



REPRODUCTIVE RIGHTS & HEALTH

THE AFFORDABLE CARE ACT'S BIRTH CONTROL BENEFIT: TOO IMPORTANT TO LOSE

The Affordable Care Act (ACA) guarantees women insurance coverage of all methods of birth control without additional out-of-pocket cost, no matter where they live or how they are insured. It first went into effect in 2012, and is an incredibly popular part of the ACA. Women have come to rely upon it – they now are able to access the birth control method that is appropriate for them when they need it without cost being an obstacle. Despite the benefit's clear advances to women and families, there has been talk among certain members of Congress and the Trump Administration of getting rid of it or changing it. Any attempt to repeal or roll back this benefit would jeopardize these important gains. And because there is no other way to guarantee coverage like this for so many people, these attempts would jeopardize women's health and economic security.

THE BIRTH CONTROL BENEFIT IS POPULAR

The birth control benefit is an extremely popular part of the ACA, which is not surprising given that birth control use is nearly universal among women of reproductive age in the United States.¹

Majorities support the birth control benefit. A 2015 survey found that over 77% of women and 64% of men support laws requiring health insurance plans to cover the full cost of birth control.² And a 2017 poll found that over 77% of women want the birth control benefit to continue.³

Support for the birth control benefit is strong among Catholics. A 2016 survey found that nearly eight in 10 Catholics (79%) agree that "health insurance companies should be required to offer health plans that include birth control."⁴

The vast majority of voters understand the connection between birth control and women's economic security.

Polling in early 2017 found that nearly three-quarters of voters believe that access to affordable birth control affects a family's financial situation and is an important part of equality for women.⁵

THE BIRTH CONTROL BENEFIT IS WORKING

Over 62.4 million women now have coverage of birth control and other preventive services without out-of-pocket costs.⁶ Women across the country are using the benefit and reaping the benefits of birth control, both to their health and economic security.

Women are using their insurance coverage to access birth control. In a recent survey, more than two-thirds of women using a prescription contraceptive reported that the full cost of their birth control was always covered.⁷

Women are able to use prescription birth control for the first time. Prior to the ACA, co-pays as low as \$6 deterred women from obtaining the health care that they needed, and some women chose to forgo birth control because of cost. But data on prescription drug use in 2013, after the birth control benefit went into effect, indicate a nearly five percent uptick in filled birth control pill prescriptions.⁸ Express Scripts, one of the nation's largest pharmacy benefit management companies, attributed this increase to the birth control benefit fulfilling a previously unmet need.⁹

Women can finally use more effective, longer-acting – but more expensive – methods of birth control, like the IUD. Prior to the birth control benefit, up-front costs of an intrauterine device (IUD) could be close to \$1000, putting it out of reach for many women. Now, thanks to the birth control benefit, cost is not a barrier to longer-acting, more effective methods. One study showed that because of the birth control benefit most insured women would have no out-of-pocket costs for an IUD.¹⁰ Another showed a statistically significant increase in IUD use after the benefit went into effect.



Women are reaping the health benefits of birth control.

The birth control benefit ensures that women who need birth control for health reasons, such as treating menstrual disorders or reducing the risk of certain cancers, can get the method they need without having to worry about the cost. In a survey conducted two years after the birth control benefit went into effect, twenty-one percent of women reported using birth control both for preventing pregnancy and managing a medical condition, and seven percent reported using it solely to manage a medical condition.¹¹

The birth control benefit is helping women to be more financially secure. The birth control benefit saved women \$1.4 billion on birth control pills alone in 2013.¹² The birth control benefit means that women no longer have to choose between paying for birth control and paying for other necessities, like groceries and utilities.

The birth control benefit is an investment in women's long-term economic security. The decision of whether or when to have children is one of the most important economic decisions a woman will make in her lifetime. Access to affordable, comprehensive birth control is critical to this planning, and health insurance coverage plays a key role in increasing access to birth control services.

ANY ROLL-BACK OF THE BIRTH CONTROL BENEFIT WOULD HARM WOMEN'S HEALTH AND ECONOMIC SECURITY, CAUSE CONFUSION, AND ERECT BARRIERS TO BIRTH CONTROL

Rolling Back the Birth Control Benefit Would Harm Women's Health and Economic Security

Taking away the benefit or otherwise rolling it back would jeopardize the important gains this country has made in investing in women's health and economic security. Women would no longer be able to choose and afford the birth control method that best fits their needs. Instead, women would once again have to make tough choices among methods based on cost, rather than on what is most appropriate for them, and some women may be forced to forgo birth control altogether.

