



# Contraception & Emergency Contraception

## The constitutional right to contraceptives

In 1965, the Supreme Court ruled that the Constitution prohibits government restrictions on married couples' access to contraceptives.<sup>1</sup> This right was extended to unmarried individuals in 1972<sup>2</sup> and to minors in 1977.<sup>3</sup>

## Contraceptive coverage by private health insurance

Many health insurance plans do not cover contraception; only 15% of indemnity insurance plans and 39% of HMO plans cover all FDA-approved methods of reversible contraception.<sup>4</sup>

- This unequal prescription coverage contributes to women of reproductive age spending about 68% more in out-of-pocket healthcare costs than men.<sup>5</sup>
- Currently, 27 states require insurers that cover prescription drugs to cover FDA-approved contraceptive drugs and devices, although 18 of these states exempt certain employers from these requirements.<sup>6</sup>

## Contraceptive coverage by public forms of health insurance

- Medicaid is the largest source of funding for subsidized family planning services in the U.S.<sup>7</sup> Family planning, including prescriptions for contraception and sterilization procedures, is one of the few medical services that federal law requires state Medicaid programs to cover.<sup>8</sup>
- Title X helps fund family planning programs and clinics. In 2004 alone, Title X-funded clinics provided contraception services to 4.2 million women.<sup>9</sup> Since 1980, however, Title X funding has decreased 61% when accounting for inflation.<sup>10</sup>

## Contraceptive equity

Contraceptive equity is parity in insurance coverage between FDA-approved contraception and other prescription medications. Reproductive rights advocates have pursued legislation and litigation in attempts to compel insurance providers with drug coverage to also cover contraception.

- Advocates have relied on Title VII (prohibiting employment discrimination) and *Erickson v. Bartell*<sup>11</sup> to increase contraceptive coverage under a theory of equity.
- Students have successfully argued that Title IX requires full contraceptive coverage at federally-funded universities.

## Coercive Uses of Contraception

- As recently as the 1990s, judges conditioned probation sentences for women accused of drug use or child abuse on their mandatory use of long-term contraception. The judiciary used long-term contraceptive methods which do not rely on repeated self-administration, such as Norplant and Depo-Provera, to prevent women deemed unfit to parent from reproducing.<sup>12</sup>
- Project Prevention, formerly known as KRACK, founded in California in 1997, offers \$300 to those who are addicted to drugs or alcoholics in exchange for proof of sterilization or long-term birth control.<sup>13</sup> Project Prevention has paid 3,000 women and 29 men in 39 states and Washington, D.C.<sup>14</sup>

## Emergency Contraception (EC)

Emergency contraception is a hormonal method of back-up birth control that can be used after sexual intercourse to prevent pregnancy by averting the release of an egg, the fertilization of an egg, or the implantation of a fertilized egg onto the uterine wall.<sup>15</sup>

- 95% of women who use some form of EC do not become pregnant.<sup>16</sup> Plan B (progestin-only) birth control may be up to 14% more effective than combination forms of hormonal EC (progestin and estrogen).<sup>17</sup>

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- A copper IUD (intrauterine device) can be used both as regular birth control and as emergency contraception, and is more effective than hormonal EC. Studies show an IUD can reduce the risk of pregnancy by 99% if inserted within five days of intercourse.<sup>18</sup>
- Higher doses of regular birth control pills have been proven safe for use as emergency contraception. This was the most common form of EC for many years. Nearly two dozen different brands of pills can be used as EC, with no long-term or serious side effects.<sup>19</sup>
- Clinical trials have suggested that the antiprogestins mifepristone and CDB-2914 may be more effective than Plan B as emergency contraception.<sup>20</sup>
- Plan B is sold as two 0.75mg levonorgestrel pills. It is most effective if the first tablet is taken within 72 hours of intercourse,<sup>21</sup> but it must be taken within 120 hours (five days) to have any effect.<sup>22</sup> The second tablet is taken 12 hours later.<sup>23</sup>
  - EC is not a medication abortion. If a pregnant woman takes EC it will have no effect on her existing pregnancy.<sup>24</sup>

