



Illinois Insurance Facts

Illinois Department of Insurance

Birth Control Coverage for Women

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Updated

Note: This information was developed to provide consumers with general information and guidance about insurance coverages and laws. It is not intended to provide a formal, definitive description or interpretation of Department policy. For specific Department policy on any issue, regulated entities (Insurance industry) and interested parties should contact the Department.

The Federal Patient Protection and Affordable Care Act (ACA) requires health insurance plans subject to its birth control provisions to cover FDA approved birth control methods without any out-of-pocket cost to you. For plans not subject to the ACA birth control provisions, Illinois law requires that birth control coverage be provided in the same manner as similar services under the policy. This fact sheet will provide a summary of Federal and Illinois statutes that impact health insurance coverage for contraceptives.

Note: *Student health plans are impacted by the Federal ACA with respect to the requirement for birth control coverage for women as discussed in this fact sheet.*

Federal Law - ACA

Section 2713 of the Federal ACA requires all new group and individual health insurance plans and policies to provide coverage of preventive health services without cost-sharing (subject to reasonable medical management technique) when they are delivered by a network provider. This means these preventative health services are paid by the insurer without any additional out-of-pocket cost to you other than the premiums that you have already paid for coverage. These preventive health services include all FDA approved contraceptive methods and patient education and counseling, as prescribed by a provider, for all women with reproductive capacity.

This provision of the ACA does not apply to "grandfathered" plans or "transitional" plans. A "grandfathered" plan is a plan that existed on March 23, 2010. A "transitional" plan is a plan that was in effect on October 1, 2013 and has been renewed and which Illinois will allow to be renewed through policy years beginning on or before October 1, 2015.

Access to FDA-Approved Contraceptive Methods

Women have access to all FDA approved contraceptive methods including but not limited to Barrier Methods, Hormonal Methods and implanted devices, as well as patient education and counseling, as prescribed by a health care provider. A "method" may be different than a specific product or brand.

Additional information on the methods can be found at:

<http://www.fda.gov/ForConsumers/ByAudience/ForWomen/FreePublications/ucm313215.htm>

Each method contains different types of drugs and/or biologics. For example, within the "Hormonal Method" the FDA lists the following drugs/biologics: (1) oral contraceptives; (2) patch; (3) vaginal contraceptive ring and (4) shot/injection. The Health Resources Services Administration (HRSA) guidelines require coverage for a variety of contraceptives *within each method*.

The law does *not* require coverage of every FDA-approved contraceptive with no cost-sharing. For instance, plans and issuers may cover a generic drug without cost-sharing and impose cost-sharing for equivalent branded drugs. A plan or issuer must accommodate any individual for whom the generic drug (or a brand name drug) would be medically inappropriate as determined by the individual's health care provider by having a mechanism for waiving the otherwise applicable cost-sharing for the branded or non-preferred brand version.

The ACA Does Not Apply to Excepted Benefits

The Federal ACA provisions regarding birth control do not apply to Excepted Benefits as defined in 42 U.S.C. § 300gg-91 and 45 C.F.R. § 148.220. Excepted Benefits include but are not limited to:

- Short-term limited duration insurance;
- Accident-only or disability income insurance;
- Liability insurance, including general liability and auto liability and auto medical payment;
- Worker's compensation or similar insurance;
- Credit-only insurance;
- Coverage for on-site medical clinics;
- Long-term care, nursing home care, home health care and community-based care;
- Medicare supplements;
- Specified disease or illness;
- Limited dental and vision;
- Hospital indemnity or other fixed indemnity insurance that pays a fixed dollar amount per time period (for example, \$100/day) regardless of the amount of expenses incurred

Exemptions for Religious-Affiliated Organizations

Some religions or religious organizations object to contraceptives or to certain contraceptives in particular. Religious-affiliated entities may be exempt under federal law from the ACA's requirements to pay for contraceptives. A religious-affiliated employer may have differing obligations in regards to paying for employee contraceptives depending upon what type of organization it is.

Religious Employers

The Federal guidelines concerning contraceptive methods and counseling do not apply to women who are participants or beneficiaries in group health plans sponsored by religious employers. A religious employer is defined as an employer that is organized and operates as a non-profit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. "Religious Employers" primarily include churches and houses of worship.

Religious-Affiliated Non-Profits

Some religious-affiliated organizations may not be exempted from contraceptive coverage under the IRS definition of "Religious Employer." However, Federal regulations provide that an "accommodation" may be provided to them whereby they do not have to contract for, pay for, or refer contraceptive coverage to which they object on religious grounds. Eligible organizations include those that (1) oppose providing coverage for some or all of the required contraceptive services on account of religious objections, (2) are organized and operate as nonprofit entities, (3) hold themselves out as religious organizations, **and** (4) self-certify that they meet the three previous conditions.

The self-certification form must be maintained on file with the eligible organization for at least 6 years

following the end of the last applicable plan year, and must be made available for examination upon request. The self-certification form is available here:

<http://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf>.

Under the accommodation, eligible organizations must **either** a) provide their self-certification to the health insurance issuer for group plans or to the third-party administrator for self-insured plans, **or** b) provide notice of their religious objection to the Secretary of Health and Human Services. Either action will trigger an obligation on the part of the *insurer or third-party administrator to provide or arrange for separate payments* for the objectionable products and procedures (i.e., the insurer or third-party administrator, and not the objecting employer, foots the bill to provide enrollees contraceptive coverage in compliance with the ACA).

