

**POWER
TO DECIDE**

the campaign to prevent unplanned pregnancy

When Your Birth Control Isn't Covered:

Health Plan Non-Compliance With the Federal
Contraceptive Coverage Requirement

A photograph of a desk with a keyboard, a mouse, and a document with a 'DENIED' stamp. The image is overlaid with a blue gradient. The document is white with a black border around the word 'DENIED'. The keyboard is black and the mouse is black. The desk surface is light-colored.

DENIED



ACKNOWLEDGMENT AND DISCLAIMER

Acknowledgment:

This report was a collective undertaking and was written by Adam Sonfield and edited by Raegan McDonald-Mosley, MD, MPH and Rachel Fey. The research was funded by the Care Collaborative, which is comprised of Agile Therapeutics, Avion Pharmaceuticals, Mayne Pharma, and TherapeuticsMD. Power to Decide was compensated for time in editing and disseminating the report.

Disclaimer:

While the information in this report is, to the best of the authors' knowledge, current as of when this report was prepared, subsequent developments—including changes to the plan documents or additional administrative guidance—could alter the information provided here.

FORWARD FROM OUR CEO



The passage of the Affordable Care Act (ACA) was a tremendous step forward and brought basic health care within reach for millions of people across the country. Notably, the ACA included a first-of-its-kind provision that required health insurance plans to cover the full range of FDA-approved birth control methods with no out-of-pocket expense. **More than 62 million** women have gained access to affordable birth control thanks to the ACA.

However, there are still significant gaps in making full coverage a reality for everyone. As we know, effective implementation and enforcement are crucial to ensuring that laws like the ACA are able to meet their ambitious goals. Our new report makes this point clear by uncovering far too many examples of health insurance plans falling short of the ACA's standards and guidance. Despite having ample time to come into compliance, our report found that many health care plans still seem to lack a process that

ensures people can get the birth control best suited to them, without exception or delay.

In my two decades as an OB-GYN, I've seen first-hand the impact birth control has on the lives of my patients – and the harm that follows when people can't access this basic health necessity because of cost.

Nearly every woman in the U.S., no matter her race, ethnicity, political or religious affiliation, will use birth control at some point in her life, and it has far-reaching benefits for the reproductive and overall well-being of anyone who can get pregnant. Contraception is also a safe and effective treatment for a range of common health concerns, such as irregular periods, menstrual migraines, ovarian cysts and more. It is a common part of everyday life.

In the 12 years since the ACA was passed, it has fundamentally changed the health care landscape and put affordable birth control within reach for millions of people across the country. But as our report shows, there is work yet to be done to realize the goal of ensuring that all of us have meaningful access to the basic contraceptive care we need.

Sincerely,

A handwritten signature in black ink that reads "Raegan McDonald-Mosley". The signature is written in a cursive, flowing style.

Dr. Raegan McDonald-Mosley, MD, MPH
Chief Executive Officer

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EXECUTIVE SUMMARY

Contraception is a key component of the care that every person deserves in order to achieve their reproductive well-being. It empowers people to pursue their educational, economic, and professional goals by allowing them to plan and space pregnancies, and to support their health and that of their families. However, contraception is not one size fits all. Patients have different needs, different goals, and different medical conditions that contribute to the decision they make with their provider as to what method of birth control is right for them at that point in their lives. In fact, birth control is a journey. A woman in the U.S. will try a median of three methods of birth control over her reproductive years and nearly one-third will use five or more methods.¹

However, prior to the Affordable Care Act (ACA) many people were not able to choose the method of contraception they and their provider determined was best for them, because their insurance plan did not cover the method, or did so but with prohibitive out-of-pocket costs.

Under the ACA's contraceptive coverage requirement, most private health plans in the U.S. must cover the full range of contraceptive methods and services for people who can become pregnant, without copayments or other cost sharing for patients. Multiple rounds of federal guidance have clarified plans' obligations, including that they must cover at least one product in every contraceptive method category, and that they may use medical management techniques such as formularies to influence patients' choice of contraceptive products within—but not across—method categories. If health plans do use medical management techniques, they must also have an easy-to-use exceptions process in place for when a patient and their provider determine that a specific product would best meet the patient's medical needs.

Evidence has accumulated—including from the National Women's Law Center, media reports, congressional committees, and federal agencies—that health plans are systematically failing to fully meet the ACA's contraceptive coverage standards. In particular, few health plans appear to have an exceptions process in place that meets the federal guidelines established in 2015, and are continuing to deny no-cost coverage for many contraceptive products, particularly newer ones, even following a determination of medical necessity by a provider in consultation with their patient.

These violations of the federal contraceptive coverage requirement interfere with the federal government's goals of reducing cost barriers for patients and helping them to choose and use the birth control methods that work best for them. The impact of these violations falls hardest on people of color, people with low incomes, and other communities that face systemic barriers in the U.S. health care and economic systems.

This report provides further documentation and detail about potential non-compliance with the ACA's contraceptive coverage standards. The report draws on three sources of information: a review of publicly available online documents from health plans and pharmacy benefit managers; a collection of denial letters issued to patients; and a "secret shopper"-style phone survey to health plans' customer service lines.

¹ Birth Control 101 | Power to Decide. (n.d.). Retrieved March 11, 2022, from Power to Decide, the campaign to prevent unplanned pregnancy 2022 | Power to Decide website: <https://powertodecide.org/what-we-do/information/resource-library/birth-control-101>

Key findings include:

- Few plans appear to have set up an exceptions process for contraceptive products at a level that meets the ACA’s standards. Research identified public documents describing acceptable exceptions processes for only two of the 42 health plans or pharmacy benefit managers assessed.
- Many plans provide no information at all about an exceptions process in their online documents, in the denial letters issued to patients, and/or in phone conversations with customer service representatives.
- Other plans indicate that an exceptions process exists, but do not provide sufficient information for patients or providers to identify and navigate such a process.
- Some health plans describe processes that do not appropriately defer to an attending provider’s determination of medical necessity in consultation with their patient; impose inappropriate medical management techniques (such as a requirement that patients first try and fail with alternative products); and/or rely on processes that were not designed to comply with the ACA’s standards.

Collectively, this new evidence that health plans often may not be in compliance with the ACA’s contraceptive coverage requirement should help inform federal and state regulators and lawmakers, health plans and pharmacy benefit managers, health care consumers and providers, and other stakeholders. More specifically, the findings of this report put further weight behind the need for enforcement steps announced in January 2022 by the federal government and behind recommendations for further action issued by family planning advocacy groups, some of which are elaborated on here.

BACKGROUND

In the decade since it went into effect, the federal contraceptive coverage requirement has significantly improved contraceptive access, and has contributed to improved reproductive well-being for those able to choose the best method of birth control for them without having to factor in out-of-pocket costs. Prior to the implementation of the ACA’s contraceptive coverage requirement, cost barriers prevented many people, particularly women of color, from accessing the birth control method that was right for them,² and as a result hindered their overall reproductive well-being. Research shows that since passage of the ACA, contraceptive costs decreased, and use of methods that previously had higher out-of-pocket costs also increased.³

However, a growing body of evidence suggests a failure of many private health plans across the U.S. to implement the requirement fully and effectively. Among other problems, health plans have been slow to cover newer contraceptive products, and few health plans appear to be meeting federal standards for an “exceptions” or waiver process through which patients can receive coverage for the contraceptive product that their provider determines they need, when it is not on their health plan’s

2 Clinical Preventive Services for Women: Closing the Gaps. (2011). In *The Nato*. National Academies Press. Retrieved March 11, 2022, from <https://www.nap.edu/catalog/13181/clinical-preventive-services-for-women-closing-the-gaps#rights>

3 Snyder, A. H., Weisman, C. S., Liu, G., Leslie, D., & Chuang, C. H. (2018). The Impact of the Affordable Care Act on Contraceptive Use and Costs among Privately Insured Women. *Women’s Health Issues*, (3), 219–223. <https://doi.org/10.1016/j.whi.2018.01.005>

drug formulary. These failures undercut the contraceptive coverage requirement's potential to help people use the chosen birth control method that will best meet their needs, protect their health, and help them achieve their pregnancy prevention goals. They also create an equity gap between those patients who can absorb the full cost of the method they need when their plan fails to comply with the ACA, and those who cannot.

