

Emergency Contraception: Barriers to Access

Access to emergency contraception (EC or “the morning-after pill”) has greatly increased in the last few years. Three brands of EC – Next Choice[®], Plan B One-Step[®], and Levonorgestrel Tablets – are available without a prescription for individuals 17 and older. ella[®] - a prescription-only EC product – provides women with a longer window of time in which to prevent pregnancy. Yet barriers remain, preventing truly unencumbered access to this important method of pregnancy prevention.

Remaining Barriers to Accessing EC

Lack of Awareness about EC and the FDA’s Restrictions on Non-Prescription EC

There is a lack of awareness about EC generally and in particular, the specific conditions under which non-prescription 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 non-prescription EC is kept *behind the counter* rather than on store shelves. Women often are not aware of this 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 non-prescription 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.
- One recent survey of pharmacists in Florida found that 56% of respondents incorrectly answered that EC causes birth defects, and 46% incorrectly replied that it causes abortion. Only 22% said that EC can be purchased in advance of need.¹

Pharmacies Not Stocking EC

Pharmacies might not be aware of – and therefore not stock – the various EC products. Additionally, women continue to encounter problems with accessing non-prescription EC because some pharmacies choose not to stock it.

- A 2007 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.²

- Recently, so-called “pro-life” pharmacies have been opening across the country.³ 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 for EC When Older Individuals Do Not Need One
 In December 2011, the FDA determined that Plan B One Step is safe and effective for over the counter use by all females, but Secretary of Health and Human Services Sebelius overruled that decision, requiring the age restriction to remain in place. This means that although individuals 17 and older can purchase non-prescription EC, girls under 17 must still get a prescription for all EC products. The age restriction on Plan B One-Step, Next Choice, and Levonorgestrel Tablets continues to hinder young women’s access to this time-sensitive drug.

Pharmacists Refusing to Dispense Prescription EC or Sell Non-Prescription EC
 Some pharmacists refuse to dispense contraception or sell non-prescription EC to women because of their personal beliefs, not because of legitimate medical or professional reasons. Upon the FDA’s approval of ella, an anti-choice group launched a campaign to persuade pharmacists to refuse to dispense it.⁴ Individuals seeking non-prescription EC have also faced refusals. Under the FDA’s conditions, non-prescription EC is kept *behind the counter*, so even women who do not need a prescription must interact with pharmacists or other pharmacy staff who may have strong personal beliefs against providing the drug. These refusals can have devastating consequences for women’s health.

Paying for EC

- EC is a relatively expensive medication – the generic versions Next Choice and Levonorgestrel Tablets cost 10-20% less than Plan B One Step, 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. Therefore, many health insurance plans do not cover Plan B One-Step, Next Choice, or Levonorgestrel Tablets for women age 17 and older because a prescription is not needed. In addition, some insurance plans exclude coverage for contraception altogether, even when a prescription is required. This means that many women must pay for EC out of pocket.
- Women enrolled in 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 non-prescription EC may require women 17 and older to get a prescription first, solely for reimbursement purposes.⁵

Showing Identification for Non-Prescription EC

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 Some Forms of EC Truly Over-the-Counter

As the FDA found, there is adequate well-supported and science-based evidence that Plan B One Step is safe and effective for use by *women of all ages*. If EC were approved for use by women of all ages, many of the barriers would disappear.

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 on non-prescription EC.⁶
- One recent study of pharmacists in Florida found that correct information about EC was the most important predictor of pharmacists' dispensing EC.⁷

Educating Women about Their EC Options and Helping Consumers Find EC

Efforts should be made to educate women about EC, the different products that are available to them, and the products' window of effectiveness so that they can choose the method that is best for them and be sure to take action as soon as possible after unprotected sex, sexual assault, or birth control failure. Women need to know where to find pharmacies where they can purchase EC, whether prescription or non-prescription, 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.⁸

Allowing Pharmacy Access for Those Who Need a Prescription

In order to ensure timely access for those who require a prescription in order to obtain EC, it is critically important for states to pass laws that allow women 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.⁹

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.¹⁰

Increasing Insurance Coverage of EC

Thanks to the new health care law, all new insurance plans will soon be required to provide insurance coverage of all FDA-approved contraceptive methods, including EC, without cost-sharing. But barriers faced solely by low-income women enrolled in Medicaid must be removed. Advocates are already taking steps to demand true non-prescription access for women on Medicaid, with several states taking action to make certain versions of EC available without a prescription through their state Medicaid program.¹¹

Conclusion

The switch of some EC to non-prescription status for individuals 17 and older and the availability of ella has meant increased access for women to important options for preventing pregnancy after unprotected sex, sexual assault, or birth control failure. But barriers remain that continue to hinder women's ability to obtain emergency contraception. 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 Alice R. Richman et al., *The Role of Pharmacists and Emergency Contraception: Are Pharmacists' Perceptions of Emergency Contraception Predictive of Their Dispensing Practices?*, *CONTRACEPTION* (Mar. 5, 2012).

² 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>.

³ Rob Stein, *'Pro-Life' Drugstores Market Beliefs*, *WA. POST*, June 16, 2008, at A1.

⁴ Rob Stein, *Will Pharmacists Fill 'Ella' Prescriptions?*, *WA. POST*, Sept. 21, 2010, http://voices.washingtonpost.com/checkup/2010/09/will_pharmacists_fill_ella_pre.html.

⁵ 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>.

⁶ 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.

⁷ Alice R. Richman et al., *supra* note 1.

⁸ 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.

⁹ For more information, see Nat'l Women's Law Ctr., *Pharmacy Access to Emergency Contraception* (Apr. 2012), available at <http://www.nwlc.org/resource/pharmacy-access-emergency-contraception>.

¹⁰ National Women's Law Center, *Pharmacy Refusals: State Laws, Regulations, and Policies* (Apr. 2012), available at <http://www.nwlc.org/resource/pharmacy-refusals-state-laws-regulations-and-policies>.

¹¹ National Institute for Reproductive Health, *Expanding Medicaid Coverage for EC on the State Level* (2007), <http://www.prochoiceny.org/assets/files/ecreport.pdf>.