

Enforcement Action for Contraception Coverage

August 1, 2022

Quick Facts

- On June 27, 2022, the Departments released a letter encouraging group health plans to fully comply with requirements to cover contraception with no cost-sharing.
- Under the Affordable Care Act (ACA), all non-grandfathered individual and group health plans are required to provide preventive services coverage with no cost-sharing.
- The guidance is clear that medically appropriate or necessary contraception must be fully covered by the group health plan.

Background

On June 27, 2022, the Department of Health and Human Services (HHS), the Department of Labor (DOL) and the Department of the Treasury (collectively, the Departments) released a [letter](#) encouraging group health plans to fully comply with the requirement to cover contraceptives with no cost-sharing.

Coverage Requirements

Under ACA, all non-grandfathered individual and group health plans are required to provide preventive services coverage with no cost-sharing. This requirement includes full coverage for contraceptives, although there are exemptions for religious organizations and for plans sponsored by employers with a religious or moral objection to providing such coverage.

For group health plans subject to the requirement, it is necessary to provide 100% coverage for the full range of contraceptive products approved, cleared or granted by the Food and Drug Administration (FDA). Plans are required to cover at least one form of contraception in each contraceptive category as set forth in the [FDA's Birth Control Chart](#). Additionally, while there is some room to impose medical management techniques on contraception coverage, guidance from the Departments makes it clear that *"efforts by plans and issuers to implement cost-control measures cannot outweigh the law protecting consumers' health and contraceptive needs, as determined by their attending provider in consultation with the patient."* In other words, if the participant's medical provider determines a certain contraceptive to be medically appropriate or necessary, that contraceptive must be fully covered by the group health plan.

Enforcement

Previous frequently asked questions (FAQs) from the Departments attempted to provide further clarity on the coverage requirements, and also encouraged better compliance. As the Departments continue to receive complaints of non-compliance, and in light of the recent Supreme Court decision potentially making it more difficult to access abortions, the Departments have indicated they *"may take enforcement or other corrective actions as appropriate."*

For fully insured plans, compliance responsibility rests primarily with the carrier, but self-funded plan sponsors are encouraged to review the contraceptive coverage described in their plans. Coverage should be available for all FDA-approved contraceptives, or alternatively, the plan should have an “*easily accessible, transparent, and sufficiently expedient exceptions process*” to ensure coverage is provided for any contraceptive deemed by a participant’s medical provider to be medically appropriate or necessary.

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