The Policy

The federal contraceptive coverage requirement stems from the Affordable Care Act (ACA), enacted by Congress in 2010. Under the ACA, most private health plans (as well as the ACA's major expansion of Medicaid) must cover a set of preventive health care services without any copayments, deductibles or other out-of-pocket costs for enrollees. That set of preventive services includes preventive care and screenings for women as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA), a branch of the U.S. Department of Health and Human Services (HHS).⁴

In 2011, HRSA first adopted guidelines for women's preventive services based on recommendations from the Institute of Medicine. Since then, HRSA has continued to update its guidelines based on recommendations from the Women's Preventive Services Initiative, an expert panel convened by the American College of Obstetricians and Gynecologists. Each iteration of the women's preventive services recommendations has included contraceptive services and supplies.

The HRSA guidelines that are currently in effect were updated and adopted by HHS in 2019. They recommend plans cover the "full range of female-controlled U.S. Food and Drug Administration [FDA]-approved contraceptive methods, effective family planning practices, and sterilization procedures."⁵ To define the "full range," the guidelines specify 18 contraceptive method categories as well as "additional methods as identified by the FDA." The guidelines for contraceptive care also include "contraceptive counseling, initiation of contraceptive use, and follow-up care (e.g., management, evaluation, as well as changes to and removal or discontinuation of the contraceptive method)."⁶ Taken together, these guidelines clearly recognize the need for people to have broad and easy access to the contraceptive products that work best for them and to the information and services needed to make decisions about birth control and to use it successfully.

The Departments of Health and Human Services, Labor and Treasury (the tri-departments, which share authority over different aspects of U.S. health insurance coverage) have issued multiple sets of Frequently Asked Questions (FAQs) to clarify how health plans are expected to implement the ACA's contraceptive coverage requirement. Most notably, the FAQs issued in May 2015 clarified that health plans and issuers must cover without cost sharing at least one form of contraception in each of the method categories identified by the FDA.⁷ Within each method category (but not across categories), plans may use "reasonable medical management techniques," such as imposing cost sharing on some contraceptive products to encourage enrollees to use other products in the same category.

4 42 USC 300gg-13: Coverage of preventive health services. (n.d.). Retrieved March 11, 2022, from Office of the Law Revision Counsel United States Code website: [https://uscode.house.gov/view.xhtml?req=\(title:42%20section:300gg-13%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:300gg-13%20edition:prelim))

5 Women's Preventive Services Guidelines. (2017, May 11). Retrieved March 11, 2022, from U.S. Health Resources & Services Administration website: <https://www.hrsa.gov/womens-guidelines/index.html>

6 Women's Preventive Services Guidelines. (2017, May 11). Retrieved March 11, 2022, from U.S. Health Resources & Services Administration website: <https://www.hrsa.gov/womens-guidelines/index.html>. HRSA adopted updated guidelines in December 2021, but they do not take effect until January 1, 2023: <https://www.womenspreventivehealth.org/recommendations/>

7 FAQs About Affordable Care Act Implementation (Part XXVI). (2015, May 11). Retrieved March 11, 2022, from Centers for Medicare & Medicaid Services website: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf

However, the 2015 FAQs make it clear that plans' cost-control measures must not outweigh enrollees' needs as determined by an enrollee's attending provider in consultation with their patient. Specifically, plans using medical management techniques like formularies must have an exceptions process in place to cover without cost sharing any necessary contraceptive service or item. This exceptions process must be "easily accessible, transparent, and sufficiently expedient," and it must not be "unduly burdensome on the individual or a provider." The plan must defer to the determination of an enrollee's provider that a particular service or item is medically necessary for that individual—defined broadly to include "considerations such as severity of side effects, differences in permanence and reversibility of contraceptives, and ability to adhere to the appropriate use of the item or service." Another FAQ document, issued in April 2016, suggested that health plans could develop a standard exceptions form and instructions, and offered a Medicare Part D form as a potential model.⁸

The Problems

There is considerable evidence that many health plans may not be complying with the ACA's standards for contraceptive coverage, as set by the HRSA guidelines and the tri-department FAQs. Much of this evidence has been gathered by the National Women's Law Center (NWLC), which runs an email and telephone hotline to offer help with obtaining insurance coverage of contraception without cost sharing.⁹ NWLC reports that nearly 7,700 people have used the hotlines over the last nine years.¹⁰

An October 2021 report from NWLC detailed numerous recent potential violations of the ACA's contraceptive coverage requirement. One major trend identified in the report was that plans are not implementing an exceptions process that meets the federal standards: "People were denied coverage without cost-sharing for the product they need, were provided little to no information about a cost-sharing exceptions process, or were pushed into processes that do not comply with federal guidance. Where doctors provided certification that the particular product was medically necessary and appropriate, plans overrode those determinations."¹¹ The report also detailed repeated failures to cover newly approved contraceptive products.

News reports have also described potential violations of the ACA's contraceptive coverage requirement. For example, an NPR article from July 2021 included stories from patients, advocates and contraceptive manufacturers about the hurdles people face in obtaining coverage for their chosen contraceptive product, particularly newer products.¹²

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- 8 FAQs About Affordable Care Act Implementation Part 31, Mental Health Parity Implementation, and Women's Health and Cancer Rights Act Implementation. (2016, April 20). Retrieved March 11, 2022, from Centers for Medicare & Medicaid Services website: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-31.pdf>
 - 9 Having trouble getting birth control without co-pay or out-of-pocket costs? (n.d.). Retrieved March 11, 2022, from National Women's Law Center website: <https://nwlc.org/having-trouble-getting-birth-control/>
 - 10 The Biden Administration Must Ensure the Affordable Care Act Contraceptive Coverage Requirement Is Working for All. (n.d.). Retrieved March 11, 2022, from National Women's Law Center website: <https://nwlc.org/resource/the-biden-administration-must-ensure-the-affordable-care-act-contraceptive-coverage-requirement-is-working-for-all/>
 - 11 The Biden Administration Must Ensure the Affordable Care Act Contraceptive Coverage Requirement Is Working for All. (n.d.). Retrieved March 11, 2022, from National Women's Law Center website: <https://nwlc.org/resource/the-biden-administration-must-ensure-the-affordable-care-act-contraceptive-coverage-requirement-is-working-for-all/>
 - 12 Andrews, M. (2021, July 21). Contraception Is Free To Women, Except When It's Not. *NPR Shots*. Retrieved from <https://www.npr.org/sections/health-shots/2021/07/21/1018483557/contraception-is-free-to-women-except-when-its-not>

Leading members of Congress have highlighted similar violations. An October 2021 letter from the chairs of four House committees to the secretaries of HHS, Labor and Treasury describes examples of medical management techniques that go beyond what the ACA allows: “denying coverage by requiring individuals to try other contraceptive methods prior to permitting coverage for the desired method; requiring patients try numerous other forms before permitting coverage of the desired form, beyond what could be considered ‘reasonable;’ denying coverage for brand name contraceptive methods for which no generic equivalent exists; and failing to provide an acceptable exceptions process.”¹³ Similarly, a December 2021 letter to the three secretaries from the chairs of two Senate committees reports that “some insurers are requiring patients to show they have failed with as many as five different birth control options before the insurer will pay for the method of their choice.”¹⁴

In January 2022, the three departments issued a new FAQ document that echoes these earlier reports of violations.¹⁵ It reported that health plans, issuers and pharmacy benefit managers (PBMs) were denying coverage for “all or particular brand name contraceptives,” even after a patient’s attending provider has determined that a specific product is medically necessary. The FAQ stated that plans were also requiring enrollees to try and fail with other contraceptive products—sometimes in other method categories—before covering the product the attending provider deemed medically necessary. And they were failing to provide an exceptions process that meets the standards set in previous FAQs, such as by forcing enrollees’ to use the plan’s standard appeals process as the way to obtain an exception. Finally, the FAQ reports that plans may not be providing coverage for newer contraceptive products that the FDA has “approved, cleared or granted,” such as “mobile apps for contraception based on fertility awareness.”

The 2022 FAQ document asserts that the three departments are investigating these complaints and are considering further enforcement, corrective actions, and additional guidance and regulations. It reminds health plans of their obligations, specifically including the requirement for an exceptions process. And it provides email addresses and phone numbers for consumers to contact federal agencies with complaints.

These violations of the ACA’s contraceptive coverage requirement create inequity. When it is adhered to, the federal policy greatly reduces cost barriers for patients and helps them to identify, choose, and consistently use the birth control methods that work best for them.^{16,17,18} When plans do not adhere to the policy, it creates a system of haves and have-nots.