## Availability of Plan B

- On August 24, 2006, Plan B was approved by the FDA for sale without a prescription to men and women age 18 and over.<sup>25</sup> Plan B is the only brand of FDA-approved EC available in the U.S.<sup>26</sup> The FDA approved one other brand, Previn, which went off the market in 2004.<sup>27</sup>
  - On March 23, 2009, a federal district court ordered the FDA to permit Plan B to be available to women over 17 without a prescription under the same conditions it is currently available to women over 18.<sup>28</sup> The FDA has declined to appeal the decision and is currently in the process of complying with the order.
  - There is no medical reason to prevent women under 17 from obtaining EC without a prescription. Plan B is safe and effective for all women, and a recent study has shown that the availability of EC does not increase sexual risk-taking.<sup>29</sup>
- In order to obtain Plan B, the purchaser may be required to show proof of age. Age can be proven by I.D. issued by any government (not just the United States), valid passports, employment authorizations, alien identification cards, or school I.D.s with a photo and birth date, among others.<sup>30</sup> The I.D. requirement poses a particular barrier for immigrants.<sup>31</sup>
  - If the woman requesting EC does not have proper identification, a pharmacy will usually require a prescription. Some pharmacies in nine states participate in a "Pharmacy Access" program, allowing pharmacists to determine if Plan B is appropriate for the patient. If medically appropriate, the pharmacist may provide Plan B to the woman without I.D.<sup>32</sup>
- Plan B is available only through licensed drug wholesalers, pharmacies, and at many family planning clinics with licensed healthcare providers. It is not available at convenience stores or non-pharmacy retail operations that may sell other family planning devices such as condoms.<sup>33</sup> All major pharmacy chains carry Plan B.<sup>34</sup>
- Plan B may cost \$30 to \$60 at pharmacies. Clinics like Planned Parenthood often use a sliding scale pricing method to make Plan B accessible to everyone.<sup>35</sup>

## Barriers to Accessing Plan B

- Doctors rarely provide EC information, so many women may not know of its availability.<sup>36</sup>
  - Princeton University and the Association of Reproductive Health Professionals have created the confidential, toll-free Emergency Contraception Hotline (1-888-NOT-2-LATE) and Emergency Contraception Website ([www.not-2-late.com](http://www.not-2-late.com)) to make information about emergency contraception more readily available.<sup>37</sup>
- The Department of Justice's 2004 National Protocol for Sexual Assault Medical Forensic Examinations does not mention emergency contraception.<sup>38</sup>



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- Complaints from conservative members of Congress led the Department of Defense Pharmacy and Therapeutics Committee to remove Plan B from the list of medications that its Medical Treatment Facilities must stock. This makes access uncertain and dependent on pharmacists' discretion for thousands of women serving overseas.<sup>39</sup>
- The committee on ethics for the American College of Obstetricians and Gynecologists stated in 2007 that providers do have a right to refuse administration of reproductive health services. However, physicians must balance moral concerns with other interests such as the health and well-being of their patient, which the ACOG calls "paramount."<sup>40</sup>

## Pharmacist Refusals

Increasingly, pharmacists who personally object to the use of contraceptives are refusing to serve women seeking to fill prescriptions for contraceptives or purchase EC.

- There have been reports of pharmacist refusals in at least 24 states.<sup>41</sup> Pharmacist refusals especially burden rural and low-income women who may struggle to travel to a pharmacy willing to meet their needs.
- Some states limit or prohibit refusals:
  - Seven states explicitly require that valid prescriptions be filled.
  - Pharmacy boards in seven states have issued policies that prohibit pharmacists from obstructing patient access to medication or refusing to transfer the prescriptions to another pharmacy.
  - Thus far in the 2009 legislative session, 12 states have considered 19 bills to prohibit or limit refusals.<sup>42</sup>
- However, four states (AR, GA, MS, SD) have laws or regulations that permit pharmacists to deny women contraception based on pharmacists' personal beliefs.<sup>43</sup>
- In 2007 legislators in both the House of Representatives and the Senate introduced the Access to Birth Control Act which, if passed, would require pharmacies to provide contraceptives, including over-the-counter EC, to women without delay.<sup>44</sup>

<sup>1</sup> *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>2</sup> *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

<sup>3</sup> *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977).

<sup>4</sup> *Ipas, Mapping Our Rights: Navigating Discrimination Against Women, Men, and Families*, <http://www.mappingourrights.org/> (click on "Laws & Policies," then "Contraceptive equity in private insurance coverage") (last visited June 9, 2009).

<sup>5</sup> *Id.*

<sup>6</sup> GUTTMACHER INSTITUTE, STATE POLICIES IN BRIEF: INSURANCE COVERAGE OF CONTRACEPTIVES 1 (2009), available at [http://www.guttmacher.org/statecenter/spibs/spib\\_ICC.pdf](http://www.guttmacher.org/statecenter/spibs/spib_ICC.pdf).

