

May 08, 2015

The Honorable Sylvia Mathews Burwell
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington DC, 20201

The Honorable Thomas Perez
Secretary
Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The Honorable Jacob J. Lew
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretaries Burwell, Lew, and Perez:

The undersigned organizations, committed to protecting and improving women's health, write to you in regards to the Affordable Care Act's (ACA) birth control coverage benefit.¹ We appreciate the Administration's leadership in implementing the ACA, and the role it has played in ensuring that women are benefitting from this landmark law. While, thanks to the ACA, many women now have coverage of birth control without cost-sharing, some health insurance issuers are not in compliance with this law. This means that the women beneficiaries in these plans continue to face barriers when accessing the birth control they need. In light of recent reports that many health insurance issuers are not complying with the ACA's birth control coverage benefit, it is imperative that the Administration take swift action to ensure that the promise and the requirements of this important part of the ACA are fulfilled. We request that the Department of Health and Human Services, Department of Labor, and the Treasury Department (the Departments) issue guidance clarifying the ACA birth control coverage benefit to ensure women have access to all FDA-approved contraceptive methods without cost-sharing, as the law requires.

The ACA's Birth Control Benefit Is Improving Women's Health and Well-Being

Birth control significantly improves the health and lives of women and their families. Birth control is highly effective at reducing unintended pregnancy, which can have severe negative health consequences for both women and children.² It also allows women to space their

¹ 42 U.S.C. § 300gg-13 (2014).

² Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps* (National Academies Press) (2011), available at <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>.

pregnancies, which improves the health of both women and their children.³ Additionally, improving women's ability to control whether and when they will have a child fosters women's ability to participate in education and the workforce on an equal footing with men. However, prior to the ACA's requirement, many women found cost an insurmountable barrier to getting access to birth control or to getting the particular birth control method recommended by their health care provider.⁴ This is why the Institute of Medicine recommended that the ACA's women's preventive services provision include coverage of all FDA-approved birth control methods for women.⁵

Today, thanks to the ACA, more than 48 million women are able to benefit from coverage of preventive services without cost-sharing, including birth control.⁶ In 2013, the first full year the birth control benefit was in effect for some women, 24 million more prescriptions for oral contraceptives were filled without cost-sharing and women saved a total of \$483 million in out-of-pocket costs for birth control.⁷ Many women are already accessing birth control without cost-sharing, including two-thirds of oral contraceptive users and nearly three-quarters of vaginal contraceptive ring users.⁸

Some Insurance Companies Still Put Cost Barriers Between Women and Birth Control

While many health insurance issuers are complying with the law's contraceptive coverage requirement, multiple reports have found that some health insurance issuers continue to place cost barriers between women and birth control. The National Women's Law Center found that issuers deny coverage of certain birth control methods, improperly limit coverage to generic methods including when there are no generic equivalents for a contraceptive method, impose cost-sharing on certain methods or the services associated with them, and maintain policies that in effect delay or deny coverage of certain birth control methods.⁹ Research by the Kaiser Family Foundation also found that multiple health carriers are excluding coverage of required contraceptive methods, such as the patch, the ring, and the implantable rod, or imposing other barriers that impede women's access to contraception without cost-sharing.¹⁰ While the law requires health insurance issuers to cover all FDA-approved contraceptive methods, these reports show that it is important to have an affirmative statement from the Departments to ensure that all health insurance issuers comply.

The Departments Must Take Action to Ensure All Women Get the Coverage They Deserve

³ *Id.*

⁴ Brief of the Guttmacher Institute and Professor Sara Rosenbaum as Amici Curiae Supporting the Government at 16, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014) (Nos. 13-354 & 13-356).

⁵ Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps*, National Academies Press, at 109-10 (2011).

⁶ HHS, ASPE, *Increased Coverage of Preventive Services with Zero Cost Sharing Under the Affordable Care Act* (Jun. 27, 2014), available at http://aspe.hhs.gov/health/reports/2014/PreventiveServices/ib_PreventiveServices.pdf.