13 House Chairs Letter to HHS re ACA Contraceptive Mandate. (2021, October 6). Retrieved March 11, 2022, from The U.S. House Committee on Education and Labor website: <https://edlabor.house.gov/imo/media/doc/House%20Chairs%20Letter%20to%20HHS%20re%20ACA%20Contraceptive%20Mandate.pdf>

14 Amid Reports that Insurers Are Flouting ACA Contraception Coverage Protections, Senators Murray, Wyden Urge Biden Administration to Protect Access to Birth Control. (2021, December 10). Retrieved March 11, 2022, from The U.S. Senate Committee on Health, Education, Labor & Pensions website: <https://www.help.senate.gov/chair/newsroom/press/amid-reports-that-insurers-are-flouting-aca-contraception-coverage-protections-senators-murray-wyden-urge-biden-administration-to-protect-access-to-birth-control->

15 FAQs About Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation. (2022, January 10). Retrieved March 11, 2022, from Centers for Medicare & Medicaid Services website: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/aca-part-51.pdf>

16 Frederiksen, B., Rae, M., & Salganicoff, A. (2020). Out-of-pocket spending for oral contraceptives among women with private insurance coverage after the Affordable Care Act. *Contraception*: X, 100036. <https://doi.org/10.1016/j.conx.2020.100036>

17 Malcolm, N., Stern, L., & Hart, J. (2021, March). Priority Roadmap for Policy-Ready Contraceptive Research Environmental Scan Report. Retrieved March 11, 2022, from Coalition to Expand Contraceptive Access website: https://static1.squarespace.com/static/5d35f1b39760f8000111473a/t/60b7da8567f001412298e9a4/1622661766278/3.+Impact+of+Major+Policy+Changes_Environmental+Scan.pdf

18 Lee, L. K., Chien, A., Stewart, A., Truschel, L., Hoffmann, J., Portillo, E., ... Galbraith, A. A. (2020, March). Women’s Coverage, Utilization, Affordability, And Health After The ACA: A Review Of The Literature. Retrieved March 11, 2022, from Health Affairs website: <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2019.01361?journalCode=hlthaff>

Violations such as plans' failure to provide an ACA-compliant exceptions process have a disproportionate impact on people of color, people with low incomes, and people in other marginalized communities who must navigate inequitable health care and economic systems. Those patients who have the time and resources to press their case with their insurer or can afford to pay for the method they need may still be able to use it, but those without time and resources are left with limited options which may include using a method less suited to them or potentially no method at all. Struggling through an insurance company's bureaucratic maze can be daunting for any consumer, but especially for someone who might also be juggling multiple jobs to make ends meet, meeting their responsibilities as a parent, and facing discrimination in multiple areas of their life.

Violations such as plans' failure to provide an ACA-compliant exceptions process have a disproportionate impact on people of color, people with low incomes, and people in other marginalized communities who must navigate inequitable health care and economic systems.

PURPOSE & METHODS

The purpose of this report is to provide further documentation of and detail about potential violations of the ACA's contraceptive coverage requirement, and particularly about health plans' and PBMs' use of (or failure to use) an exceptions process that meets the standards laid out in the tri-department FAQs. Additional information about potential violations may be useful for federal and state regulators, members of Congress, state legislators, health plan and PBM employees, health care providers, patients and other stakeholders in understanding, navigating and correcting problems implementing the ACA's contraceptive coverage requirement.

This report relies on three major sources of information: a review of publicly available documents from health plans and PBMs about their policies; a review of denial letters issued to patients seeking coverage for several contraceptive products; and a series of "secret shopper"-style phone calls to health plans seeking information from customer service agents and pharmacy service representatives.

Sample of Plans

For the secret shopper phone calls and the review of plan documents, researchers targeted a geographically diverse sample of 55 formularies managed by 42 of the largest private health plans and PBMs in the U.S., including formularies for employer-based coverage and coverage through the ACA's health insurance exchanges. Those formularies each covered between 168,000 and 8.6 million lives in 2022, according to data from Managed Markets Insights and Technology (MMIT), and collectively accounted for 73.9 million covered lives.¹⁹ The sample is limited to the private health insurance market and does not include Medicaid plans or any other form of public coverage. A full list of the formularies in the sample and their covered lives can be found in Appendix A.

¹⁹ Managed Markets Insights and Technology, 2022 data on commercial and health exchange formularies, accessed 1/30/2022.

Plan Documents

For each of the health plans and PBMs included in the sample, researchers conducted an internet search, using Google, to identify publicly available documents that mention or describe an exceptions process for contraceptive products that are excluded from the plan's formulary. They searched for variations of the plan's name combined with variations of "contraceptive" or "preventive" and also searched for documents related to the specific formularies in the sample.

They then searched through those documents for any mention of an exceptions or waiver process that was specifically connected to coverage of contraceptive products and services or preventive care more generally, or any other mention of a way to obtain coverage for an excluded contraceptive product or to waive cost sharing for a contraceptive product. The documents found included prescription drug formularies, documents about preventive services generally, and documents about contraceptive coverage specifically. In total, researchers found relevant documents for 24 health plans or PBMs out of the 42 companies in the sample. Those companies managed 33 of the 55 formularies in the sample.

Denial Letters

Researchers also reviewed a collection of denial letters issued in 2021, including 48 letters from 12 major health plans or PBMs. These letters were obtained from multiple sources each after experiencing challenges related to obtaining a preferred contraceptive, and were stripped of any identifiable information prior to review by researchers to protect the confidentiality of patients and providers.

'Secret Shopper' Phone Survey

The phone survey was conducted by HealthyBOS, a back office support company that has experience conducting secret shopper-style surveys. Between December 2021 and February 2022, HealthyBOS staff members made calls to customer service, pharmacy service, member services or other identified support numbers from the 55 health plans or PBM formularies identified in the sample. Phone numbers for the companies were obtained from MMIT as well as online searches.

Callers explained to plan representatives that they were seeking information about how to obtain no-cost coverage of contraceptive products. Specifically, they asked for a copy of the policy or forms needed to request an exception to obtain no-cost coverage for a contraceptive product that normally had a copayment or was excluded from coverage. Callers made at least three attempts to contact each plan.

If asked to identify themselves, callers were instructed to say that they were calling from a patient service hub (a service that drug manufacturers use to connect with patients, including by helping patients navigate the reimbursement process).

Two versions of the complete script for the survey can be found in Appendix B. The script was revised for a round of follow-up calls in an attempt to more clearly describe the purpose of the call to plan representatives, after initial attempts were mostly unsuccessful.

FINDINGS

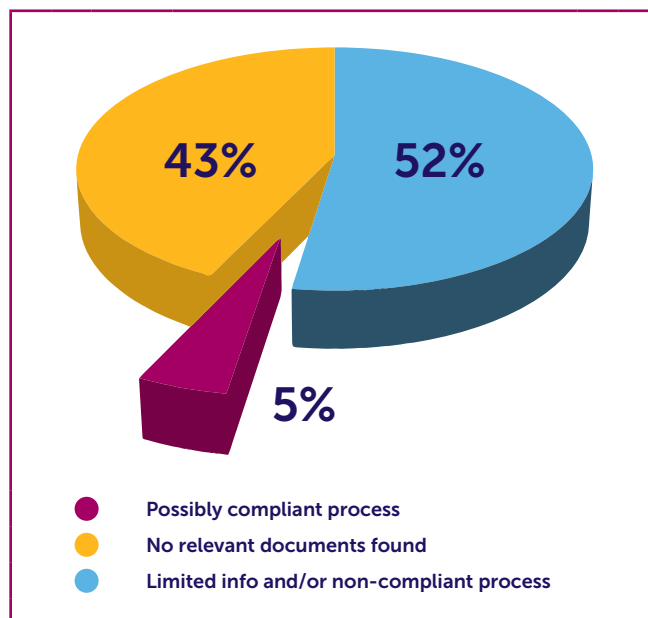
Overall, the findings of this report echo and expand on those of NWLC and the federal government and uncovered potential violations of aspects of the ACA’s contraceptive coverage requirement by numerous large private health plans. In particular, only a few plans appear to have in place an exceptions process that would meet the ACA’s standards and allow patients to receive the specific contraceptive products that they need.

