

BEYOND THE BELTWAY



States Actions to Protect and Enhance the Affordable Care Act's Contraceptive Coverage Provision

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Over the last few years there have been numerous attempts to dismantle the Affordable Care Act (ACA), including the failed attempt by lawmakers to repeal the law in 2017.¹ Currently, there is an ongoing legal challenge to the constitutionality of the entire law by 18 states and the Trump Administration.² At risk is health insurance for millions of people, as well as access to contraception for as many as 61.4 million women.³ Even if the legal challenge fails, the Trump Administration delivered a more direct threat to contraceptive coverage when it issued regulations allowing more employers and universities to exempt themselves from covering some or all methods of birth control in their health plans—though the rules are temporarily blocked.⁴

Current federal guidelines implementing the ACA require all non-grandfathered plans to cover at least one contraceptive for each of the [FDA approved methods for women](#), as prescribed, without copays or deductibles. Federal guidance also requires that plans reduce administrative barriers for patients.⁵

Given the uncertainty of protections offered by the ACA with respect to no copay access to the full range of birth control methods, and the future of the law itself, many state legislatures have [taken action to codify and/or expand upon](#) the federal provision.

Recognizing opportunities to improve on the ACA, many of these states also require coverage for one or more of the following: an extended supply of prescription contraceptives at one time, over-the-counter (OTC) methods without a prescription, and male sterilization.

These state actions are positive steps in the right direction, but it is worth noting that state insurance laws usually only apply to plans regulated by the state.⁶ Hence, state laws do not necessarily provide a substitute for the federal contraceptive coverage

¹ The ACA has not been repealed in whole, but the tax bill enacted in December 2017 repeals the ACA's individual mandate. The Congressional Budget Office estimates that the bill will leave 13 million fewer people with health insurance by 2027—and with that, fewer women will have contraceptive coverage.

² Musumeci, M. (2019). Kaiser Family Foundation. *Explaining Texas v. U.S.: A Guide to the 5th Circuit Appeal in the Case Challenging the ACA*. www.kff.org/health-reform/issue-brief/explaining-texas-v-u-s-a-guide-to-the-5th-circuit-appeal-in-the-case-challenging-the-aca/.

³ National Women's Law Center. (2019). *New Data Estimate Nearly 61.4 Million Women Have Coverage of Birth Control without Out-of-Pocket Costs* <https://nwlc.org/resources/new-data-estimate-nearly-61-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/>

⁴ Judges in Federal District Courts in Pennsylvania and California issued preliminary nationwide injunctions, pending the final outcome of the court cases.

⁵ In 2015, HHS issued guidance clarifying the contraceptive coverage requirements, see www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs12.html#Coverage_of_Preventive_Services.

⁶ Most state insurance mandates do not apply to self-funded plans, see: Governing. (2017). *For Millions of Insured Americans, State Health Laws Don't Apply* www.governing.com/topics/health-human-services/khn-self-insurance-state-laws.html.

provision—and in the case of some plans, state laws simply *are not* a stopgap for the federal provision. The chart below provides more details on each of the states’ policies.

State	Bill/ Guidance	Year Passed	When the Law Applies to Plans ⁴	Covers Emergency Contraception w/out a Rx?	Other Limits (-) or Features (+)
California~	SB 1053	2014	January 1, 2016	No	+ Also applies to Medi-Cal managed care plans
Connecticut	Sub. HB 5210	2018	January 1, 2019	No ⁵	+ Covers OTC contraceptive drugs ⁵ + Covers 12-month contraceptive supply ¹ - Co-pays may apply for out-of-network providers
Delaware~	SB 151	2018	July 11, 2018	Yes	+ Covers 12-month contraceptive supply ¹ + Applies to public and private plans - Coverage not required for male condoms
District of Columbia~	B 22-106	2018	January 1, 2019	No ⁵	+ Public and private plans must cover a wide range of women’s preventive services + Covers OTC contraceptives ⁵ + Covers 12-month contraceptive supply ¹
Illinois	HB 5576	2016	January 1, 2017	No ⁵	+ Covers all OTC methods, except male Condoms ⁵
Maine	LD 1237	2017	January 1, 2019	No	+ Covers 12-month contraceptive supply ¹
Maryland	HB 1005	2016	January 1, 2018	Yes	+ Covers male sterilization + Prohibits public and private plans from requiring prior authorization for long acting reversible contraceptives (LARC) + Covers 12-month contraceptive supply ¹
Massachusetts~	H 4009	2017	August 2018	Yes	+ Covers 12-month contraceptive supply ¹ + Also applies to Medicaid and state employee health insurance - Coverage not required for male condoms or FDA-approved oral contraceptives without a therapeutic equivalent
New Hampshire	HB 421	2018	January 1, 2019	No	+ Covers 12-month contraceptive supply ¹ + Applies to public and private plans
New Jersey	A 5508	2020	April 16, 2020	Yes	+ Covers male sterilization and male condoms (except cost-sharing is permitted in high-deductible plans) + Covers OTC contraceptive drugs w/out a Rx
New Mexico	HB 89	2019	January 1, 2020	Yes	+ Covers a 6-month contraceptive supply for private plans ¹ + Covers OTC contraceptives without a Rx ⁵ + Covers male sterilization and condoms (except in high-deductible plans, before the deductible is met).
New York	SB 659A DFS-06-17-00015-A	2019 2017	January 1, 2020 August 27, 2017	Yes No ³	+ Covers 12-month contraceptive supply ¹ + Covers OTC contraceptive drugs, devices and supplies ⁵
Nevada	AB 249	2017	January 1, 2018	No	+ Covers 12-month contraceptive supply ¹ + Applies to Medicaid managed care plans and private plans

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Oregon~	HB 3391	2017	January 1, 2019	No ⁵	+ Private insurers must cover <i>all</i> Women's Preventive Services required by federal guidelines as of 1/1/17 + Directs the state to appropriate funds to provide coverage for the aforementioned to women who are of reproductive age but are temporarily ineligible for Medicaid due to their immigration status + Requires a report on insurer compliance
Vermont	H 620	2016	October 1, 2016 (Medicaid) October 1, 2017 (private plans)	No	+ Applies to public and private plans + Plans must cover sterilizations for men and women, with some limits + Directs the state's Department of Health Access to establish and implement value-based payments for LARC insertion and removal ²
Washington	Sub.SB 6219	2017	January 1, 2019	Yes	+ Plans must cover sterilizations for men + Covers all OTC methods without a Rx

~ State law specifies that coverage is not excluded for contraception prescribed for reasons other than contraception. This does not necessarily mean that this would be excluded in states where such coverage is not specified.

¹ These laws/regulations include coverage for an extended supply of prescription contraceptives. For more details: <https://powertodecide.org/what-we-do/information/resource-library/extended-supply-contraception>.

² Value-based payments reward providers for the value of the care they deliver, thus value-based payments for LARC should take into account the value of preventing unintended pregnancy.

³ This is required for Medicaid beneficiaries pursuant to regulation [HLT-39-16-00031](#).

⁴ This applies to plans issued or renewed after the effective date. As explained earlier, these policies generally do not apply to self-funded plans. Also, most states have exemptions for religiously affiliated employers.

⁵ Connecticut's law requires health insurers to cover OTC contraceptive drugs, D.C. requires coverage for OTC contraceptives, and Illinois and New York require coverage for all OTC contraceptive drugs, devices, and products—none of these state laws specify that such coverage is required for OTC contraception without a prescription.