

Emergency Contraception: Barriers to Access

Individuals 17 and older can now obtain emergency contraception (EC or “the morning-after pill”) without a prescription. Yet barriers remain, preventing truly unencumbered access to this important method of pregnancy prevention.

Remaining Barriers to Access

Lack of Awareness about the FDA’s Restrictions

There is a lack of awareness about the specific conditions under which EC can be sold in pharmacies. This leads to consumers leaving the pharmacy without EC, because of the misconception that they could not obtain it.

- The FDA requires that EC is kept *behind the counter* rather than on store shelves. Women often are not aware of this fact and might leave the store without EC because they are unable to find it on the shelves with other over-the-counter family planning supplies.
- The FDA permits pharmacy employees *other than the pharmacist* to check identification and sell EC to individuals 17 and older. Yet, pharmacy staff, including technicians and interns, are not always aware of their ability to do so. Women have reported encountering pharmacy staff who said the pharmacist was the only one allowed to sell non-prescription EC.
- The FDA approved non-prescription EC for *all individuals* age 17 and older. This means that men are permitted to purchase it. Yet some pharmacy employees are refusing to sell non-prescription EC to men.
- There is *no limit* on the number of non-prescription EC packs a person can purchase at once, yet reports have surfaced that pharmacy employees are refusing to sell multiple packs at one time.

Pharmacies Not Stocking EC

Women continue to encounter problems with accessing non-prescription EC because some pharmacies do not stock it.

- A survey by the NARAL Pro-Choice North Carolina Foundation found that 40% of pharmacies surveyed in the state did not have EC in stock. And only 57% of rural pharmacies had it in stock at the time of the survey.¹
- Recently, so-called “pro-life” pharmacies have been opening across the country.² These pharmacies refuse to stock or sell any contraception at all, and refuse to refer women elsewhere when they are looking for contraception.

Requiring Girls to Get a Prescription

Although individuals 17 and older can access EC without a prescription, girls under 17 must still get a prescription before obtaining the drug. Despite ample scientific evidence that the drug is safe and effective for use by women of all ages, the FDA’s age restriction continues to hinder young women’s access to this time-sensitive contraception.

Pharmacists Refusing to Provide Contraception

Some pharmacists refuse to dispense contraception or sell non-prescription EC to women. Despite the FDA’s decision to make EC available without a prescription, refusals based on personal beliefs are still a problem. Because EC is kept behind the counter, even women who do not need a prescription must interact with pharmacy staff who may have strong personal beliefs against

providing the drug. Since non-prescription EC arrived in pharmacies, there have been a number of refusal incidents. These refusals can have devastating consequences for women's health.

Paying for EC

- EC is a relatively expensive medication – the recently-approved generic version costs 10-20% less than the brand version, but the cost of EC can be up to \$70 in some pharmacies. The high cost makes EC unaffordable, or scarcely affordable, for many women.
- Once drugs are switched to non-prescription status, they are not usually covered by insurance. In addition, some insurance plans exclude coverage for contraception altogether, even when a prescription is required. Therefore, many women must pay for EC out of pocket.
- Women on Medicaid are particularly burdened by problems of cost and coverage. Some state Medicaid programs do not cover EC at all. Even states whose Medicaid programs cover EC may require women 17 and older to get a prescription first, solely for reimbursement purposes.³

Showing Identification

In order to purchase non-prescription EC, a consumer must show identification to prove age. Many immigrant women do not have government-issued identification and therefore do not have access to non-prescription EC.

Solutions

A variety of solutions are needed to remove the barriers facing women who seek access to EC. This includes, but is not limited to, the following:

Making EC Truly Over-the-Counter

If the FDA approved EC for non-prescription use by *women of all ages*, as was recommended by its own expert panel, many of the barriers would disappear. In March 2009, a federal district court ordered the FDA to reconsider whether to make emergency contraception available to women of all ages without a prescription,⁴ but it has not yet done so.

Educating Pharmacy Staff

Education of pharmacy staff should focus not only on what EC is and how it works, but on the FDA's conditions for sale of non-prescription EC.