According to the 2015 federal guidance FAQs, health plans that use formularies and similar medical management techniques must have an exceptions process that is “easily accessible, transparent, and sufficiently expedient” and “not unduly burdensome on the individual or a provider.”²⁰ This process must ensure that the plan covers a specific product or service without cost sharing if it is recommended by a patient’s attending provider “on a determination of medical necessity with respect to the individual.” The plan must defer to the determination of that provider, and “medical necessity” is defined broadly to include “considerations such as severity of side effects, differences in permanence and reversibility of contraceptives, and ability to adhere to the appropriate use of the item or service.”

NWLC²¹ and the federal government²² have found widespread violations of these standards, and this report documents additional evidence of potential violations based on a review of health plans’ public documents, a collection of denial letters issued to patients, and secret shopper phone calls to health plans.

Findings from Plan Documents

For 18 of the 42 health plans and PBMs assessed (which managed 22 formularies in the sample), researchers found no documents that mention an exceptions process for contraceptive products or preventive services more generally. These included Anthem, Blue Cross Blue Shield of Alabama, Blue Cross Blue Shield of Louisiana, Blue Cross Blue Shield of Michigan, Centene, Elixir PBM, EmblemHealth, Kaiser Foundation Health Plans California, Kaiser Foundation Health Plans Mid-Atlantic, Kroger PBM, Magellan Rx Management, MC-RX, MedImpact Healthcare Systems, Molina Health Care, OptumRx, SelectHealth, Spectrum Health System, UPMC Health System, and Wellmark.



20 FAQs About Affordable Care Act Implementation (Part XXVII). (2015, May 11). Retrieved March 11, 2022, from Centers for Medicare & Medicaid Services website: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf

21 The Biden Administration Must Ensure the Affordable Care Act Contraceptive Coverage Requirement Is Working for All. (n.d.). Retrieved March 11, 2022, from National Women’s Law Center website: <https://nwlc.org/resource/the-biden-administration-must-ensure-the-affordable-care-act-contraceptive-coverage-requirement-is-working-for-all/>

22 FAQs About Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation. (2022, January 10). Retrieved March 11, 2022, from Centers for Medicare & Medicaid Services website: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>

For the other 24 health plans and PBMs (which managed 33 formularies), researchers found at least some mention of an exceptions process for contraception—sometimes in a plan’s prescription drug formulary but more often in a separate document about the ACA’s contraceptive coverage requirement or the ACA’s broader preventive services requirement.

However, documents from only two of those health plans—Aetna and Florida Blue—described a process that may meet the ACA standards. Researchers were not able to verify if the described processes are in use or followed by these plans.

- A 2017 document from Aetna describes an exceptions process in detail, including potential reasons that an exception might be needed (including a catch-all category of “not medically appropriate”), the timeframe for the process, and the length of time an exception will last (three years before a renewal is needed).²³
- The information provided by Florida Blue is more limited but still helpful. The plan formularies include a brief but clear description of an exceptions process for contraceptive products, including a link to the specific form that a health care provider should submit.²⁴ The form itself is a single page long and asks the provider to specify the reason for the request (rather than requiring the provider to select from a limited list).²⁵ The form does, however, ask for potentially unnecessary information about other medications “previously tried and failed for treatment of this diagnosis.”

Documents found for the remaining 22 health plans and PBMs included information that was too brief or vague to be helpful and/or that otherwise appeared to violate the ACA standards, including one or more of the following problems:

Inadequate information: The plan document might include only a brief and vague mention of an exceptions process, often buried in a footnote and in very small font. It might include inadequate information on how to obtain an exception—for example, saying merely that the patient can call customer service or their doctor can contact the plan. The document might also include conflicting information about how to obtain an exception. Few documents found link to an actual form.

Examples:

- A 2021 document on preventive services from Highmark Blue Cross Blue Shield mentions only in a footnote that contraceptive services or items recommended by a doctor “based on medical necessity” are covered without cost sharing, with no further information on how that process works.²⁶

23 This document is no longer online but was captured by the Internet Archive on January 27, 2022 and can be viewed here: <https://web.archive.org/web/20220127153932/https://es.aetna.com/document-library/healthcare-professionals/documents-forms/contraceptives-policy.pdf>

24 Care Choices Medication Guide. (2022, March). Retrieved March 11, 2022, from BlueCross BlueShield Florida website: https://www.myprime.com/content/dam/prime/memberportal/WebDocs/2022/Formularies/HIM/2022_FL_7T_CareChoices.pdf

25 Contraceptives Tier Exception Physician Fax Form. (n.d.). Retrieved March 11, 2022, from BlueCross BlueShield Florida website: http://www.bcbsfl.com/DocumentLibrary/Providers/Content/Rx_OC_TierException.pdf

26 2021 Preventative Schedule. (n.d.). Retrieved March 11, 2022, from Highmark BlueCross BlueShield website: https://www.highmarkbcbs.com/pdf/Highmark_Preventive_Schedule_2020.pdf

- A document from CVS Caremark summarizes the preventive care products that are available to enrollees at no cost sharing because of the ACA, and briefly mentions that an exceptions process is available if the listed products are not medically appropriate—but without information on how to use that process.²⁷
- Documents describing preventive medication coverage for multiple plans offered by UnitedHealthcare each include two inadequate and conflicting notes about an exception—one (in normal text) instructing the enrollee to call customer service and a second (in a footnote) saying the company will grant an exception “when informed by a member’s health care provider.”²⁸
- A 2017 notice for providers from Premera Blue Cross points them to a pharmacy exceptions form that was revised to include a simple check-box for contraception-related exceptions.²⁹ However, researchers found no mention of this exceptions process in consumer-facing documents.
- Similarly, researchers found a copy of a New York state-mandated contraception exceptions form on Excellus BCBS’s website,³⁰ but no mention of the form in consumer-facing documents.

Not deferring to the provider’s determination: In some cases, plan documents specify processes that depart from the ACA’s requirement that plans defer to an attending provider’s determination that a specific product is medically necessary for their patient. The process might specify criteria for an exception that is narrower than the ACA standards: for example, that a patient must try a specific number of other contraceptive options first before receiving an exception, or that a provider must adhere to an inappropriately narrow definition of “medical necessity.” Similarly, the plan document might say that the process requires medical review by the health plan, rather than accepting the provider’s determination. Examples:

- A 2021 document describing Blue Cross Blue Shield of North Carolina’s copay waiver process for ACA preventive services requires the provider to certify that “the patient is clinically unable to utilize all [contraceptive] medications” that the plan covers at \$0 cost sharing³¹—a far stricter standard than allowed under the ACA.

27 Let’s Talk Prevention: Your No-Cost Preventive Services. (2022, January). Retrieved March 11, 2022, from CVS Caremark website: https://www.caremark.com/portal/asset/NoCost_Preventive_List.pdf

28 Advantage and Essential Prescription Drug List (PDL). (2022, January). Retrieved March 11, 2022, from United Healthcare website: <https://www.uhc.com/content/dam/uhcdotcom/en/Pharmacy/PDFs/pharmacy-uhc-multistate-advantage-essential-ppaca-preventive-med-list-january-2022.pdf>; California Advantage and Essential HMO and PPO Prescription Drug List (PDL). (2022, January 1). Retrieved March 11, 2022, from United Healthcare website: <https://www.uhc.com/content/dam/uhcdotcom/en/Pharmacy/PDFs/pharmacy-uhc-california-advantage-essential-ppaca-preventive-med-list-january-2022.pdf>; Oxford New York Advantage and Essential Prescription Drug List (PDL). (2021, May 1). Retrieved March 11, 2022, from UnitedHealthcare website: <https://www.oxhp.com/secure/materials/member/May2021NYOxfAdvandEssentialPPACAZeroCostSharePreventiveCareMedications.pdf>

29 Brand-Name Contraceptives. (2017, August 17). Retrieved March 11, 2022, from Premera BlueCross BlueShield of Alaska website: <https://www.premera.com/ak/provider/news/pharmacy/brand-name-contraceptives/>

30 Request for an Alternative Contraceptive Drug, Device, or Product for Patients Covered Under a NY Health Insurance Policy. (2020a, January 27). Retrieved March 11, 2022, from Excellus BlueCross BlueShield website: <https://provider.excellusbcbs.com/documents/20152/127427/EHP+Contraceptive+Exception+Request+Standard+Form+1.27.20+.pdf/f081d95e-0355-b576-a696-97f03d97dd00?t=1580300245597>

