NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

COVERING PRESCRIPTION CONTRACEPTIVES IN EMPLOYEE HEALTH PLANS: HOW THIS COVERAGE *SAVES MONEY*

Contraceptive Equity Is Good for Women's Health and Required By Law

There are compelling reasons to include coverage of prescription contraceptives in any health insurance plan that includes coverage of other prescription drugs and devices and preventive care. Contraception is an important component of health care for women, enabling them to prevent unwanted pregnancies and control the timing and spacing of their pregnancies –which in turn is good for maternal and child health. This coverage is also a legal requirement for many health plans and employers. State insurance laws in 25 states require contraceptive equity,[1] and the federal law prohibiting sex discrimination in the workplace has been held to bar all employers with at least 15 employees from singling out prescription contraception for exclusion from an otherwise comprehensive employee health plan.[2]

Contraceptive Coverage Saves Money

The increasing cost of health insurance, while never acceptable as an excuse for discrimination, is a serious concern for employers and workers alike. But in the context of contraceptive coverage, it is important to understand that *including insurance coverage of prescription contraceptives in an employee health benefits plan does not add to the cost; in fact, it saves money.* A variety of authorities have documented this fact:

- The National Business Group on Health (NBGH), an organization representing 160 large national and multinational employers, has estimated that *failing* to provide contraceptive coverage could cost an employer 15-17% more than *providing* it. This calculation is based on an economic model that took into account the many direct and indirect costs of unintended pregnancy. Direct costs include costs related to childbirth – which can be among the highest cost drivers of an employer's health care expenditures. Indirect costs to employers include cost associated with employee absences, maternity leave, employee replacement, and reduced employee productivity. NBGH concluded that because any premium cost associated with including contraception in employees' insurance coverage is more than offset by avoiding these direct and indirect costs, employers should strongly consider covering all methods of prescription contraceptives in their employee benefits plans (both insured and self-insured).[3]
- Mercer Human Resources Group, a global human resources consulting firm, also has touted the employer cost savings associated with contraceptive coverage, calling particular attention to the fact that mistimed or unintended pregnancies increase the risk of expensive complications.[4]
- The Guttmacher Institute, a nonprofit organization that conducts research, analysis and public education on reproductive health issues, has estimated that for every dollar spent to provide publicly-funded contraceptive services, an average of $4.02 is saved in Medicaid expenses on births. Providing these services saves $4.3 billion in public funds.[5]

- A 2009 study conducted to estimate the relative cost effectiveness of contraceptives in the United States from a payer's perspective concluded that any contraceptive method is superior in terms of cost effectiveness to "no method."[6]
- Another research team, after summarizing several studies on contraceptive coverage, urged employer consultants to consider the cost-savings of providing this coverage.[7]
- Any direct premium costs to an employer who adds contraceptive coverage to its employee benefits plan are at most extremely modest, and likely to be nonexistent. When the federal government added prescription contraceptives to the Federal Employee Health Benefits Program (FEHBP), it found that this caused *no increase* in the government's premium cost.[8] A Guttmacher Institute study concluded that, on average, it would cost a private employer only an additional $1.43 per month per employee to add coverage for the full range of FDA-approved reversible contraceptives.[9] Even if there were such a cost, it would be far outweighed by the savings, as shown by the studies cited above.

Conclusion

Contraceptive coverage is a win-win-win proposition: it is good for women's health, it avoids litigation and potential liability for sex discrimination, *and it saves money*.

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[1] *See* Nat'l Women's Law Ctr., *Contraceptive Equity Laws in Your State: Know Your Rights—Use Your Rights: A Consumer Guide*, *available at* http://www.nwlc.org/pdf/ConCovStateGuideAugust2007.pdf. Since publication of the consumer guide, Wisconsin has also enacted contraceptive coverage legislation. 2009 Wis. Act 28, to be codified at WIS. STAT. ANN. § 632.895(17). These laws require health insurance policies issued in the state that cover other FDA-approved prescription drugs to include coverage of prescription contraceptives. Additionally, three states – MI, MT, and WI (prior to enactment of the 2009 law) – have interpreted their state anti-discrimination law to require contraceptive coverage. *See* Montana Attorney General Opinion Vol. No. 51, Op. No. 16, *available at* http://www.doj.mt.gov/resources/opinions2006/51-016.pdf; Letter from Wisconsin Attorney General Peggy A. Lautenschlager to State Senator Gwendolynne Moore, Oct. 17, 2003 (on file with NWLC); Michigan Civil Rights Commission, Declaratory Ruling on Contraceptive Equity, Aug. 21, 2006, *available at* http://www.michigan.gov/documents/Declaratory_Ruling_7-26-06_169371_7.pdf.

[2] *See, e.g.*, Erickson v. Bartell Drug Co., 141 F. Supp.2d 1266 (W.D. Wash. 2001); U.S. Equal Employment Opportunity Commission Decision (Dec. 14, 2000), *available at* http://www.eeoc.gov/policy/docs/decision-contraception.html. The Eighth Circuit Court of Appeals came out the other way in a divided opinion that, in our view, is in error. *In re* Union Pacific Railroad Employment Practices Litigation, 479 F.3d 936 (8th Cir. 2007).

[3] Rowena Bonoan & Julianna Gonen, *Promoting Healthy Pregnancies: Counseling and Contraception as the First Step*, FAMILY HEALTH IN BRIEF (Washington Business Group on Health: Washington, D.C.) 2000, at 3. The National Business Group on Health was formerly the Washington Business Group on Health.

[4] William M. Mercer, Inc., *Women's Health Care Issues: Contraception as a Covered Benefit* (New York) 2000, at 11-17. The Mercer Human Resources Consulting Group was formerly William M. Mercer.

[5] Jennifer J. Frost et al., *The Impact of Publicly Funded Family Planning Clinic Services on Unintended Pregnancies and Government Cost Savings*, 19 J. HEALTH CARE FOR THE POOR & UNDERSERVED 778–796 (2008).

[6] James Trussell et al., *Cost Effectiveness of Contraceptives in the United States*, 79 CONTRACEPTION 5–14 (2009).

[7] William R. Gardner & Robert C. Strader, *The Cost Effectiveness of Contraception*, MANAGING EMPLOYEE HEALTH BENEFITS, Winter 1996, at 34.

[8] When the FEHBP 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, Director, U.S. Office of Personnel Management (Jan. 16, 2001) (on file with NWLC).

[9] Jacqueline E. Darroch, *Cost to Employer Health Plans of Covering Contraceptives* (Washington, D.C.: The Guttmacher Institute, 1998), *available at* http://www.guttmacher.org/pubs/kaiser_0698.html.