



Secretary Xavier Becerra  
Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC

Secretary Janet Yellen  
Department of Treasury  
1500 Pennsylvania Ave NW  
Washington, DC

Secretary Marty Walsh  
Department of Labor  
200 Constitution Ave NW  
Washington, DC

Sept. 24, 2021

Dear Secretary Becerra, Secretary Yellen and Secretary Walsh,

The undersigned members of the Family Planning Coalition are pleased to write to you in regards to the Affordable Care Act's contraceptive coverage requirement. The Biden-Harris Administration has an incredible opportunity to improve people's access to affordable, quality contraceptive care. We expect this Administration to do everything in its power to meet that opportunity head-on.

With regard to the ACA's contraceptive coverage requirement, the Administration must do more than just rescind the Trump Administration's religious and moral exemptions and issue new rules. We expect the Administration to ensure that all privately insured people have comprehensive contraceptive coverage, meaning:

- all FDA-approved contraceptive drugs, devices and products, and all contraceptive services, counseling and information;
- up-to-date with the latest science and medical expertise;
- without coverage restrictions such as unnecessary prescriptions, quantity limits, restrictions on switching methods, or insurer red tape;
- usable at strong provider networks that meet consumers' needs.

Meeting this vision will require multiple federal agencies, under the coordination of the White House, to work together to enhance, standardize and enforce federal contraceptive coverage requirements across private health insurance plans and other health coverage within federal jurisdiction, such as Medicaid and the Children's Health Insurance Program. The Administration

should also apply these standards to all health coverage it administers (e.g., federal employee health plans, TRICARE, Veterans Affairs, people in federal incarceration or detention), to the extent it has the legal authority to do so, and robustly enforce them.

The Departments you lead have an important role to play in implementing, overseeing and enforcing the contraceptive coverage requirement to guarantee that people can access the birth control methods that work best for them. As of last year, [64.3 million women](#) had coverage of birth control without out-of-pocket costs, and [evidence to date](#) has shown that the coverage has decreased costs to women, increased contraceptive uptake and continuation, and improved health outcomes.

***Building on these important gains, the Departments must take steps to expand and solidify the contraceptive coverage requirement.*** Many people are still [unable to access their methods of choice](#), and inequities remain and have been [exacerbated](#) during the COVID pandemic. Over its four years in office, the prior administration took few, if any, steps to enforce the requirement, provide oversight of its implementation, or ensure that it reflected the most recent developments in contraceptive technologies or innovations in coverage and delivery of care. This has left plan enrollees to face hurdles and administrative roadblocks when trying to access their coverage. These roadblocks are even more pronounced for those already facing barriers to care, especially Black, Indigenous and other people of color, people with disabilities, and LGBTQI+ people. Addressing these problems would be in line with the goals of President Biden’s January 28 Executive Order on Strengthening Medicaid and the Affordable Care Act.

With this in mind, our organizations recommend that the Departments carry out the following administrative actions as soon as possible:

- *HHS/DOL/Treasury Tri-Department Action:* The Departments should build upon prior guidance issued during the Obama Administration that makes clear the obligations health plans have to provide coverage under the ACA’s contraceptive coverage requirement.
  - *All birth control methods must be covered.* The agencies should reiterate that all unique birth control methods appearing on the updated FDA Birth Control Guide should be covered without cost-sharing and that coverage of dual method use is required (e.g., fertility awareness–based app in conjunction with internal condoms).
  - *Costs associated with birth control must be covered.* Despite the fact that the HRSA recommendations and prior guidance are abundantly clear that plans must cover items, services and counseling associated with birth control without out-of-pocket costs, many people still do not have this coverage. The agencies should reiterate this requirement and provide technical assistance to plans to ensure that this critical aspect of coverage is a reality. Without coverage of costs associated with birth control—like IUD insertions and removals, follow-up appointments, and patient-centered counseling—people remain unable to access the care they need.

- *Plans must use a standard process to guarantee coverage of provider-recommended birth control.* When a specific birth control product is recommended by someone’s health care provider, plans are required to cover that product without cost-sharing per guidance in 2015 and 2016. Despite a recommendation to model this coverage process after Medicare Part D’s exceptions process, health plans have generally not implemented it at all. The agencies should issue a standard exceptions form and require plans to use it, thus ensuring people do not have gaps in coverage of their birth control. New York state law explicitly requires an exceptions process, and [the state’s Department of Financial Services has issued a standard exceptions form](#) that is used by plans it regulates. This form can serve as a model for the form the Departments will promulgate.
- *Coverage of over-the-counter preventive services, including birth control, should not require a prescription.* There are several FDA-approved contraceptive methods available over-the-counter (OTC) and multiple companies are working to bring more methods out from behind the pharmacy counter. Additional OTC products are included in the ACA’s preventive services requirement, including folic acid supplements, aspirin to prevent heart disease and tobacco cessation products. However, existing guidance allows health plans to require a prescription for OTC preventive services that, by definition, do not require one—an unnecessary hurdle to accessing this care. The Departments should make clear that plans must cover OTC preventive services without requiring a prescription, including OTC birth control methods, and provide technical assistance to plans as they implement this coverage.
- *Health Resources and Services Administration:*
  - *Continue to support the WPSI recommendations, which are guided by science and medical expertise, and adopt WPSI’s science- and medicine-based recommendations.* As the agency responsible under the ACA for the women’s preventive services recommendations underlying the federal contraceptive coverage guarantee, HRSA must ensure that the [recommendations](#) incorporate and are based on the latest science and medical expertise. That means continuing to support the Women’s Preventive Services Initiative (WPSI) and fully incorporating its recommendations, including its “implementation considerations.”
  - *Require coverage of birth control methods used by people of all genders.* There are two contraceptive methods on the FDA’s Birth Control Guide—external condoms and vasectomy—that have been excluded from the contraceptive coverage requirement, and the Departments must correct that error. First, coverage of external condoms and vasectomy is clearly necessary to meet the needs of transgender women. The Departments have long recognized that coverage of preventive services must reflect the services an individual needs