31 ACA Copay Waiver Criteria. (2021, July). Retrieved March 11, 2022, from BlueCross BlueShield of North Carolina website: https://www.bluecrossnc.com/sites/default/files/document/attachment/services/public/pdfs/aca_copay_waiver_criteria.pdf; ACA Copay Waiver Fax Form. (2021, July). Retrieved March 11, 2022, from BlueCross BlueShield of North Carolina website: https://www.bluecrossnc.com/sites/default/files/document/attachment/services/public/pdfs/aca_copay_waiver_fax_form.pdf

- A 2018 document from Horizon Blue Cross Blue Shield of New Jersey announces that the plan will no longer cover brand-name oral contraceptives at \$0 cost sharing, unless a provider submits a copay waiver form for “clinical review.”³²
- A 2022 document from Blue Cross Blue Shield of Massachusetts on ACA-covered preventive medications tells consumers that their provider “may request an exception for a non-covered medication when medically necessary,” but then says in a footnote that “If approved, you’d pay the highest-tier cost” (rather than at no cost, as required by the ACA).³³

Inappropriate process: In some cases, the plan documents indicate that enrollees and providers must use the plan’s regular formulary exceptions process or its prior authorization process. These processes do not appear to meet the ACA standards for contraceptive coverage, as they include medical review by the plan, typically set narrow criteria for an exception, and require information beyond what the ACA requires to make a determination of medical necessity. Examples:

- A 2022 drug formulary from Blue Shield California instructs providers and enrollees to use the plan’s prior authorization process if seeking a brand-name contraceptive.³⁴
- A 2022 document about preventive and contraceptive services from CareFirst says that brand-name oral contraceptives are covered “only when generic equivalent drug is medically inappropriate, as determined by the individual’s health care provider”—but highlights that “Preauthorization and medical review of brand name oral contraceptives is required.”³⁵

This is by no means a definitive accounting of everything contained in health plans’ written documents. In reality, some plan documents may not be available online, may be password protected, or may not readily appear in a basic Google search. Moreover, a health plan’s documents may not accurately reflect the plan’s actual practices, may conflict with internal written rules or procedures for staff members who process claims, and/or may be unknown or misunderstood by customer service staff—and therefore miscommunicated to enrollees and providers.

Nevertheless, these findings reflect the information that a typical patient or provider might find when searching the internet as a first, obvious step to understand their options. U.S. consumers have become reliant on online information, and they expect—based on common experience—to be able to learn what they need through simple internet searches. The failure of many health plans and PBMs to have information about an exceptions process on their websites that consumers can readily find would seem to fail the federal government’s requirement for an “easily accessible” and “transparent” process.

32 Changes to Coverage of Oral-Combined Contraceptives Due to Wide Range of Generic Alternatives. (2018, May 16). Retrieved March 11, 2022, from Horizon Blue Cross Blue Shield of New Jersey website: <https://www.horizonblue.com/employers/news/employer-news/changes-coverage-oral-combined-contraceptives-due-wide-range-generic-alternatives>

33 Blue Cross Blue Shield of Massachusetts Formulary: Affordable Care Act (ACA) Covered Medication List. (2022, January 1). Retrieved March 11, 2022, from BlueCross BlueShield of Massachusetts website: https://home.bluecrossma.com/collateral/sites/g/files/csphws1571/files/acquiadam-assets/55-1143_BCBSMA_Affordable_Care_Act_%28ACA%29_Covered_Medication_List.pdf

34 Plus Drug Formulary. (2022, March). Retrieved March 11, 2022, from Blue Shield of California website: <https://blueshieldca.adaptiverx.com/web/pdf?key=8F02B26A288102C27BAC82D14C006C6FC54D480F80409B68129B425E3FAECE39>

35 Healthcare Reform Update Summary of Preventive and Contraceptive Services. (2022, February 1). Retrieved March 11, 2022, from CareFirst website: <https://individual.carefirst.com/carefirst-resources/pdf/summary-of-preventive-services-cst2178.pdf>

Findings from Denial Letters

Many of the problems observed in health plan documents are also reflected in denial letters and coverage determinations received by health plan enrollees. Our review of 48 denial letters (with personal information deidentified) from 12 major health plans or PBMs identified several common themes, including minimal information about why a request was denied; requirements that do not meet the ACA's standards for a contraception exceptions process and instead are based on the company's regular formulary exceptions process or its prior authorization process; and a failure to even acknowledge that a contraception exceptions process exists. Examples of apparent non-compliance with the ACA's required exceptions process include:

Minimal information: Many of the denial letters provide little information at all about why a given request was denied, instead simply stating that the drug in question is not covered by the plan or that brand-name drugs in general are not covered. For example, several denial letters from OptumRx (some of them on behalf of UnitedHealthcare) simply state that "the requested medication and/or diagnosis are not a covered benefit and are excluded from coverage." And one letter from Blue Shield of California asserts that "Your plan only covers generic drugs. All brand name drugs are excluded from your plan."

Try and fail: Many denial letters indicated that a patient must try some or all covered options first, before an exception might be granted. For example, letters from several companies stated that the patient must first have tried a specific number of other contraceptives, or all of them in one or more categories before obtaining the specific contraceptive their provider prescribed. For instance, letters from Express Scripts denying coverage of a contraceptive state the patient must have tried "at least five other contraceptive agents" —notably, not necessarily in the same method category, which appears to be a violation of the ACA requirement.

Contraindication: Sometimes, a "try and fail" requirement can be bypassed if the provider can document side effects or contraindications to the alternatives. For example, several letters from CVS Caremark state that the product requested would be covered "when you have a contraindication to all the alternatives" or proof of "inadequate treatment response or intolerance to the required number of formulary alternatives." Similarly, a letter from Humana denying coverage of a requested product says that the patient would need to provide information about why the plan's preferred drugs "have not worked for your medical condition and/or would have bad side effects."

Determination by plan's doctor: Several denial letters indicate the health plan's own doctor has reviewed the request and made a determination against it, rather than deferring to the determination of the patient's own provider (as required under the ACA). For example, one letter from CVS Caremark states that the request "was reviewed by an MD Board Certified in Family Medicine." Similarly, a letter from OptumRx states that the request "was reviewed by a Physician Reviewer who is a Medical Doctor specialized in Obstetrics and Gynecology."

No sign of a contraception exceptions process: The companies' denial letters provide information about their standard appeals or grievance processes, but none of the letters disclose that there is a specific requirement under the ACA for an exceptions process for these contraceptive products that is "easily accessible, transparent, and sufficiently expedient," and it must not be "unduly burdensome on the individual or a provider." That was even true for one letter from Prime Therapeutics on behalf of Florida Blue: The letter simply states that "the product/service is not covered under your pharmacy plan" with no sign of the exceptions process that Florida Blue has in place (according to the plan documents described earlier in this report).

The apparent failure of companies' denial letters to adhere to the ACA's standards for a contraception exceptions process—or to even acknowledge that such a process is supposed to exist—does not honor consumers' rights under the ACA. People expect accurate and complete information from their health plan when they are seeking coverage for the care they need. They will, understandably, view a denial letter as an authoritative statement rooted in what plans must cover and the processes they must follow under the law. Only the most knowledgeable and determined consumers would receive a denial letter like the ones described here and be able to successfully navigate a path to the no-cost coverage they are owed.

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Findings from the 'Secret Shopper' Phone Survey

The primary finding from the secret shopper phone survey was that enrollees would have no success obtaining accurate and helpful information about a contraception exceptions process from health plans' customer service or other publicly identified phone lines.

Overall, callers contacted representatives for 55 formularies managed by 42 health plans or PBMs. They completed 91 calls in total, in many cases contacting representatives for the same formulary multiple times when initial calls resulted in no useful information. On average, callers spent 14 minutes on the phone, were put on hold for seven minutes, and four in 10 of them were transferred (often more than once).

The information callers received after navigating the customer service phone lines was not helpful. For 21 of the 91 calls, representatives refused to answer questions without additional information, such as a member ID. While it is possible that additional information might have been provided with a member ID, the exceptions process should be set company-wide for all plans subject to the ACA and should not vary from member to member or plan to plan. Moreover, companies were inconsistent in requiring a member ID, with callers able to talk to a representative on a different attempt for all but four health plans or PBMs.