- Advocacy groups like MergerWatch and Pharmacy Access Partnership have facilitated pharmacist trainings on EC across the country. Surveys done after MergerWatch's trainings indicated an improvement in the level of knowledge about how EC works and increased understanding of the FDA restrictions.⁵

Helping Consumers Find Non-Prescription EC

Efforts should be made to educate women about pharmacies where they can purchase non-prescription EC, and the fact that they need to ask for it at the pharmacy counter.

Encouraging Pharmacies to Stock EC

There are tools available to encourage pharmacies to stock EC.

- Increased consumer requests for EC should encourage pharmacies to stock the drug, since pharmacies are responsive to the needs of their communities.
- Requirements that pharmacies post notice when they do *not* stock EC may be effective in increasing the percentage of pharmacies that stock. For example, in New York City, in 2002

only 55% of pharmacies stocked EC. In 2003, a stocking notice law was passed. In 2007, a survey indicated that 94% of pharmacies were stocking EC.⁶

Allowing Pharmacy Access for Girls Under 17

In order to ensure girls' access to EC, it is critically important for states to pass laws that allow them to get EC from a pharmacist without first obtaining an advance prescription from a doctor. Nine states—AK, CA, HI, ME, MA, NH, NM, VT, and WA—have these laws.⁷

Limiting Pharmacists' Refusals To Provide EC

States should continue their efforts to pass laws and policies that prohibit or limit refusals to provide medication in the pharmacy. Fifteen states—AL, CA, DE, IL, ME, MA, NV, NJ, NY, NC, OR, PA, TX, WA, WI—have laws or policies that ensure women's access to contraception at the pharmacy or require refusing pharmacists to help women obtain contraception elsewhere.⁸

Improving Low-Income Women's Access to Non-Prescription EC

Barriers faced solely by low-income women on Medicaid must be removed. Advocates are already taking steps to demand true non-prescription access for women on Medicaid. Several states have already acted, or announced that they will soon act, to make EC available without a prescription through their state Medicaid program.⁹

Conclusion

The switch of EC from prescription-only to over-the-counter status for individuals 17 and older has meant increased access for women. But barriers remain that continue to hinder women's ability to obtain the drug. A series of additional steps is needed to ensure that women can access EC when they need it, getting a second chance to avoid unintended pregnancy.

¹ NARAL Pro-Choice North Carolina Foundation, Access to Emergency Contraception in North Carolina Pharmacies (June 6, 2007), <http://www.prochoicenorthcarolina.org/assets/files/ecaccessfinal.pdf>.

² Rob Stein, 'Pro-Life' Drugstores Market Beliefs, WA. POST, June 16, 2008, at A1.

³ National Health Law Program, Over the Counter or Out of Reach? A Report on Evolving State Medicaid Policies for Covering Emergency Contraception (June 2007), available at <http://www.healthlaw.org/library.cfm?fa=detail&id=101166&appView=folder>.

⁴ Tummino v. Torti, 603 F. Supp. 2d 519 (E.D.N.Y. 2009).

⁵ MergerWatch, Pharmacy Refusal Toolkit: Protecting Women's Rights at the Pharmacy Counter (June 2007), available at http://www.mergerwatch.org/pdfs/bp_pharm_toolkit.pdf.

⁶ The Council of the City of New York, Press Release, Council Investigation Finds Emergency Contraception Available in 94% of NYC Pharmacies Surveyed, May 20, 2007, available at http://www.nycouncil.info/pdf_files/newswire/047_052007_emergency_contraception_2.pdf.

⁷ For more information, see Nat'l Women's Law Ctr., Pharmacy Access to Emergency Contraception (Nov. 2009), available at <http://www.nwlc.org/pdf/pharmacyaccess11.09.pdf>.

⁸ National Women's Law Center, Pharmacy Refusals: State Laws, Regulations, and Policies (July 31, 2009), available at <http://www.nwlc.org/pdf/pharmacyrefusals101.731.pdf>.

⁹ National Institute for Reproductive Health, *Expanding Medicaid Coverage for EC on the State Level* (2007), <http://www.prochoiceny.org/assets/files/ecreport.pdf>.