⁷ IMS Institutes for Healthcare Informatics, *Medicine Use & Shifting Costs of Healthcare: A Review of the Use of Medicines in the United States in 2013*, 16 (Apr. 2014).

⁸ Adam Sonfield et al., *Impact of the federal contraceptive coverage guarantee on out-of-pocket payments for contraceptives: 2014 update*, 91 *Contraception* 44 (2015) available at [http://www.contraceptionjournal.org/article/S0010-7824\(14\)00687-8/pdf](http://www.contraceptionjournal.org/article/S0010-7824(14)00687-8/pdf).

⁹ Nat'l Women's Law Ctr., "State of Birth Control Coverage: Health Plan Violations of the Affordable Care Act," (April 2015), available at www.nwlc.org/stateofcoverage.

¹⁰ Laurie Sobel et al., "Coverage of Contraceptive Services: A Review of Health Insurance Plans in Five States," (April 16, 2015), available at <http://kff.org/private-insurance/report/coverage-of-contraceptive-services-a-review-of-health-insurance-plans-in-five-states/>.

Specifically, the Departments must clarify existing guidance to ensure plans provide coverage without cost-sharing of each unique FDA-approved birth control method for women identified by the FDA Office of Women’s Health.¹¹ The Department should ensure that a woman has access to coverage of the *specific* contraceptive method she has chosen in consultation with her health provider. This is particularly important because research indicates that women and couples are more likely to use contraception successfully if given their contraceptive method of choice.¹² Moreover, contraception is most effective when a woman has access to a contraceptive that best meets her needs, which often depends on multiple considerations. For women with certain medical conditions or risk factors, some contraceptive methods may be contraindicated.¹³ Because contraceptive methods vary in effectiveness, delivery mechanism, and because not all contraceptives will be clinically appropriate for all women, providing access to all FDA-approved contraceptive methods will best enable a woman to meet her individual medical needs and reproductive goals.

The Departments must clarify existing guidance that coverage of all FDA-approved methods for women specifically includes coverage of the most cost-effective methods over time. Unfortunately, the National Women’s Law Center and the Kaiser Family Foundation found that health insurance issuers continue to impose costs on some the most cost-effective methods over time, like long-acting birth control methods such as the IUD with copper, the IUD with progestin, the implantable rod, and female sterilization. Claims that providing coverage of all FDA-approved contraceptive methods would increase premiums contradict the evidence that coverage of birth control is cost-effective. The Departments have previously stated that coverage of contraceptives is at least cost-neutral, if not resulting in cost savings.¹⁴ And, when the federal government added birth control coverage to its employee health plan, there was no increase in premiums because covering birth control is so cost-effective.¹⁵ While long-acting birth control methods have higher up-front costs, they are the most cost-effective over time.¹⁶ The Departments must clarify existing guidance to ensure that health insurance issuers are covering all FDA-approved birth control methods identified by the FDA Office of Women’s Health, including the most cost-effective methods over time.

Likewise, to ensure meaningful implementation of the ACA benefit, the Departments must enforce the birth control coverage requirement when regulating health insurance issuers, and provide strong support to states and regional offices as they enforce the requirement.

¹¹ FDA Birth Control Guide available online at

<http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM356451.pdf>. In its brief to the Supreme Court in *Hobby Lobby v. Sebelius*, the government cites to the FDA Birth Control Guide as the list of contraceptive methods required to be covered under the ACA’s birth control coverage requirement. Brief for the petitioner at 6, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014) (Nos. 13-354 & 13-356).

¹² Joanne Noone, *Finding the Best Fit: A Grounded Theory of Contraceptive Decision Making in Women*, 39 *Nursing Forum* 4 (2004), and Stanley K. Henshaw, *Unintended pregnancy in the United States*, 30 *Family Planning Perspectives* 24 (1998).

¹³ Inst. of Med., *Clinical Preventive Services for Women: Closing the Gaps*, National Academies Press, at 105 (2011).

¹⁴ Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 8456, 8463 (Feb. 6, 2013).