Self-Funded Plans of Closely-Held Corporations with Religious Objections

On June 30, 2014, the United States Supreme Court in *Burwell v. Hobby Lobby* ruled that, under the United States Religious Freedom Restoration Act, a closely held corporation cannot be required to provide a particular contraceptive drug or device if doing so places a substantial burden on the owners' religious beliefs. The particular contraceptives in this case to which the employers objected to providing under their self-funded health plans were Plan B and Ella "morning after" pills, as well as the Mirena and Paraguard IUD's. These four FDA-approved contraceptives may prevent a fertilized egg from developing any further by inhibiting its attachment to the uterus. The other 16 FDA-approved contraceptives in existence work by preventing an egg from being fertilized, which did not raise religious objections from the employers in *Hobby Lobby*.

As of October 2014, Federal regulations are still being developed to allow closely-held for-profit corporations to self-certify as eligible organizations with religious objections.

Frequently Asked Questions About the Federal Law

The following are frequently asked questions regarding the Federal law and birth control mandates.

Q1) My qualified health plan (QHP) has a \$250.00 deductible for office visits and procedures performed in the office. Does this deductible apply to my office visit to consult my physician about birth control? Does it apply to the office procedures such as an insertion of an intrauterine device (IUD)?

A1) If the primary purpose of the office visit is for something other than "preventative services," then the visit may be subject to a co-pay or require payment of a deductible (preventative services include such things as ordinary well-care and contraceptive counseling, not sick visits). For example, if you visit your physician for the treatment of an illness such as a urinary tract infection, and birth control is prescribed during that visit, the office visit would be subject to the deductible.

However, the actual birth control method prescribed would still be paid for by the insurer with no cost sharing or additional cost to you. If you visit your physician for an annual well woman exam and birth control guidance, both the office visit and the birth control would be paid with no cost sharing to you.

Q2) Are condoms covered under the law?

A2) No. Contraceptive methods that are generally available over the counter are only included if the method is both FDA approved and prescribed for a woman by her health care provider. Federal law does not require contraception for men. (See 78 FR 8456, 8458, footnote 3 which provides that HRSA guidelines "exclude services relating to a man's reproductive capacity, such as vasectomies and

condoms.")

Q3) Will I have to pay anything for my birth control under my insurance coverage?

A3) There are brands and methods of birth control which will be covered without co-pays. Insurance companies are allowed to limit drugs and devices to some generic options which will not require a co-payment. Other birth control options such as brand name drugs may have copayments which will be required to be paid.

Illinois Law

Effective January 1, 2004, Illinois law 215 ILCS 5/356z.4 requires all individual and group insurance and health maintenance organization (HMO) policies that provide coverage for outpatient services and outpatient prescription drugs or devices, also to provide coverage for all outpatient contraceptive drugs or devices approved by the FDA. Deductibles and coinsurance under that law are the same as those imposed for any other outpatient drug or device under the policy.

The ACA was enacted in 2010. As Federal law, it trumps ("preempts") state law regarding insurance coverage of contraceptives. However, Illinois law still applies to health insurance plans that are not covered by the ACA. These include:

- fully insured grandfathered health plans, which are plans that were in effect on March 23, 2010;
- fully insured transitional plans, which are plans that were in effect on October 1, 2013 and which Illinois will allow to be renewed through policy years beginning on or before October 1, 2015;
- fully insured Marketplace health plans in instances when a contraceptive method is approved by the FDA but not part of the formulary of the issuer.

In these instances, deductibles, coinsurance and copayments are the same as those imposed for any other outpatient drug or device under the policy.

Pursuant to 215 ILCS 5/356z.16, the state law does not apply to:

- Short-term travel insurance;
- Disability income insurance;
- Long-term care insurance;
- Accident-only insurance;
- Limited or specified disease insurance;
- Blanket policies.

The following are frequently asked questions regarding the state law. These questions apply to fully insured Illinois policies not covered by the ACA, which are grandfathered plans, transitional plans, and Marketplace plans in Illinois as described above.

Q1) My plan has a \$35.00 copayment for prescription drugs. My birth control pills cost \$32.00 so my plan does not pay anything. Is that acceptable under the law?

A1) Yes. The law requires the plan to pay for birth control at the same benefit level as similar services under the policy. If your prescription drug copayment is \$35.00, then the copayment applies to the birth control pills.

Q2) My major medical policy has a \$250.00 deductible for office visits and procedures performed in the office. Does this deductible apply to my office visit to consult my physician about birth control? Does it apply to office procedures such as insertion of an IUD (Intrauterine Device)?

A2) Yes. The deductible that applies to office visits and procedures also applies when those services are necessary for purposes of birth control.

Q3) Do contraceptive drugs only need to be covered if the insurance policy covers both outpatient services and outpatient prescription drugs?

A3) The Illinois law only applies to insurance plans that provide coverage for both types of services in order for birth control to be covered.

Q4) Will I have to pay anything for my birth control under my insurance coverage?

A4) There are brands and methods of birth control which will be covered without co-payment. Insurance companies are allowed to limit drugs and devices to some generic options which will not require a copayment. Other birth control options such as brand name drugs may have copayments which will be required to be paid.

Related Information

215 ILCS 5/356z.4 can be found at Illinois Compiled Statutes 215, Article XX, Accident and Health Insurance (scroll to approximately 1/3 of the way down the page or use find and search for "356z.4"), or by clicking on 215 ILCS 5/356z.4.

Information regarding the Affordable Care Act can be found at <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Prevention.html> and at: <http://www.dol.gov/ebsa/healthreform/regulations/coverageofpreventiveservices.html>.

For More Information

Call our Office of Consumer Health
Insurance toll free at (877) 527-9431
or visit us on our website at
<http://insurance.illinois.gov>