Even when callers were able to ask questions of the representative, they were typically given no information at all or told that the representative was not aware of an exceptions process for contraception. In only 34 of the 91 connected calls—for 26 of the 42 plans or PBMs in the sample—representatives attempted to either describe an exceptions process over the phone or, more commonly, directed callers to a URL on the company's website.

In many of these 34 cases, representatives directed the caller to the company’s home page, a topic page for prescription drugs, or similarly generic website content that did not answer the caller’s question. Several representatives directed callers to documents about coverage of preventive services that make no mention of an exceptions process. One sent a caller to a section of the company’s website that includes links to pharmacy benefit forms—but none about contraception or preventive care. Several others directed callers to their generic forms for submitting prescription drug claims.

Several representatives directed callers to irrelevant information. One representative directed a caller to information about how to apply for an exemption to a state’s requirement that all residents have health insurance. Another sent a caller to the website of a company that offers subsidies for consumers who cannot afford their copayments. Yet another directed a caller to information about pre-ACA plans—the opposite of what the caller was looking for.

Only in four cases did the representative describe an exceptions process for contraception or direct the caller to a specific URL that described such a process—but in none of these cases did they provide adequate information. Two of the documents that callers were directed to were identified in the plan document search described above and provided either inadequate information or described an inappropriate exceptions process involving prior authorization and medical review by the plan. Another document provided by a representative was a coverage policy document designed for health plan staff, rather than a consumer-facing document; the policy described appears consistent with the ACA but does not tell consumers how to obtain an exception. Finally, in one case, the representative told the caller that providers could use the company’s standard prior authorization process if a contraceptive product was not on the preferred drug list—a violation of the ACA standard for contraception because it requires the plan’s own medical provider to review rather than deferring to the attending provider’s judgment as required by the ACA.

The experience of the secret shopper callers clearly shows that consumers can rely on information from companies’ customer service lines even less than they can rely on the documents companies make available online. Callers were met with ignorance, inadequate information, or misinformation. This is further evidence suggesting that health plans and PBMs are not meeting the ACA requirement for an “easily accessible” and “transparent” contraception exceptions process.

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State Contraceptive Coverage Policies

More than half of the states in the country have their own policies requiring state-regulated insurance plans to cover contraceptive services and supplies.³⁶ Although some of these policies predate the enactment of the ACA in 2010, the more recent state policies mirror and in some cases build on the ACA's requirements.³⁷

States have expanded on the ACA's rules in several ways, such as by requiring plans to cover every specific contraceptive product, without cost sharing; to cover vasectomy without cost sharing; and to cover over-the-counter contraceptive products without a prescription.³⁸ At least 13 states and the District of Columbia specifically require insurance companies to have an exceptions process in place for off-formulary contraceptive products.³⁹

In preparing this report, researchers identified several instances where health plans and PBMs had tailored their policies to meet a specific state's requirements. For example:

- New York state has designed a contraception exceptions form that it requires state-regulated health plans to use.^{40,41} As noted above, at least one plan operating in New York state had a copy of that exceptions form on its website,⁴² although researchers found no mention of that form in the plan's consumer-facing resources.
- Washington state specifically requires coverage without cost sharing of "all contraceptive drugs, devices, and other products, approved by the [FDA]."⁴³ For one health plan operating in Washington state and elsewhere, researchers found a document listing out "additional contraceptives covered under Washington State Law for eligible groups"—a list of 25 brand-name products, plus male condoms.⁴⁴ That list was absent from an otherwise similar document for Oregon.⁴⁵

36 Insurance Coverage of Contraceptives. (2022, March 1). Retrieved March 11, 2022, from Guttmacher Institute website: <https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives>

37 State Actions to Expand Contraceptive Coverage. (2021, November). Retrieved March 11, 2022, from Power to Decide website: <https://powertodecide.org/what-we-do/information/resource-library/state-actions-expand-contraceptive-coverage>

38 Taylor, L. M. (2021, December). Model Contraceptive Equity Act: Legislative Language and Issue Brief. Retrieved March 11, 2022, from National Health Law Program website: <https://healthlaw.org/resource/model-contraceptive-equity-act-legislative-language-and-issue-brief/>

39 Exception Policies: Advocating for No-Cost Coverage of Noncovered Contraceptives. (2021, March). Retrieved March 11, 2022, from National Women's Law Center website: <https://nwlc.org/wp-content/uploads/2021/03/Exceptions-Guide.pdf>

40 Supplement No. 3 to Insurance Circular Letter No. 1 (2003): Health Insurance Coverage for Contraceptive Services. (2019, December 18). Retrieved March 11, 2022, from Department of Financial Services website: https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2019_s3_cl2003_1

41 Request for an Alternative Contraceptive Drug, Device, or Product for Patients Covered Under a NY Health Insurance Policy. (2020b, January 27). Retrieved March 11, 2022, from Department of Financial Service website: https://www.dfs.ny.gov/system/files/documents/2020/02/contraceptive_exception_request_form.pdf

42 Request for an Alternative Contraceptive Drug, Device, or Product for Patients Covered Under a NY Health Insurance Policy. (2020a, January 27). Retrieved March 11, 2022, from Excellus BlueCross BlueShield website: <https://provider.excellusbcbs.com/documents/20152/127427/EHP+Contraceptive+Exception+Request+Standard+Form+1.27.20+.pdf/f081d95e-0355-b576-a696-97f03d97dd00?t=1580300245597>

43 RCW 48.43.072: Required reproductive health care coverage—Restrictions on copayments, deductibles, and other form of cost sharing. (n.d.). Retrieved March 11, 2022, from Washington State Legislature website: <https://app.leg.wa.gov/rcw/default.aspx?cite=48.43.072>

44 Preventive Services: Covered Contraceptive Products for Washington. (2022, January 1). Retrieved March 11, 2022, from Prime Therapeutics website: https://regence.myprime.com/content/dam/prime/memberportal/WebDocs/Other/Misc/Cambia/Commercial/2022_RBW_Pharmacy_ACA_Contraceptives_List.pdf

45 Preventive Services: Covered Contraceptive Products for Oregon. (2022, January 1). Retrieved March 11, 2022, from Prime Therapeutics website: https://regence.myprime.com/content/dam/prime/memberportal/WebDocs/Other/Misc/Cambia/Commercial/2022_RBO_Pharmacy_ACA_Contraceptives_List.pdf

Notably, state-level requirements only apply to health insurance plans regulated by the state. They do not apply to companies' self-funded health plans (i.e., when a company pays directly for its employees' health expenses, rather than buying traditional insurance). In 2021, 64% of covered workers were enrolled in a self-funded plan.⁴⁶ Nevertheless, these types of state-level policies have the potential to help millions of people access and afford the birth control methods of their choice, to the extent that they are enforced by the states and adhered to by insurers.

CONCLUSIONS & RECOMMENDATIONS

Collectively, the findings of this report—from online plan documents, a collection of denial letters, and the results of a secret shopper-style phone survey—provide additional compelling evidence suggesting widespread violations of the ACA's contraceptive coverage requirement by private health plans and PBMs. These findings reinforce those from the NWLC, members of Congress, and the three federal departments that oversee compliance with the ACA's requirements.

Few plans appear to have set up an exceptions process for contraceptive products that meets the ACA's standards. Many plans provide no indication that an exceptions process exists at all—in their online documents, their denial letters, and/or via phone calls to customer service representatives. Other plans hint at an exceptions process but provide too little information for patients or providers to identify and navigate such a process. Still other health plans describe processes that fail to defer to an attending provider's determination of medical necessity, often impose inappropriate medical management techniques (such as "try and fail"), and often rely on the plan's standard formulary exceptions or prior authorization processes (which do not comply with the ACA's standards for contraceptive coverage because it requires the plan's own medical provider to review rather than deferring to the attending provider's judgment as required by the ACA). The consequences put a heavy burden on patients and their providers to navigate processes that are opaque at best to try to obtain the contraceptive coverage needed with no guarantee of success for their efforts.

It is unreasonable to conclude that these practices comply with the ACA's contraceptive coverage requirement, as described in multiple guidance documents by the federal government. Failure to comply with the law by health plans and PBMs undermines the ACA's goals of improving consumers' access to the contraceptive information, services and products that they need to advance their health and meet their family planning goals. The barriers raised in this report may also deepen inequities for those already facing systemic barriers to their reproductive well-being.