Before the birth control benefit:

- Costs of birth control made up to 30-44% of women's total out-of-pocket health care costs.¹³
- For someone making the federal minimum wage of \$7.25 an hour, the average cost of a full year's worth of birth control pills without insurance was the equivalent of 51 hours of work.¹⁴
- The up-front costs of an IUD was nearly a month's salary for someone working full-time at minimum wage.¹⁵

Studies show that these costs associated with contraception lead women to forego it completely, choose less effective methods, or use it inconsistently or incorrectly.¹⁶ This contributed to the nation's high unintended pregnancy rate with accompanying risks to the health of women and children. It also meant some women could not prevent, plan, and space pregnancies, hurting their ability to move forward with their education and career.

Rolling Back the Birth Control Benefit Would Cause Confusion

Women have come to rely on the birth control benefit. To change it or roll it back would cause confusion about their coverage options and upend their plans about whether or when to have children. It would also cause confusion for insurers and health care providers, who have also come to rely upon the benefit and have structured their plans and services accordingly.

Rolling Back the Birth Control Benefit Would Erect Barriers to Birth Control

Getting rid of or gutting the birth control benefit would erect barriers to birth control, barriers that might prevent women from obtaining it altogether. Women would be forced to go outside of their existing insurance systems and network of health care providers, losing continuity of care. They might have great difficulty finding another source of birth control that is accessible and within a reasonable distance. Publicly-funded systems, like Title X and Medicaid, that provide birth control coverage only provide no-cost birth control to those that meet certain income thresholds. They were not designed to absorb patients who should be getting private birth control coverage. Moreover, the Title X family planning system is already overburdened and underfunded, and both it and Planned Parenthood clinics are facing increasing attacks from federal and state policymakers. Rolling back the benefit would force women to incur significant costs—monetary, logistical, and administrative—to access care fundamental to their health. These hurdles could lead women to forgo birth control services completely.

OTHER BIRTH CONTROL COVERAGE REQUIREMENTS CANNOT REPLACE THE ACA BIRTH CONTROL BENEFIT

The ACA's birth control benefit accomplished a unique aim: an across-the-board, nationwide requirement that all women with health insurance have coverage of *all* FDA-approved birth control methods and related education and counseling *without any* out-of-pocket costs. Now, a woman's access to insurance coverage of birth control is not dependent on a woman's income level, the state in which she resides, or the health plan she chooses. Threats to roll back the birth control benefit threaten to undo that important advance and send women back to a patchwork system.



The birth control benefit followed several important state and federal guarantees of birth control coverage. These state and federal requirements were critical to create the foundation that the birth control benefit is built on, but they are a patchwork system. This patchwork system of legal requirements still exists, and would continue to exist if the birth control benefit were rolled back. But these individual requirements cannot serve as a substitute for the birth control benefit. For example:

- Federal non-discrimination law, Title VII of the Civil Rights Act of 1964, requires employers to provide birth control coverage, but it does not reach employers with fewer than 15 employees. Almost every state has a law against sex discrimination in employment along the same lines as Title VII. These similar state laws should be interpreted as requiring birth control coverage for employees in the same way, and already have been in three states: Wisconsin, Montana, and Michigan.¹⁷ But in most states, people reliant on insurance provided by small businesses could be forced to pay out-of-pocket if the birth control benefit were rolled back.
- Twenty-six states require health plans to cover birth control when they cover prescription drugs, and in four of these states, lawmakers have taken a step further and enshrined the ACA's birth control benefit in state law.¹⁸ But those requirements do not reach "self-funded" insurance plans that are regulated by the federal government and which most workers are enrolled in.¹⁹

- Twenty-two states still do not have a specific law requiring that health insurance cover birth control. If the birth control benefit were rolled back, women in these states would be left behind.
- Medicaid coverage is required to include all FDA-approved birth control methods without out-of-pocket costs, but where states have not expanded Medicaid or do not have special Medicaid family planning programs, many women have no coverage for birth control. Furthermore, some members of Congress have already made clear that the Medicaid family planning coverage requirement is on the chopping block.²⁰

The birth control benefit is a fundamental shift in health insurance coverage of birth control, with enormous impact. It is something women want and have come to rely upon. Rolling back the benefit would leave many women without critical coverage, harming their health and economic security. And it could create confusion among women, health care providers, and insurers about what insurance plans must cover. While other legal requirements will continue to provide *some* contraceptive coverage for *some* women, we cannot afford to return a time when zip code, employer, or income determined a woman's ability to access the contraception she needs.

