full range of FDA-approved prescription contraceptive drugs and devices. More than half of states, however, require insurance policies that cover other prescription drugs to also cover all FDA-approved contraceptive drugs and devices, as well as related medical services. Some of these state policies allow employers or insurers to refuse to cover contraceptives on religious or moral grounds.

Additionally, federal law requires insurance coverage of contraceptives for federal employees and their dependents; it includes a limited but seldom used exception for religious insurers. In December 2000, the U.S. Equal Employment Opportunity Commission made it clear that an employer’s failure to provide coverage of contraception, when it covers other prescription drugs and preventive care, is a violation of protections against sex discrimination under Title VII of the Civil Rights Act; those protections for employees’ benefits include no exemption for religious employers.



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HIGHLIGHTS:

- 28 states require insurers that cover prescription drugs to provide coverage of the full range of FDA-approved contraceptive drugs and devices; 17 of these states also require coverage of related outpatient services.
 - 2 states exclude emergency contraception from the required coverage.
 - 1 state excludes minor dependents from coverage.

- 20 states allow certain employers and insurers to refuse to comply with the mandate. 8 states do not permit refusal by any employers or insurers.
 - 3 states include a “limited” refusal clause that allows only churches and church associations to refuse to provide coverage, and does not permit hospitals or other entities to do so.
 - 7 states include a “broader” refusal clause that allows churches, associations of churches, religiously affiliated elementary and secondary schools, and, potentially, some religious charities and universities to refuse, but not hospitals.
 - 9 states include an “expansive” refusal clause that allows religious organizations, including at least some hospitals, to refuse to provide coverage; 1 of these states also exempts secular organizations with moral or religious objections. (An additional state, Nevada, does not exempt any employers but allows religious insurers to refuse to provide coverage; one other state exempts insurers in addition to employers.)

- 14 of the 20 states with exemptions require employees to be notified when their health plan does not cover contraceptives.
- 4 states attempt to provide access for employees when their employer refuses to offer contraceptive coverage, generally by allowing employees to purchase the coverage on their own, but at the group rate.

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INSURANCE COVERAGE OF CONTRACEPTIVES

STATE	COVERAGE REQUIRED		EXCLUSIONS		REFUSAL PROVISIONS			Enrollees Notified by:	Access for Enrollees
	Prescription Drugs & Devices	Outpatient Services	EC	Minor Dependents	Scope				
					"Limited"	"Broader"	"Expansive"		
Arizona	X	X					X	Employer	
Arkansas	X		X			X			
California	X				X			Employer	
Colorado	X								
Connecticut	X						X*	Insurer	*
Delaware	X	X					X	Employer	
Georgia	X								
Hawaii	X	X					X	Employer	X
Illinois	X	X					X ^{†,‡}		
Iowa	X	X							
Maine	X	X				X		Employer	
Maryland	X	X					X	Employer	
Massachusetts	X	X				X			
Michigan ^Ω	X	X				X			
Missouri	X						X	Insurer	X
Montana ^Ω	X	X							
Nevada	X						†	Insurer	
New Hampshire	X	X							
New Jersey	X					X		Employer	
New Mexico	X						X		
New York	X				X			Employer/Insurer	X
North Carolina	X	X	X			X		Insurer	
Oregon	X	X			X				
Rhode Island	X					X		Employer	
Texas	Ψ	Ψ							
Vermont	X	X							
Virginia	Ψ	Ψ							
Washington	X	X							
West Virginia	X	X		X			X	Insurer	X
Wisconsin	X	X							
TOTAL	28	17	2	1	3	7	9	14	4

§ Enforcement temporarily enjoined by court order; policy is not in effect, pending the outcome of litigation.

* Religious insurers are not exempt from the mandate but may provide contraceptive coverage through a subcontract with another insurer or third-party entity.

† Refusal clause applies to insurers.

‡ Refusal clause applies to secular entities that object on moral or religious grounds.

Ω Policy is the result of an administrative ruling (Michigan) or an attorney general opinion (Montana).

Ψ Employers must be offered the option to include coverage of contraceptives within the health plan.

FOR MORE INFORMATION:

For information on state legislative and policy activity, click on Guttmacher's [Monthly State Update](#), for state-level policy information, see Guttmacher's [State Policies in Brief](#) series, and for information and data on reproductive health issues, go to Guttmacher's [State Center](#). To see state-specific reproductive health information, go to Guttmacher's [Data Center](#), and for abortion-specific information, click on [State Facts About Abortion](#). To keep up with new state relevant data and analysis, sign up for the [State News Quarterly Listserv](#).

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