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⁴⁶ Section 10: Plan Funding – 9805. (2021, November 10). Retrieved March 11, 2022, from Kaiser Family Foundation website: <https://www.kff.org/report-section/ehbs-2021-section-10-plan-funding/>

Recommendations

Multiple organizations have already issued recommendations for how to address these types of potential plan violations, and the federal government has already begun to take some steps to address the issue. Most notably, the January 2022 tri-department FAQs reiterate the ACA's standards for contraception and assert that the federal government will take additional steps to collect and investigate complaints, potentially engage in enforcement actions, and potentially issue further guidance and/or regulations.⁴⁷

The findings of this report suggest that all of these steps—and more—are clearly needed. Additional recommendations have been thoroughly laid out by family planning advocacy groups. Notably, 35 organizational members of the Family Planning Coalition (including Power to Decide) sent a letter in September 2021 to the secretaries of HHS, Labor and Treasury detailing actions the Biden administration could take to bolster the exceptions process, oversight and enforcement, and other aspects of the federal contraceptive coverage requirement.⁴⁸ Recent reports from NWLC, including its November 2021 report titled, "Access to Birth Control Without Out-Of-Pocket Costs: Improving and Expanding the Affordable Care Act's Contraceptive Coverage Requirement," provide additional recommendations.⁴⁹ This report echoes and expands upon some of those recommendations.

The federal government should:

- Clarify health plans' obligations around a contraception-specific exceptions process to address any lingering confusion, such as by explicitly stating that a standard pharmacy exceptions or prior authorization process would not typically meet the ACA's standards for contraception;
- Create a standard, simple exceptions form for health plans to use, because it is now clear that few health plans have created such a form on their own;
- Provide guidance to health plans about how to effectively inform patients and providers about the contraception exceptions process, both online and by phone;
- Disseminate all of the relevant federal rules to every federal and state agency that has enforcement responsibilities for the contraceptive coverage requirement and/or handles health insurance complaints;
- Enforce the requirement in response to complaints from individuals, a thorough review of plan documents, and other documented examples of non-compliance;
- Conduct educational campaigns for health care consumers and providers, to help them understand the ACA's requirements and how to navigate health plans' rules. Power to Decide's Bedsider website,⁵⁰ a birth control support tool for consumers provides a wealth of knowledge on birth control communication with consumers and could serve as a resource.

47 FAQs About Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation. (2022, January 10). Retrieved March 11, 2022, from Centers for Medicare & Medicaid Services website: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebbsa/our-activities/resource-center/faqs/aca-part-51.pdf>

48 Letter from Family Planning Coalition members to Secretaries Becerra, Yellen and Walsh. (2021, September 24). Retrieved March 11, 2022, from Family Planning Coalition website: <https://nwlc.org/wp-content/uploads/2021/11/Final-FPC-ltr-092421.pdf>

49 Access to Birth Control Without Out-of-Pocket Costs: Improving and Expanding the Affordable Care Act's Contraceptive Coverage Requirement. (2021, November). Retrieved March 11, 2022, from National Women's Law Center website: https://nwlc.org/wp-content/uploads/2021/11/final_Long_nwlc_2021_BC_AffordCareAct-003.pdf

50 Bedsider Birth Control Support Network. (n.d.). Retrieved March 11, 2022, from Bedsider website: <http://bedsider.org>

State agencies should:

- Thoroughly review the practices of currently approved health plans and any future plans prior to approval, to ensure that they comply with the ACA's standards for contraceptive coverage;
- Enforce the contraceptive coverage requirement in response to complaints from individuals, a thorough review of plan documents, and other documented examples of non-compliance;
- Disseminate all relevant federal and state rules to regulated health plans;
- Provide guidance to regulated plans on how to implement and communicate an exceptions process for contraceptive coverage;
- Codify the federal requirements in state insurance regulations in order to further encourage health plans' compliance.

Insurance providers and PBMs should:

- Conduct a thorough audit of their internal practices to ensure they fully comply with the ACA's contraceptive coverage requirement;
- Revise all relevant plan documents—for consumers, providers, and internal staff—to ensure that they consistently and correctly describe the plan's contraceptive coverage policies and the related exceptions process;
- Train staff members—including those responsible for customer service, pharmacy services, and processing claims and appeals—on these requirements and processes, and how they differ from standard pharmacy exceptions and prior authorization processes;
- To the extent our research has not located exceptions processes or other information that plans and PBMs have available to consumers and providers, we encourage plans and PBMs to share that information broadly—including with our team at Power to Decide—and to make it easily accessible.

APPENDIX A:

Sample of Health Plans

PBM/Health Plan	Formulary	Number of covered lives	Geographical Coverage
Anthem, Inc.	Anthem Essential 4 Tier	> 2M and < 5M	10+ states
	Anthem National Three Tier	> 1M and < 2M	10+ states
Blue Cross Blue Shield of Alabama	BCBS Alabama	< 500K	AL
Blue Cross Blue Shield of Louisiana	BCBS of Louisiana 4 Tier Covered Drug List	< 500K	LA
Blue Cross Blue Shield of Massachusetts	BCBS Massachusetts Three Tier	> 1M and < 2M	MA
Blue Cross Blue Shield of Michigan	BCBS of Michigan Custom 3 Tier	> 500K and < 1M	MI
Blue Cross Blue Shield of Minnesota	BCBS of Minnesota FlexRx ThreeTier	> 500K and < 1M	MN
Blue Cross Blue Shield of North Carolina	BCBS of North Carolina Enhanced 4 Tier	> 500K and < 1M	NC
	BCBS of North Carolina Essential 6 Tier HIX	< 500K	NC
Blue Cross Blue Shield of Tennessee	BCBS Tennessee Preferred Formulary	>500K and < 1M	TN
Blue Shield of California	Blue Shield California Standard	> 500K and < 1M	CA
Cambia Health Solutions	Regence Three-Tier Drug List	> 500K and < 1M	WA, OR, UT, ID
CareFirst, Inc.	CareFirst Formulary 3	< 500K	MD, VA, DC
Centene Corporation	Ambetter from Sunshine Health HIX	< 500K	FL
	Fidelis Care Exchange NY	< 500K	NY
Cigna Corporation	Cigna Standard Three Tier	> 2M and < 5M	10+ states
	Cigna Value Three Tier	> 2M and < 5M	10+ states

CVS Health	CVS Caremark Advanced Control Formulary	> 1M and < 2M	10+ states
	CVS Caremark Performance Standard Control	> 2M and < 5M	10+ states
	CVS Caremark Value	> 1M and < 2M	10+ states
CVS Health - Aetna	Aetna Standard	> 2M and < 5M	10+ states
Elixir PBM	Elixir Standard Formulary	> 500K and < 1M	10+ states
EmblemHealth, Inc.	EmblemHealth Large Group Formulary	< 500K	NY
Express Scripts PBM	Express Scripts National Preferred with Advantage Plus	> 5M	10+ states
	Express Scripts National Preferred with Unlimited	> 5M	10+ states
Florida Blue	Florida Blue Three Tier	> 500K and < 1M	FL
	Florida Blue Care Choices HSA HIX	< 500K	FL
Health Care Service Corporation – BCBS IL	BCBS of Illinois Performance Formulary	> 500K and < 1M	IL
Health Care Service Corporation – BCBS TX	BCBS of Texas Performance Formulary	> 500K and < 1M	TX
	BCBS of Texas HIX 6 Tier	< 500K	TX
Highmark, Inc.	Highmark Blue Cross Blue Shield 3 Tier	> 500K and < 1M	PA, WV
Horizon Blue Cross Blue Shield of New Jersey	Horizon BCBS of New Jersey	> 500K and < 1M	NJ
IHC Health Plans Corp	SelectHealth RxCore Utah HIX	> 500K	UT
Kaiser Foundation Health Plans, Inc. California	Kaiser Permanente California HIX	< 500K	CA
	Kaiser Permanente Northern California	> 2M and < 5M	N. CA
	Kaiser Permanente Southern California	> 2M and < 5M	S. CA