<sup>7</sup> Rachel Benson Gold & Cory L. Richards, Medicaid Support for Family Planning in the Managed Care Era, BNET Business Network, Jan. 1, 2001, available at [http://findarticles.com/p/articles/mi\\_m0KCV/is\\_2001\\_Jan\\_1/ai\\_n18612649](http://findarticles.com/p/articles/mi_m0KCV/is_2001_Jan_1/ai_n18612649).

<sup>8</sup> *Id.*

<sup>9</sup> ADAM SONFIELD ET AL., COST PRESSURES ON TITLE X FAMILY PLANNING GRANTEEES, FY 2001-2004, at 2, available at <http://www.guttmacher.org/pubs/2006/08/01/CPTX.pdf> (last visited June 9, 2009).

<sup>10</sup> Rachel Benson Gold, Stronger Together: Medicaid, Title X Bring Different Strengths to Family Planning Effort, 10 GUTTMACHER POL'Y REV. 2, available at <http://guttmacher.org/pubs/gpr/10/2/gpr100213.html> (last visited June 9, 2009).

<sup>11</sup> 141 F. Supp. 2d 1266 (W.D. Wash. 2001) (holding failure to cover contraceptives in healthcare constitutes employment discrimination).

<sup>12</sup> American Civil Liberties Union, *Norplant: A New Contraceptive with the Potential for Abuse*, <http://www.aclu.org/reproductiverights/contraception/16528res19940131.html> (last visited July 14, 2008).

<sup>13</sup> Project Prevention, <http://projectprevention.org/> (last visited June 9, 2009).

<sup>14</sup> *Id.*

<sup>15</sup> Plan B (Levonorgestrel), Frequently Asked Questions, <http://www.go2planb.com/ForConsumers/TakingPlanB/faqs.aspx#AL1> (last visited June 11, 2009).



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- <sup>17</sup> The Emergency Contraception Website, Effectiveness, <http://ec.princeton.edu/questions/eceffect.html> (last visited June 11, 2009).
- <sup>18</sup> The Emergency Contraception Website, Copper-T IUD as Emergency Contraception, <http://ec.princeton.edu/info/eciud.html> (last visited June 11, 2009).
- <sup>19</sup> The Emergency Contraception Website, *supra* note 17.
- <sup>20</sup> JAMES TRUSSEL & ELIZABETH G. RAYMOND, EMERGENCY CONTRACEPTION: A LAST CHANCE TO PREVENT UNWANTED PREGNANCY 2 (2008), available at <http://ec.princeton.edu/questions/ec-review.pdf>.
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- <sup>22</sup> Planned Parenthood, Emergency Contraception (Morning After Pill), <http://www.plannedparenthood.org/health-topics/emergency-contraception-morning-after-pill-4363.htm#use> (last visited June 12, 2009).
- <sup>23</sup> Plan B: FAQs, *supra* note 15.
- <sup>24</sup> *Id.*
- <sup>25</sup> PHARMACY ACCESS PARTNERSHIP, WHAT CUSTOMERS NEED TO KNOW ABOUT OBTAINING PLAN B OVER-THE-COUNTER IN PHARMACIES 1 (2007), available at <http://www.pharmacyaccess.org/pdfs/ConsumerFAQsOTC.pdf>.
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- <sup>28</sup> *Tummino v. Torti*, 603 F.Supp. 2d 519, 550 (E.D.N.Y. 2009).
- <sup>29</sup> *Id.*
- <sup>30</sup> The Emergency Contraception Website, How to Get Emergency Contraception, <http://ec.princeton.edu/questions/ID.html> (last visited June 11, 2009).
- <sup>31</sup> Angela Hooton, FDA Allows Emergency Contraception to Be Sold Without a Prescription, *CENT. FOR AM. PROGRESS*, Aug. 28, 2006, available at [http://www.americanprogress.org/issues/2006/08/planB\\_column.html](http://www.americanprogress.org/issues/2006/08/planB_column.html).
- <sup>32</sup> Pharmacy Access Partnership, *supra* note 25.
- <sup>33</sup> Emergency Contraception, Getting EC, <http://www.ec-help.org/GettingEC.htm> (mouse over "Where Can I Get EC?") (last visited June 11, 2009).
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- <sup>36</sup> Trussel, *supra* note 20, at 8.
- <sup>37</sup> *Id.*
- <sup>38</sup> *Id.*
- <sup>39</sup> *Id.*
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- <sup>43</sup> *Id.*
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