regardless of their sex assigned at birth or gender in insurance records. Second, coverage of those two methods for people of all genders would clearly benefit women's health, regardless of whether they are the ones who are technically "using" the method. HRSA has broad discretion to define what constitutes preventive care for women for the purposes of coverage without cost-sharing. Preventive services can be currently designated for women even if they primarily benefit another person's health (e.g., breastfeeding support). It is a reasonable interpretation under the statute to include all contraceptive and sterilization services that have clear preventive benefits for women, even if they necessitate the involvement of a male partner. Moreover, this would bring private coverage into better alignment with Medicaid, which in many states already covers external condoms for patients of all genders. The Administration should update existing guidance, including [IRS Notice 2018-12](#), to reflect public health research and facilitate access to external condoms and vasectomy.

- *Food and Drug Administration:* The federal contraceptive coverage guarantee, as administered by HRSA, refers to the [FDA's Birth Control Guide](#) for the list of specific methods included. We recognize that the Guide was not originally designed for the purpose of determining coverage. However, given that it currently serves this crucial purpose in addition to being a public education tool, it must be updated whenever a new method is approved. Currently, the Guide excludes several recently approved methods that are distinct from those currently in the Guide, including a contraceptive gel, a contraceptive ring that lasts a full year, and an FDA-approved contraceptive mobile app. FDA must update its list and create a process to ensure that whenever the agency approves a new method, the chart is updated and other federal agencies (including HRSA and those that run federal health plans) are notified immediately. The House of Representatives has also called for the updating of the FDA's Birth Control Guide in the FY2022 House Appropriations Report.
- *HHS/DOL/Treasury Tri-Department Education campaign:* The Departments must undertake a public education campaign about the ACA's contraceptive coverage requirement to make sure that consumers know what their rights are under the law, health care providers have all the information they need to counsel their patients on contraceptive options and correctly bill for those services, and enforcement agencies have the latest guidance from the Departments to properly complete their duties. HHS in particular should ensure that the updated FDA Birth Control Guide—providing information about each unique birth control method—is disseminated widely to the public as part of this campaign. Although the ACA's preventive services requirement has been in effect for over a decade, many individuals still have little understanding of how to use their health coverage to access preventive services at no cost. Thus, the Departments should focus some portion of the campaign on health literacy for preventive services (e.g., educating the public on the cost savings for using in-network providers, including

pharmacies, to access preventive services).

- *Cross-agency oversight and enforcement:* It is imperative that each Department and agency tasked with oversight or enforcement of the above requirements prioritize them. However, oversight and enforcement is dispersed across HHS, Labor and Treasury, as well as the Office of Personnel Management and numerous state-level agencies. A coordinated effort would ensure that issuers are complying across insurance markets and all government agencies are giving issuers consistent guidance. An interagency workgroup should be established to monitor the progress of each Department and agency tasked with oversight or enforcement of the above requirements. This workgroup can also play a broader coordinating role, [as has been recommended](#), to align policies and activities across federal agencies with a role in sexual and reproductive health and wellbeing, and coordinating with the White House policy offices. For example, the workgroup could include agencies with responsibility over other federally controlled health coverage, such as Medicaid, CHIP, TRICARE, Veterans Affairs and federal employees health benefits, to help them align that coverage with the ACA requirements, to the extent that they can within their legal authority.

We appreciate your time and attention to women's health priorities, including the ACA's contraceptive coverage requirement. We would like to continue this conversation with you in a virtual meeting at your convenience. Please direct questions or communication to Mara Gandal-Powers at the National Women's Law Center ([mgandal-powers@nwlc.org](mailto:mgandal-powers@nwlc.org)), who can coordinate on behalf of our groups.

Sincerely,

American Academy of Pediatrics  
American Atheists  
American College of Nurse-Midwives  
American College of Obstetricians and Gynecologists  
American Society for Reproductive Medicine (ASRM)  
Catholics for Choice  
Center for American Progress  
Center for Reproductive Rights  
Coalition to Expand Contraceptive Access  
Families USA  
Guttmacher Institute  
Healthy Teen Network  
Ibis Reproductive Health  
Jacobs Institute of Women's Health  
Medical Students for Choice  
NARAL Pro-Choice America

National Association of Nurse Practitioners in Women's Health  
National Family Planning & Reproductive Health Association  
National Health Law Program  
National Latina Institute for Reproductive Justice  
National Medical Association  
National Organization for Women  
National Partnership for Women & Families  
National Women's Health Network  
National Women's Law Center  
Nurses for Sexual and Reproductive Health  
Physicians for Reproductive Health  
Planned Parenthood Federation of America  
Population Institute  
Power to Decide  
Religious Coalition for Reproductive Choice  
Reproductive Health Access Project  
SIECUS: Sex Ed for Social Change  
Society for Adolescent Health and Medicine  
URGE: Unite for Reproductive & Gender Equity

Cc:

Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services  
Jennifer Klein, Co-chair, White House Gender Policy Council  
Jessica Marcella, Deputy Assistant Secretary for Population Affairs  
Dr. Ellen Montz, Deputy Administrator and Director, Center for Consumer Information & Insurance Oversight  
Shilpa Phadke, Deputy Director, White House Gender Policy Council  
Melanie Fontes Rainer, Counselor to the Secretary