

FTC/DOJ Health Care Hearing on Mandated Benefits: Contraceptive Coverage

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by Rachel Laser, Senior Counsel
National Women's Law Center

Why Contraceptive Coverage Is Crucial Component of Women's Health Insurance

- Pregnancy prevention
 - Physical, emotional, economic and social consequences of unwanted pregnancies
 - Prescription contraceptives are the most effective form of birth control
 - For some women, certain types of contraception are safer than others
 - Five FDA reversible methods are: oral; barrier; injections (Depo); implants (Norplant); IUDs.
- Medical reasons other than pregnancy prevention, i.e. dysmenorrhea, pre-menstrual syndrome and ovarian cancer prevention.

Insurance Coverage of Contraceptives Is a Matter of Equity for Women

- Pregnancy is a condition unique to women
- Only forms of prescription contraception available today are for women
- Failure to cover contraceptives forces women to bear higher health costs
- Failure to cover contraceptives exposes women to the unique physical, economic and emotional consequences of unintended pregnancy

Federal Law Requires Employers Who Cover Prescription Drugs to Include Prescription Contraception

- Title VII, as amended by the PDA '78
- EEOC ruling (2000) and Erickson v. Bartell Drug Co. (2001; appeal settled this year)
- FEHBP (FY 1999 Treasury-Postal Appropriations Bill)

Contraceptive Coverage is Part of Basic Preventive Health Care for Women

- Erickson judge and EEOC compared to other prevention features of health plans
- Fits into trend to cover preventative care in health insurance
 - Washington Business Group on Health, an organization that represents 160 national and multinational employers, has concluded: *“The era of providing insurance coverage only for illnesses or injuries . . . has largely passed, as managed care has helped to further the concept and practice of managed health and productivity through managing the total cost of disease rather than just the cost of medical treatment.”*
“Contraception . . . falls squarely within the definition of basic preventive health care for women.”

Contraceptive Coverage Saves Insurers and Employers Money

- Cost is not a defense to discrimination (EEOC and Erickson decisions)
- The savings outweigh the costs of contraceptive coverage
 - Minimal cost— A 1998 AGI study (“Cost to Employer Health Plans of Covering Contraceptives”) projected a premium increase of \$1.43 per employee per month.
 - Savings to employers in fewer pregnancies and deliveries and healthier newborns-- and indirect savings of increased productivity of workers and less leave time outweigh the cost. (William M. Mercer Co., 2000 “Women’s Health Care Issues: Contraception as a Covered Benefit”)
 - Washington Business Group on Health has estimated that *failing to provide contraceptive coverage could cost an employer at least 15% more than providing this coverage*. This report concluded, “For health and financial reasons, employers concerned with providing both comprehensive and cost-effective health benefits ought to consider ensuring that they are covering the full range of contraceptive options.”
- No increase in premiums in the FEHBP program
 - Medicaid—net \$2.00 savings

History of Contraceptive Coverage

- Surveys in 1990's revealed that prescription contraceptives were frequently excluded from health plans.
 - AGI survey from 1990s found that roughly half of typical large-group plans do not routinely cover *any* contraceptive method at all; only 15% covered *all five* FDA-approved reversible methods.
 - Before Congress mandated contraceptive coverage for federal employees (FY '99), 81% of plans under FEHBP did not cover all reversible forms of contraception and 10% did not cover any of these methods.

Why Has Contraceptive Coverage Been Excluded?

- Less prevention focus in health insurance.
- No one complained.
- Women paid out of pocket; costs not prohibitive for many women.
- History of sex discrimination in health care
 - Lack of research testing drugs on women
 - Lack of maternity benefits

New Momentum for Prescription Contraceptive Coverage

- 1990s Surveys
- **Viagra**

The Public Supports Requiring Contraceptive Coverage

- 2001 poll found that 71% of Americans support laws requiring health insurance plans to cover prescription contraception.
- 1999 Kaiser Family Foundation poll found that 75% of Americans believe contraception should be covered by insurers even if such coverage added to the cost

Current Status of Contraceptive Coverage

- 2002 Kaiser Family Foundation survey: 99% covered workers have coverage for prescription drugs, but only 78% have coverage for oral contraceptives.
- Recent clarification of federal anti-discrimination law is beginning to change policy voluntarily and based on lawsuits.
- 25 states require prescription contraceptive coverage.
 - Does not cover self-funded plans, which are regulated solely by the federal government; a large number of all workers are covered by self-funded plans.
- Federal EPICCC has not passed (covers self-funded plans; small companies not covered by Title VII; others)
- Many employees still do not receive this benefit because companies and insurance companies are not choosing to provide it, and/or the relevant federal and state laws do not reach them or are not being enforced.

Why Is the Public Preference for Requiring Contraceptive Coverage Not Adequately Reflected in the Marketplace?

- In the context of self-funded plans, women have not traditionally been at the top of the hierarchy in companies (esp. lower-income women who are harmed the most)
- In the context of state mandates, women are still disproportionately represented in state legislatures
- Privacy concerns/stigma
- Minimal costs

Prescription Contraception Must be Covered

- Federal anti-discrimination law requires it
- Critical public policy
 - Equity (Crucial component of women's health and basic preventive health care for women; sometimes treatment of disease)
 - Reduces unintended pregnancies (including maternal mortality and morbidity)
 - Promotes healthy babies
- Saves money
- Benefits not adequately recognized by the market