- 1 Gutmacher Inst., *Contraceptive Use in the United States* (Oct. 2015), available at http://www.gutmacher.org/pubs/fb_contr_use.html.
- 2 Laurie Sobel, et al., The Kaiser Family Found., *The Future of Contraceptive Coverage* (2017) available at <http://kff.org/womens-health-policy/issue-brief/the-future-of-contraceptive-coverage/>.
- 3 PerryUndem, *Contraceptives + Policy Through a Gender Lens, Results from a National Survey Conducted by PerryUndem 17* (March 2017), available at <https://www.scribd.com/document/342699692/PerryUndem-Gender-and-Birth-Control-Access-Report>.
- 4 Beldon Russonello, *2016 Survey of Catholic Likely Voters*, available at <http://www.catholicsforchoice.org/wp-content/uploads/2016/10/2016-Catholic-Voter-Poll.pdf>.
- 5 PerryUndem, *supra* note 3, at 12 and 14.
- 6 U.S. Dep't of Health and Human Svcs., Asst. Sec. for Planning and Evaluation, *The Affordable Care Act is Improving Access to Preventive Services for Millions of Americans* (May 14, 2015), available at http://aspe.hhs.gov/health/reports/2015/Prevention/ib_Prevention.pdf.
- 7 Emily M. Johnston et al., Urban Inst., *Access to Contraception in 2016 and What It Means to Women* (Jan. 2017) available at <http://www.urban.org/sites/default/files/publication/87691/2001113-access-to-contraception-in-2016-and-what-it-means-to-women.pdf>.
- 8 IMS Inst. for Healthcare Informatics, *Medicine Use and Shifting Costs of Healthcare: A Review of the Use of Medicines in the United States in 2013*, (2014), available at http://www.plannedparenthoodadvocate.org/2014/IIHI_US_Use_of_Meds_for_2013.pdf.
- 9 The Express Scripts Lab, *Express Scripts 2015 Drug Trend Report Health Insurance Exchange* (March 2016), available at <http://lab.express-scripts.com/lab/-/media/bed6ee9784474511a8534c397e346d56.ashx>.
- 10 Jonathan M. Bearak et al., *Changes in out-of-pocket costs for hormonal IUDs after implementation of the Affordable Care Act: an analysis of insurance benefit inquiries*, 93 *Contraception* 139 (2016) available at [http://www.contraceptionjournal.org/article/S0010-7824\(15\)00575-2/abstract](http://www.contraceptionjournal.org/article/S0010-7824(15)00575-2/abstract).
- 11 See A. Salganikoff, Kaiser Family Found., *Women and Health Care in the Early Years of the Affordable Care Act* 35 (May 2014), available at <https://kaiserfamilyfoundation.files.wordpress.com/2014/05/8590-women-and-health-care-in-the-earlyyears-of-the-affordable-care-act.pdf>.
- 12 Nora V. Becker and Daniel Polsky, *Women Saw Large Decrease in Out-of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing*, 34 *Health Affairs* 1204 (July 2015) available at <http://content.healthaffairs.org/content/34/7/1204.abstract>.
- 13 *Id.*
- 14 Brief of the National Women's Law Center and 68 Other Organizations as Amici Curiae Supporting Respondents, *Zubik v. Burwell*, 136 S.Ct. 1557 (May 16, 2016).
- 15 *Id.*
- 16 See, e.g., Gutmacher Inst., *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions* 5 (Sept. 2009), <http://www.gutmacher.org/pubs/RecessionFP.pdf> (finding that to save money, women forewent contraception, skipped birth control pills, delayed filling prescriptions, went off the pill for at least a month, or purchased fewer birth control packs at once).



- 17 Nat'l Women's Law Ctr., *Contraceptive Equity Laws in Your State: Know Your Rights - Use Your Rights, A Consumer Guide* (Aug. 2012) available at <https://nwlc.org/resources/contraceptive-equity-laws-your-state-know-your-rights-use-your-rights-consumer-guide/>. Some of the state laws against sex discrimination reach employers with fewer than 15 employees.
- 18 California, Illinois, Maryland, and Vermont have each enshrined the ACA's birth control benefit, but Maryland's law is not in effect until Jan. 1, 2018. Cal. Ins. Code § 10123.196 (2016); 215 Ill. Comp. Stat. Ann. 5/356z.4 (2016); Md. Code Ann. Ins. §§ 15-826.1, 15-826.2, 15-831 (2016); Md. Code Ann. Health Gen. § 15-148 (2016); and, Vt. Stat. Ann. tit. 8, § 4099c (2016).
- 19 Nat'l Women's L. Ctr., *supra* note 17. Wisconsin is unique in that it both has a legal requirement that the plans cover birth control if they cover prescription drugs *and* has interpreted its state anti-discrimination law to require birth control coverage by employers.
- 20 A proposed amendment to the American Health Care Act gave states the option to block grant their Medicaid program and did not require family planning services and supplies as a required service as part of the block grant. Manager's Amendment (Policy Changes) Offered by M. _____ (March 20, 2017), available at https://rules.house.gov/sites/republicans.rules.house.gov/files/115/AMDT/policy-mngr_01.xml.pdf.

