

FACT SHEET

The Birth Control Coverage Benefit Is Critical To Women's Health, Yet Bosses Are Going to Court to Take it Away

November 2013

The Affordable Care Act (ACA) requires that health insurance plans cover all FDA-approved birth control methods without out-of-pocket costs. This benefit is a huge step forward for women's health and equality. Despite the fact that over 27 million women now have this benefit, some bosses want to take it away and have filed over 100 federal lawsuits to do so. This term, the Supreme Court will review two of the cases brought by for-profit businesses. A decision in favor of these bosses would not only take away this important health care benefit but could also jeopardize other long-standing employee protections.

The ACA's Birth Control Coverage Benefit

- **The Affordable Care Act Requires All New Health Insurance Plans to Cover All FDA-Approved Birth Control Methods, Sterilization Procedures, and Patient Education And Counseling Without Out-Of-Pocket Costs.**¹ The benefit ensures that a woman can access the method of birth control that she and her medical provider determine is best for her, without a co-pay, co-insurance, or deductible.
- **This Is a Popular Provision That Millions of Women Have Already Benefited From, and Now Bosses Want to Take It Away.** The contraceptive coverage requirement has been in effect since August 1, 2012. Over 27 million women are now covered by this benefit and are now able to get their birth control with no out-of-pocket costs.² Over time, millions more women will get access to the benefit.
- **Houses of Worship and Non-Profits with Religious Objections Do Not Have to Provide Birth Control Coverage to Their Employees under This Law.**³
 - **Houses of Worship are Exempt from Compliance with the Benefit.** Churches and other houses of worship do not have to provide birth control coverage without cost-sharing. Their employees will not have access to this benefit.
 - **Non-Profit Organizations with Religious Objections Do Not Have to Directly Provide This Benefit.** Non-profit organizations that hold themselves out as religious and oppose birth control for religious reasons receive an "accommodation" and do not have to cover birth control without cost-sharing in their health plans. Instead, their employees will receive this benefit directly from the insurance company. This benefit will start with the first plan year beginning on or after January 1, 2014.

The Birth Control Benefit is Critically Important for Women's Health and Equality

- **Birth Control Is a Critical Part of Women's Health.** The Institute of Medicine recommended that contraceptive coverage be included as a preventive service in the ACA because the health benefits of birth control are well-documented.⁴ Birth control is highly effective at reducing unintended pregnancy, which can have severe negative health consequences for both women and children. It also allows women to space their pregnancies, which improves the health of both women and their children. Birth control is such a core part of women's health that 99% of sexually active women have used birth control at some point in their lives.⁵
- **Birth Control Coverage Promotes Gender Equality.** Not providing insurance coverage of contraception in comprehensive health plans is sex discrimination, since pregnancy is unique to women and the only forms of prescription birth control are available exclusively for women. Women pay much higher out of pocket health care costs than men – largely due to the cost of birth control. The benefit addresses this disparity by ensuring coverage with no cost sharing. In addition, promoting women's access to contraception leads to greater social and economic opportunities for women -- including helping to close the wage gap -- by allowing women to control the timing of pregnancies and thus participate in a greater way in education and the labor force.
- **By Requiring Coverage without Out-of-Pocket Costs, the Contraceptive Coverage Benefit Removes the Financial Barrier to Birth Control that Many Women Have Faced.** The high costs of contraception, including cost-sharing requirements, are a barrier to women using contraceptives consistently and to their receiving the most appropriate or effective form of contraception.⁶ This benefit removes this historic financial barrier to women getting the birth control they need.

The Vast Majority of Americans Support Birth Control Coverage and Agree that It Is a Key Part of Women's Health and Should Be Covered by Insurance

- **73 Percent of People Agree That Women Should Have Access to Affordable Birth Control.** According to a poll conducted by the National Women's Law Center and Planned Parenthood Federation of America in 2012, nearly three in four voters (73 percent), including 80 percent of women and 78 percent of Independents, agreed that all women should have access to affordable prescription birth control and that cost should not be a barrier to using the most effective form of birth control.⁷
- **The Majority of People View This As a Women's Health Issue by a 20 Point Margin.** Additionally, when it comes to employers providing full coverage for prescription birth control, by a 20-point margin, 56 percent of American voters see this issue as a matter of women's health care and access to birth control, not one of religious liberty. Independent voters' views mirror those of voters overall, with 56 percent of independents saying that this is an issue of women's health care and access to birth control.

Challenges to the Birth Control Benefit

Over 100 lawsuits have been filed in federal court by bosses seeking to deny employees' birth control coverage. They are suing under the federal Religious Freedom Restoration Act (RFRA) and the First Amendment.

- **Over 40 Lawsuits Have Been Filed by For-Profit Businesses and the Supreme Court Will Review Two of Them This Term.** The two for-profit cases were filed by:
 - The Hobby Lobby chain of arts and crafts stores (*Sebelius v. Hobby Lobby Stores, Inc.*, 10th Circuit); and
 - Wood cabinet and specialty goods manufacturer Conestoga Wood (*Conestoga Wood Specialty Corp. v. Sebelius*, 3rd Circuit)

A Supreme Court Decision Could Mean That Bosses Can Use Religion to Discriminate Against Women in A Number of Ways

- **If The Supreme Court Allows For-Profit Businesses to Deny Women This Critical Benefit, It Would Mean That Bosses Can Impose Their Religious Beliefs on Their Employees.**
 - Such a decision could have nationwide consequences for women and families. For example, Hobby Lobby has 13,000 employees in stores around the country. Bosses at other for-profit companies could also decide to assert religious beliefs in order to deny their female employees this critical benefit.
 - Women who work for these companies will be denied control over their reproductive lives.
- **A Boss's Religious Beliefs Should Not Trump Women's Health and Access to The Health Care They Need.**

The Supreme Court's Decision Could Have Far-Reaching Consequences

- **The Court's Decision Could Jeopardize Other Health Care Benefits.** A Supreme Court decision on the side of the for-profit employers could have broad and troubling implications. Such a finding could be used by bosses as an excuse to deny other health benefits required by the nation's laws, such as maternity care, STD testing, and vaccines.
- **The Court's Decision Could Threaten Other Civil Rights Laws.** Its reach could also potentially extend beyond the health care context, and be used as justification for bosses to refuse to comply with other laws that benefit employees, like minimum wage and equal pay laws.

1 42 U.S.C. § 300gg-13 (2013).

2 Laura Skopec & Benjamin D. Sommers, Abstract of ASPE Issue Brief: Seventy-One Million Additional Americans are Receiving Preventive Services Coverage Without Cost-Sharing under the Affordable Care Act (March 2013), available at http://aspe.hhs.gov/health/reports/2013/PreventiveServices/ib_prevention.cfm.

3 Exemption and Accommodation in Connection with Coverage of Preventive Health Services, 45 C.F.R. § 147.131 (2013).

4 INST. OF MED., CLINICAL PREVENTIVE SERVICES FOR WOMEN: CLOSING THE GAPS 102-10 (2011), available at <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>.

5 Kimberly Daniels et al., *Contraceptive Methods Women Have Ever Used: United States, 1982–2010*, National Health Statistics Reports No. 62, 4 (Feb. 14, 2013), available at: <http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>.

6 Inst. of Med., *supra* note 4, at 108.

7 Memorandum from Hart Research Associates to Interested Parties Re: Findings From Recent National Survey on Coverage for Prescription Birth Control (June 20, 2012), available at: <http://www.nwlc.org/sites/default/files/Me10608.pdf>.