¹⁵ When the Federal Employees’ Health Benefits Program contraceptive coverage requirement was implemented, the Office of Personnel Management (OPM), which administers the program, arranged with the health carriers to adjust the 1999 premiums in 2000 to reflect any increased insurance costs due to the addition of contraceptive coverage. But OPM found that no such adjustment was necessary, and reported that “there was no cost increase due to contraceptive coverage.” Letter from Janice R. Lachance, Dir., U.S. Office of Pers. Mgmt. (Jan. 16, 2001) (on file with NWLC).

¹⁶ James Trussell et al., *Cost effectiveness of contraceptives in the United States*, 79 *Contraception* 5, 13 (2009).

The Departments should also address several other compliance issues raised in the recent reports.

- The Departments must make clear that any insurance issuer that limits its coverage to generic birth control methods, and thereby denies coverage of unique methods that do not have generic equivalents, is not in compliance with the ACA.
- The Departments must make clear that while the regulations allow for the use of “reasonable medical management techniques,” plans cannot use techniques, such as step therapy or prior authorization, that in effect delay access to or deny coverage of unique birth control methods.
- The Departments must reiterate that the ACA requires coverage of services related to birth control without cost-sharing. While the Departments clearly stated this requirement in prior guidance, plans continue to impose cost-sharing on these services.¹⁷
- The Departments clearly stated in prior guidance that plans must have a process to waive cost-sharing if a woman’s health care provider determines that a specific birth control that is not regularly covered by the plan is medically appropriate for that woman.¹⁸ However, most plans do not yet have a waiver process in place. We call on the Departments to revisit the waiver process many of the undersigned organizations suggested in a letter sent to the Departments in July 2014.¹⁹

Thank you for your ongoing commitment to improving the health and lives of women and families, and for your work implementing the ACA. By clarifying these details of the birth control benefit and taking a strong leadership role in the law’s enforcement, the Administration will make sure that all women who should be benefitting from the ACA’s birth control benefit are getting the coverage required by the law. We look forward to continuing to work with you in our shared goal of fulfilling the promise of the ACA to increase women’s access to essential preventive health care.

Sincerely,

National Women's Law Center
Planned Parenthood Federation of America
Advocates for Youth
American Association of University Women (AAUW)
American Civil Liberties Union
American Congress of Obstetricians and Gynecologists
Anti-Defamation League
Bend the Arc: A Jewish Partnership for Justice
California Family Health Council
Catholics for Choice
Center for Reproductive Rights
Coalition of Labor Union Women

¹⁷ U.S. Dep’t of Health and Human Svcs., U.S. Dep’t of Labor, and U.S. Treasury, FAQs on Affordable Care Act Implementation XII, Question 16 (Feb. 20, 2013), *available at* <http://www.dol.gov/ebsa/faqs/faq-aca12.html>.

¹⁸ *Id.*, Question 14.

¹⁹ Letter attached.

Disciples for Choice (CC DOC) USA/Canada
Disciples Justice Action Network
EverThrive Illinois
Gay & Lesbian Advocates & Defenders (GLAD)
General Board of Church and Society, United Methodist Church
Guttmacher Institute
Hadassah, The Women's Zionist Organization of America, Inc.
Institute for Science and Human Values, Inc.
Methodist Federation for Social Action
NARAL Pro-Choice America
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Family Planning & Reproductive Health Association
National Latina Institute for Reproductive Health
National LGBTQ Task Force
National Women's Health Network
Physicians for Reproductive Health
Population Connection Action Fund
Religious Institute
Reproductive Health Technologies Project
Section of Family Planning & Contraceptive Research at the University of Chicago
Sexuality Information and Education Council of the U.S. (SIECUS)
The National Campaign to Prevent Teen and Unplanned Pregnancy
UltraViolet
Union for Reform Judaism
Unitarian Universalist Association
Unitarian Universalist Women's Federation
Women of Reform Judaism

Cc:

Cecilia Munoz; Head of Domestic Policy Council
Valerie Jarrett; Chair of the White House Council on Women & Girls
Tina Tchen; Executive Director for the Council on Women & Girls
Hallie Schneur; Deputy Director of the White House Council on Women and Girls
Jeanne Lambrew; Deputy Director of the White House Office of Health Reform
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500