

COVERAGE OF CONTRACEPTIVES IN HEALTH INSURANCE: THE FACTS YOU SHOULD KNOW

Twenty-five states have passed laws that require insurance companies to cover prescription contraceptives if they cover other prescription drugs. To help women use these insurance laws to get coverage for prescription contraceptives, the National Women's Law Center offers a consumer guide, Contraceptive Equity Laws in Your State: Know Your Rights – Use Your Rights, which is available at <http://www.nwlc.org/pdf/ConCovStateGuideAugust2007.pdf>. Some background information follows:

Why Women Need Insurance Coverage for Prescriptive Contraceptives:

- ❑ Pregnancy prevention is central to good health care for women. Most women have the potential to become pregnant for over 30 years of their lives, and for approximately three-quarters of her reproductive life, the average woman is trying to postpone or avoid pregnancy.
- ❑ Access to contraception is critical to preventing unintended pregnancies and to enabling women to control the timing and spacing of their pregnancies, which in turn reduces the incidence of maternal death, low birth weight babies, and infant mortality.
- ❑ The exclusion of prescription contraceptives from health insurance coverage unfairly disadvantages women by singling out for unfavorable treatment a health insurance need that only they have. Failure to cover contraception forces women to bear higher health care costs to avoid pregnancy, and exposes women to the unique physical, economic, and emotional consequences that can result from unintended pregnancy.
- ❑ One of the most immediate economic consequences of not providing contraceptive health coverage for women is the out-of-pocket cost of paying for contraception. Women insured through employer-sponsored insurance or with an individual policy are more likely than men to spend more than 10 percent of their income on out-of-pocket costs and premiums.

Advocates are Pursuing a Multi-Track Approach to Expanding Contraceptive Coverage:

Those seeking to expand insurance coverage of contraceptives are moving forward on several fronts. All of these efforts are complementary.

- ❑ The 25 state laws require *insurance policies* issued in those states to cover prescription contraceptives if they cover other prescription drugs and devices, and other states have similar proposals pending. Federal legislation to provide this guarantee nationwide also is pending in Congress, as part of the Prevention First

Act (S. 21 and H.R. 463), which contains a number of measures designed to reduce unintended pregnancy.

- ❑ In addition, as detailed below, the federal law against sex discrimination in employment, Title VII of the Civil Rights Act of 1964, has been interpreted to require *employers* to include prescription contraceptive coverage in their health benefits for their employees if they offer an otherwise comprehensive health plan.
- ❑ In light of the fact that Title VII has been interpreted as placing a contraceptive coverage requirement on employers who are covered by federal law, state laws against sex discrimination in employment should be interpreted in the same way. Laws in three states – Michigan, Montana, and Wisconsin – already have been.
- ❑ The federal government also includes contraceptive coverage in its health insurance plans available to federal employees when other prescription drugs are covered.
- ❑ These approaches are all necessary. The Title VII rulings are prompting employers to add this coverage to avoid liability and damages for violations. But many people work for employers too small to be covered by Title VII, or for other reasons do not obtain their health insurance from their employer (for example, if they work part-time). The state contraceptive equity laws – and EPICC, if it becomes law – can help them because these laws cover insurance policies directly.

Legal History of Contraceptive Coverage:

- ❑ The ability of women to receive the contraceptive coverage they deserve has advanced significantly as a result of two interpretations of the federal civil rights laws, one by the Equal Employment Opportunity Commission (EEOC) and one by a federal court.
- ❑ In late 2000, the EEOC ruled that an employer's failure to provide insurance coverage for prescription contraceptives, when it covers other prescription drugs, devices, and preventive care, constitutes unlawful sex discrimination under Title VII of the Civil Rights Act of 1964. The National Women's Law Center led a coalition of 60 health care, women's, civil rights, and other groups asking the EEOC for such a ruling.
- ❑ The EEOC's ruling was followed by the 2001 decision, *Erickson v. Bartell Drug Co.*, in which the U.S. District Court for the Western District of Washington ruled that the defendant's exclusion of prescription contraceptives from its otherwise comprehensive employee health benefits plan constituted a violation of Title VII. The court's decision was the first one ever to rule definitively on the merits of this issue. The court, as a result, ordered Bartell Drug Co., the defendant, to cover each of the available options for prescription contraception to

the same extent, and on the same terms, that it covers other drugs, devices, and preventive care for its employees, as well as all contraception-related outpatient services. The National Women's Law Center was part of the legal team representing the plaintiff in the class action lawsuit.

- Unfortunately, the advances made in women's ability to gain contraceptive coverage under Title VII suffered a setback in March 2007. A divided panel of the Eighth Circuit Court of Appeals, under the particular factual circumstances in the case, held that the failure of Union Pacific Railroad to provide contraceptive coverage to its employees was not sex discrimination under federal law. The court determined that because Union Pacific excluded coverage for all contraceptives (prescription and non-prescription), and did not cover sterilization procedures for either men or women, insurance coverage was equal for men and women. In our view, this decision is in error and reflects a basic misunderstanding of the fundamental principles of discrimination. Fortunately for the women involved, Union Pacific changed its plan to include prescription contraceptives and has announced that it will not take away the coverage following the Eighth Circuit's decision.

Workers Press Their Employers to Add Contraceptive Coverage:

- On January 1, 2007, Wal-Mart, the nation's largest private sector employer, began offering contraceptive coverage to its employees. This victory was achieved after five years of litigation. In October 2002, Wal-Mart employee Lisa Smith Mauldin of Dallas, Georgia filed a sex discrimination class action lawsuit against Wal-Mart because it did not cover her birth control pills. The National Women's Law Center was part of Mauldin's legal team. As a result of Wal-Mart's decision, the case was voluntarily dismissed.
- In 2006, after pressure from a local coalition working with the National Women's Law Center, the State of Wyoming health insurance plan was amended to include contraceptive coverage, as the vast majority of states already do.
- In February 2006, Robin Llewellyn, a Seattle resident who is a licensed third mate in the Merchant Marine, urged her health plan, the Masters, Mates & Pilots (MM&P) Plan, to add contraceptives to its prescription drug package. MM&P covers over 70 employers in the maritime shipping industry, providing health insurance to thousands of beneficiaries. When the plan refused to add contraceptive coverage, the National Women's Law Center wrote on Ms. Llewellyn's behalf advising it of the legal requirements and demanding the addition of this coverage. MM&P then promptly added the coverage.
- In December 2003, the National Women's Law Center intervened on behalf of an employee of a newspaper publisher in Michigan – Independent Newspapers, Inc. – and persuaded the company to add contraceptive coverage to its health plan.

- A Lenox Hill Hospital employee in New York City contacted the National Women's Law Center in spring 2003 because the hospital did not include oral contraceptives in its prescription drug plan. The National Women's Law Center wrote to the hospital and hospital officials quickly agreed to add this coverage.
- In spring 2003, the National Women's Law Center was successful in working with the American Federation of State, County, and Municipal Employees (AFSCME) to secure contraceptive coverage for the employees of the city of Eugene, Oregon.
- Daimler-Chrysler joined automakers Ford and General Motors in adding contraceptive coverage in June 2002.
- In December 2002, Dow Jones and Company agreed to provide coverage for all FDA-approved prescription contraceptives and related medical services in all of its health plans for its employees, as part of a settlement of charges that had been filed with the EEOC by employees and their union.
- In April 2001, at the University of Nebraska, several female faculty and staff members urged the University administration to add contraceptive coverage – with legal assistance from the National Women's Law Center – and the University regents agreed.