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

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In 2017, federal lawmakers introduced several plans to repeal the Affordable Care Act (ACA), which would have negatively affected access to contraception for as many as 62 million women.[1] While none of these proposals passed, 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.[2]

Current federal guidelines implementing the ACA require all non-grandfathered plans to cover at least one contraceptive for each of the 18 FDA approved methods, as prescribed, without copays or deductibles. Federal guidance also requires that plans reduce administrative barriers for patients.[3]

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: 1) State insurance laws usually only apply to plans regulated by the state, so they cannot preserve contraceptive coverage for all insured women;[4] 2) Prior to the ACA, 28 states had laws requiring health insurance plans that provide prescription drug coverage to include prescription birth control, in order to ensure that it was not treated differently than other prescription medications.[5] Still, those laws did not require such coverage without copays. Hence, state laws do not necessarily provide a substitute for

[1] The ACA has not been repealed in whole, but the tax bill enacted in December 2017 repeals the ACA's individual mandate.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] Judges in Federal District Courts in Pennsylvania and California issued preliminary nationwide injunctions, pending the final outcome of the court cases.
[3] 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.
[4] 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.
[5] Sobel, L., Beamesderfer, A., and Salganicoff, A. (2016). Private Insurance Coverage of Contraception. Washington, DC: Kaiser Family Foundation http://kff.org/womens-health-policy/issue-brief/private-insurance-coverage-of-contraception/.

the federal contraceptive coverage 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	+ 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	+ 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	Yes	+ Covers all OTC methods, except male condoms
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 York	DFS-06-17-00015-A	2017	August 27, 2017	No[3]	+ Covers 12-month contraceptive supply[1]
Nevada	AB 249	2017	January 1, 2018	No	+ Covers 12-month contraceptive supply[1] + Applies to public and private plans
Oregon~	HB 3391	2017	January 1, 2019	Yes	+ Private insurers must cover *all* 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

~ State law specifies that coverage is not excluded for contraception prescribed for reasons other than contraception.

[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] 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 and D.C. requires coverage for OTC contraceptives, but neither law specifies that such coverage is required without a prescription.