Kaiser Foundation Health Plans, Inc. Mid-Atlantic	Kaiser Permanente Mid-Atlantic	< 500K	MD, VA, DC
Kaiser Foundation Health Plans, Inc. Northwest	Kaiser Permanente Northwest	< 500K	OR, WA
Kaiser Foundation Health Plans, Inc. Washington	Kaiser Permanente Washington Three Tier	< 500K	WA
Kroger PBM	Kroger National Preferred Formulary	< 500K	10+ states
Lifetime Healthcare Companies	Excellus BCBS 3 Tier	< 500K	NY
Magellan Rx Management	Magellan Rx Standard Formulary	< 500K	10+ states
MC-RX	MC-RX Formulary	< 500K and > 1M	10+ states
MedImpact Healthcare Systems, Inc.	MedImpact Portfolio High Formulary	< 500K	10+ states
Molina Health Care, Inc.	Molina Healthcare of Texas HIX	< 500K	TX
OptumRx	OptumRx Select Standard	> 2M and < 5M	10+ states
OptumRx – CalPERS	CalPERS	> 500K and < 1M	CA
OptumRx – Walmart	Walmart Associates Formulary	> 1M and < 2M	10+ states
Premera, Inc.	Premera Preferred 3-Tier - B3	> 500K and < 1M	WA, AK
Spectrum Health System	Priority Health Michigan Commercial Formulary	> 500K and < 1M	MI
UnitedHealth Group, Inc.	UnitedHealthcare Advantage Three Tier	> 5M	10+ states
	UnitedHealthcare California Advantage Three Tier	< 500K	CA
	UnitedHealthcare Oxford Health Plan Advantage Three Tier	< 500K	NJ, NY
UPMC Health System	UPMC Your Choice	< 500K	PA
Wellmark, Inc.	Wellmark Blue Rx Preferred 3 Tier with Specialty	< 500K	IA, SD

APPENDIX B:

Script for Phone Survey

Script version 1

Hi, I'm calling to understand how to obtain no-cost coverage of contraceptive products under your plan.

- Can you provide me with a copy of the policy, or the forms needed to request an exception to obtain no-cost coverage for a contraceptive product that normally has a copay or is not covered at all?
- Can you tell me where I can find a copy on your website?
 - **If Yes, Will Provide:** Great, my email is [email address for HealthyBOS]. Can you send me the policy, the forms, and the link? When can I expect to receive that?
 - **If No or Doesn't Know:** Oh, my understanding is that insurance companies under the Affordable Care Act are required to have an exceptions process in place to cover all prescription birth control options without cost sharing if a provider says a specific product is medically necessary.
 - Can you please provide me with information about this exceptions process or is there someone else who can help me? Can you provide me their name, title and contact info with a phone number and email?
 - **If Yes:** repeat above with new contact; **If No:** go to close and capture data.

IF ASKED

- **What is your member ID?:** I don't have a member ID. I'm calling from a patient service hub to understand how to help patients obtain no-cost coverage of contraceptive products that their health care provider has recommended. Can you tell me about this exceptions process?
- **Who's calling? or, where are you calling from?:** I'm calling from a patient service hub to understand how to help patients obtain no-cost coverage of contraceptive products that their health care provider has recommended. Can you tell me about this exceptions process?

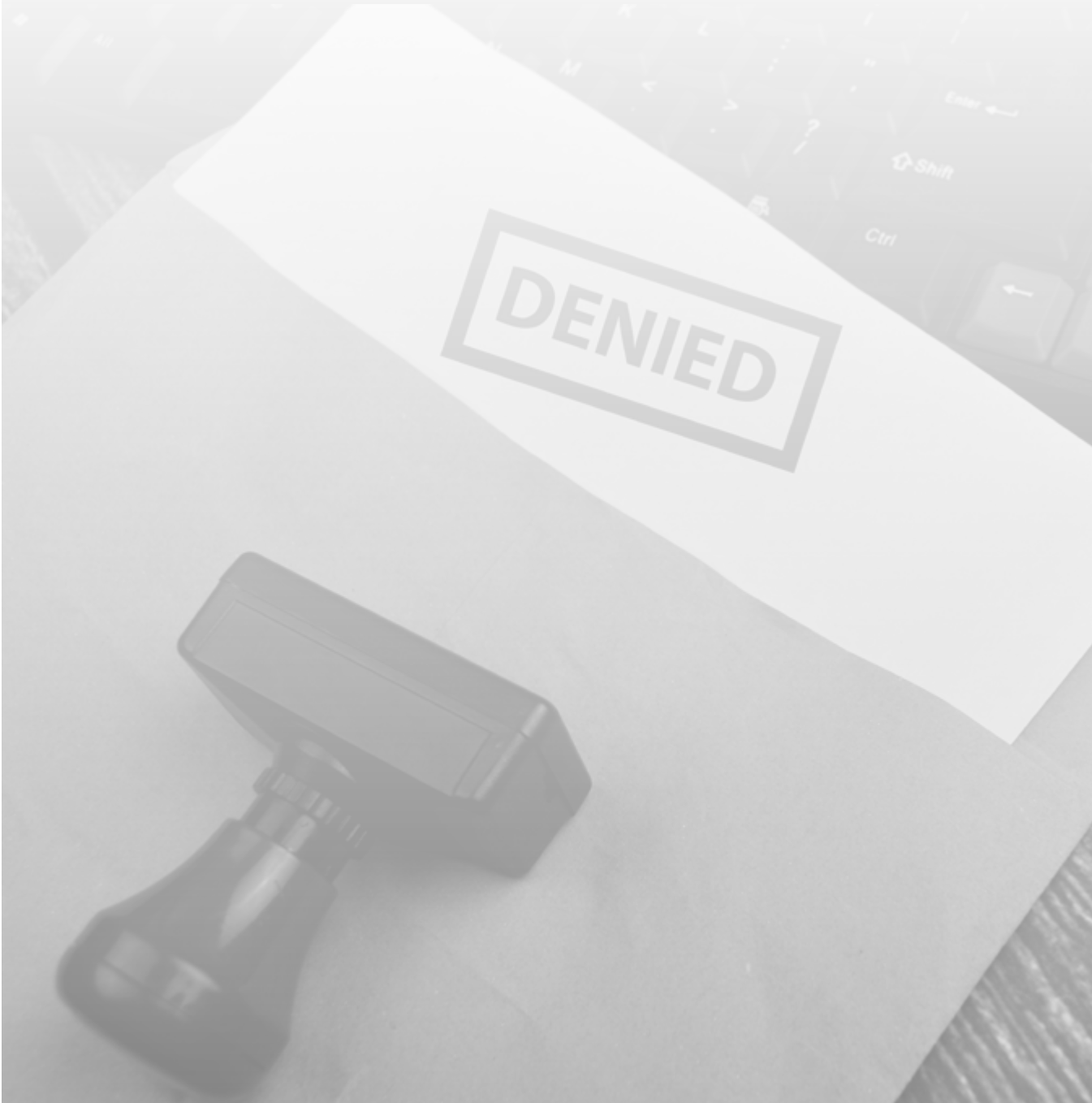
Script version 2

Hi, I'm calling to obtain information on your reimbursement process for no-cost coverage of contraceptive products. I'm looking for an exceptions process that's required by the Affordable Care Act's preventive services guidelines for members in plans that are governed by the ACA's requirements.

- Can you provide me with a copy of the process, policy or forms needed to request an exception to obtain no-cost coverage for a contraceptive product that normally has a copay or is not covered at all?
- Can you tell me where I can find a copy on your website?
 - **If Yes, Will Provide:** Great, my email is [email address for HealthyBOS]. Can you send me the policy, the forms, and the link? When can I expect to receive that?
 - Can you tell me where I can find a copy on your website?
 - **If No or Doesn't Know:** Oh, my understanding is that insurance companies under the Affordable Care Act are required to have an exceptions process in place to cover all prescription birth control options without cost sharing if a provider says a specific product is medically necessary.
 - Can you please provide me with information about this exceptions process or is there someone else who can help me? Can you provide me their name, title and contact info with a phone number and email?
 - **If Yes:** repeat above with new contact; **If No:** go to close and capture data.

IF ASKED

- **What is your member ID?:** I don't have a member ID. I'm not calling regarding a specific member, but I'm looking to understand the exceptions process or policy to obtain contraceptives at no cost that would apply to all members who are covered in plans that are subject to the requirements of the Affordable Care Act. Can you help me understand your exceptions process or tell me who else can help me?
- **Who's calling? or, where are you calling from?:** I'm calling to gather information for a patient service hub that processes prescriptions on behalf of many different members and providers. I'm working with them to ensure they understand how to help patients obtain no-cost coverage of contraceptive products that have been recommended by a health care provider. Can you provide me with information on your exceptions process or tell me who else can help me?





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