



# Contraception

## Do women have a constitutional right to access contraceptives?

Yes. In 1965, the Supreme Court ruled that the Constitution prohibits government restrictions on married couples' access to contraceptives (*Griswold v. Connecticut*, 381 U.S. 479 (1965)). This right was extended to unmarried individuals in 1972 (*Eisenstadt v. Baird*, 405 U.S. 438 (1972)) and to minors in 1977 (*Carey v. Population Services International*, 431 U.S. 678 (1977)).

## Is contraception covered by private health insurance?

Unfortunately, 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>1</sup>

- This unequal prescription coverage contributes to women of reproductive age spending about 68% more in out-of-pocket healthcare costs than men.<sup>2</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>3</sup>

## Is contraception covered by public forms of health insurance?

- Employees of the federal government receive contraceptive coverage in all health insurance plans that cover other prescription drugs.
- Medicaid is the largest source of funding for subsidized family planning services in the U.S.<sup>4</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>5</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>6</sup> Since 1980, however, Title X funding has decreased 61%, when accounting for inflation.<sup>7</sup>

## What is 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*, 141 F.Supp.2d 1266 (W.D.Wash., 2001) (holding failure to cover contraceptives in healthcare constitutes employment discrimination), to increase healthcare coverage.
- Students have successfully argued that Title IX requires full contraceptive coverage at federally-funded universities.

<sup>1</sup> Ipas, Mapping Our Rights: Navigating Discrimination Against Women, Men, and Families, [http://www.ipas.org/mapping/final\\_map.asp](http://www.ipas.org/mapping/final_map.asp) (last visited July 29, 2008).

<sup>2</sup> Id.

<sup>3</sup> Guttmacher Institute, State Policies in Brief as of July 1, 2008, Insurance Coverage of Contraceptives, [http://www.guttmacher.org/statecenter/spibs/spib\\_ICC.pdf](http://www.guttmacher.org/statecenter/spibs/spib_ICC.pdf) (last visited July 14, 2008).

<sup>4</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) (last visited July 14, 2008).

<sup>5</sup> Id.

<sup>6</sup> Adam Sonfield, Rachel Benson Gold, Jennifer J. Frost, Casey Alrich, Cost Pressures on Title X Family Planning Grantees, FY 2001-2004, Guttmacher Institute, <http://www.guttmacher.org/pubs/2006/08/01/CPTX.pdf> (last visited July 14, 2008).

<sup>7</sup> Rachel Benson Gold, Stronger Together: Medicaid, Title X Bring Different Strengths to Family Planning Effort, 10 GUTTMACHER POLICY REVIEW 2, available at <http://guttmacher.org/pubs/gpr/10/2/gpr100213.html> (last visited July 14, 2008).

# Contraception

## 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>8</sup>

- EC is 95% effective when taken within 120 hours of sex.<sup>9</sup>
- EC is not medication abortion. If a pregnant woman takes EC, it will have no effect on her existing pregnancy.
- In August 2006, the FDA approved Plan B (the brand name for EC) for over-the-counter sale to women and men age 18 and older. Women under 18 and those lacking a government-issued I.D. must obtain a prescription for Plan B.

\*For more information, see enclosed fact sheet about Emergency Contraception.

## Pharmacist Refusals of Contraception

Women seeking to fill prescriptions for contraception or purchase emergency contraception over-the-counter are increasingly being refused service by pharmacists who personally object to their use of contraception. There have been reports of pharmacist refusals in many states, including AZ, CA, GA, IL, LA, MA, MN, MO, MT, NH, NY, NC, OH, OR, RI, TN, TX, WA, WV, WI.<sup>10</sup> Pharmacist refusals especially burden rural and low-income women who may struggle to travel to a pharmacy willing to meet their needs.

State and federal legislators have worked to protect women's access to needed contraception:<sup>11</sup>

- Seven states—CA, IL, ME, MA, NV, NJ, WA—explicitly require pharmacists or pharmacies to ensure that valid prescriptions are filled.
- In seven states—AL, DE, NY, NC, OR, PA, TX—pharmacy boards have issued policy statements that prohibit pharmacists from obstructing patient access to medication or from refusing to transfer prescriptions to another pharmacy.
- On June 6, 2007 legislators in both the House of Representatives (H.R. 2956, last action on 6/6/07: referred to Committee on Energy and Commerce) and the Senate (S.1555, last action on 6/6/07: read twice and referred to Committee on Health, Education, Labor, and Pensions) 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.
- Thus far in the 2008 legislative session, thirteen states (FL, IN, MO, NJ, NY, OH, OK, PA, RI, SD, WA, WV, WI) have considered twenty-four bills that would prevent pharmacists or pharmacies from denying access to prescription contraception based on personal beliefs, including thirteen bills that apply to EC over-the-counter.
- However, four states (AR, GA, MS, SD) have laws or regulations that permit pharmacists to deny women contraception based on pharmacists' personal beliefs.

---

<sup>8</sup> Plan B (Levonorgestrel), Frequently Asked Questions,

<http://www.go2planb.com/ForConsumers/TakingPlanB/faqs.aspx#AL1> (last visited July 14, 2008).

<sup>9</sup> Emergency Contraception, Frequently Asked Questions, <http://www.ec-help.org/FAQs.htm#> (last visited July 14, 2008).

<sup>10</sup> National Women's Law Center, Pharmacy Refusal 101,

[http://www.nwlc.org/pdf/FSParmacyRefusals\\_101\\_061307.pdf](http://www.nwlc.org/pdf/FSParmacyRefusals_101_061307.pdf) (last visited July 14, 2008).

<sup>11</sup> Id.



# Contraception

## Coercive Uses of Contraception

- As recently as the 1990s, judges conditioned probation sentences for women accused of drug use or child abuse on the mandatory use of long-term contraception. The judiciary used long-term contraceptive methods which don't rely on repeated self-administration, such as Norplant and Depo-Provera, to prevent women it deemed unfit to parent from reproducing.<sup>12</sup>
- Project Prevention, formerly known as KRACK, founded in California in 1997, offers \$300 to women addicted to drugs and/or alcohol in exchange for proof of sterilization or long-term birth control. There are now Project Prevention branches in 27 states and Washington, D.C.<sup>13</sup>

## Female Condoms

- There are three different types of female condoms currently available: 1) Female Health Company, FC1 and FC2, 2) PATH Women's Condom, and 3) VA-Feminine Condom, aka Reddy Female Condom. They look similar to the widely used male condoms.
- Why female condoms?
  - Woman-initiated
  - Many potential benefits for HIV positive women
  - Dual protection against HIV and unwanted pregnancy
  - Widespread acceptability
- Challenges
  - High cost – the female condom currently costs \$1.21 per condom, while the traditional male condom costs \$.06-.07 per condom (this may change as production increases).
  - Product familiarity – female condom visibility is low, and people are unaware of the female condom as an effective prevention option.
  - Provider bias – belief that women do not want and will not use them.
  - Consumers' feelings – female condoms are noisy, bulky, and unattractive.

---

<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/about/new\\_chapters.html](http://projectprevention.org/about/new_chapters.html) (last visited July 14, 2008).