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INSURANCE COVERAGE FOR CONTRACEPTION IMPROVES THE HEALTH OF WOMEN AND FAMILIES

CONTRACEPTION: IMPORTANT BASIC HEALTH CARE

Access to contraception is central to women's autonomy and equality. Contraception is basic health care and should be treated as such as a matter of public policy. The average woman will spend five years pregnant or trying to get pregnant, and nearly three decades trying to avoid pregnancy.[1] Without contraception she would have between 12 and 15 pregnancies.[2] Her body and the very course of her life would be governed almost solely by reproduction. Yet contraception, especially the most effective forms of reversible contraception, is inaccessible to many women.

INSURANCE COVERAGE: WOMEN'S CONTRACEPTIVE NEEDS NEGLECTED

An important barrier to access is inadequate insurance coverage of contraceptives. Today, almost two-thirds of all adult women get their health insurance through employers.[3] While most insurers generally cover prescription drugs, they often exclude some or all contraceptives.

An Alan Guttmacher Institute (AGI) study confirms that contraception is often excluded[5]:

- 49 percent of all typical large group plans do not routinely cover *any* contraceptive methods.
- Only 15 percent of typical large group plans cover all five of the most commonly used reversible prescription methods.
- HMOs provide better contraceptive coverage than large group plans, but fewer than half (39 percent) cover all five of the most common reversible prescription methods.

Did You Know?

A 2003 survey of employer health benefits conducted by the Kaiser Family Foundation and the Health Research and Educational Trust indicates that gaps in coverage of contraception persist—despite recent improvements. The survey shows that 91 percent of workers enrolled in health maintenance organizations (HMOs) and 82 percent of workers enrolled in conventional plans receive coverage for the pill—the most frequently used reversible birth control method. However, more than 1 in 10 workers with insurance benefits lack coverage for the pill and less than three-quarters receive coverage for *all* five reversible birth control methods.[4]

Preferred provider organizations (PPOs) and point-of-service (POS) networks usually include some contraceptive care, but they, too, contain major gaps[6]:

- 49 percent of PPOs and 19 percent of POS networks do not routinely cover *any* reversible contraceptive methods.
- Only 18 percent of PPOs and 33 percent of POS networks typically cover the five most commonly used reversible prescription methods.

FACT:

According to the Women's Research and Education Institute, women in their reproductive years pay 68 percent more than men on out-of-pocket medical expenses, largely due to their reproductive health care needs.

Source: WOMEN'S RESEARCH AND EDUCATION INSTITUTE, WOMEN'S HEALTH CARE COSTS AND EXPERIENCES 2-3 (1994).

ACCESS TO CONTRACEPTIVES: IMPROVES HEALTH, SAVES MONEY

Lack of access to contraception carries substantial health risks for women. All contraceptive methods are not medically appropriate for all women. Many women who use contraception rely on a reversible method that requires a prescription and, typically, a visit to a health care provider. The five most commonly used reversible prescription methods of contraception are: the pill, injections (such as Depo-Provera), diaphragms, implants, and intrauterine devices (IUDs).[7] When all of the common methods of reversible prescription contraception are not available, some women may choose less appropriate methods or forego birth control altogether to avoid paying high, out-of-pocket costs—which may lead to unintended pregnancy.

ACCESS TO CONTRACEPTION IMPROVES WOMEN'S AND CHILDREN'S HEALTH

Reducing unintended pregnancies benefits women's and children's health, as unintended pregnancy has serious health consequences for both woman and child.

- Women facing unplanned pregnancies are less likely to identify health risks associated with pregnancy prior to conception, and, therefore, they often do not take full advantage of the health options available to manage such conditions safely during pregnancy.[8]
- Women facing an unwanted pregnancy are more likely to delay prenatal care or not seek it at all and are more likely to smoke and drink alcohol during pregnancy.[9]
- Children of unplanned pregnancies are at greater risk of low birth weight, dying before reaching their first birthday, of being abused, and of receiving insufficient resources in order to ensure healthy development.[10]

IMPROVED ACCESS TO AND USE OF CONTRACEPTION WOULD LEAD TO COST SAVINGS BY PREVENTING UNINTENDED PREGNANCIES

- Insurers generally pay the medical costs of unintended pregnancy, including: full-term pregnancy ($8619), ectopic pregnancy ($4994), miscarriage ($1038), and less often, abortion ($416).[11]
- Studies show that any increases in cost due to contraceptive coverage are minimal and countered by the decrease in costs associated with unintended pregnancy. According to an AGI study, providing coverage for the full range of reversible prescription contraceptives costs only $1.43 per employee per month—an increase of less than one percent in an employer's costs of providing medical coverage.[12] A Washington Business Group on Health Study, which also considers the savings related to reducing unplanned pregnancies, finds that providing coverage for these methods does not ultimately increase costs.[13]

PUBLIC OPINION: SUPPORT FOR CONTRACEPTIVE EQUITY

Polls have indicated that the public not only supports equity in contraceptive coverage, but also supports legislation guaranteeing that private insurance plans include these services:

- In a 2001 NARAL Pro-Choice America Foundation nationwide poll, 77 percent of respondents supported legislation requiring health insurance companies to cover the cost of contraception.[14]
- A 1998 Kaiser Family Foundation survey found that about three-quarters of Americans agreed with policies to guarantee that insurance plans will cover contraception – even if premiums were to rise as a result.[15]

CONTRACEPTIVE COVERAGE: STATE AND FEDERAL LEGISLATION

- Since 1998, 21 states have passed comprehensive laws or regulations to address the imbalance in private insurance coverage for reversible, prescription contraception: AZ, CA, CT, DE, GA, HI, IL, IA, ME, MD, MA, MO, NV, NH, NM, NY, NC, RI, TX, VT, and WA.[16]
- Unfortunately, the battles for contraceptive equity do not necessarily stop once a law has been enacted. In 2003 for example, Texas enacted a law allowing insurers to issue plans that do not include state-mandated health benefits, including coverage for contraception. As of January 1, 2004, Texas allows insurers to offer, and employers to select, plans without coverage of contraceptive services and supplies.[17]
- State laws guaranteeing equitable coverage for contraception will help many women, but they ultimately cannot ensure coverage throughout the country. Not all states will require coverage, and in states that do, not all privately insured women will be covered. For instance, a federal law – the Employee Retirement Income Security Act (ERISA) – exempts certain state insurance regulations for "self-insured" employer health plans.

- Federal legislation is necessary to ensure nationwide, private health insurance coverage for contraception. The Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC) ensures equality in insurance coverage for prescription contraceptives and related medical services. It has been introduced in every Congress since 1997, but never reached the House or Senate floor until 2003, when family planning supporters included it in a "prevention package" amendment to anti-choice legislation. Anti-choice lawmakers voted against this common-sense measure, killing the amendment.[18]

CONTRACEPTIVE COVERAGE ON CAMPUS

In 2002, in response to a complaint from a student, the George Washington University in Washington, DC agreed to include prescription contraceptives as part of its the student health insurance plan. The student, supported by public interest and women's health advocates, argued that the health plan's failure to cover contraceptives was a "glaring case of sex discrimination." Approximately one-third of four-year colleges offer prescription drug coverage, and only half of those plans include contraception.

Source: Amy Argetsinger & Avram Goldstein, *GWU to Cover Birth Control in Student Health Plan*, WASH. POST, Aug. 29, 2002, at B2.

LEGAL CHALLENGES: FAILURE TO COVER CONTRACEPTIVES IS SEX DISCRIMINATION

Several recent legal victories have strengthened the case for contraceptive coverage, and other court cases are pending.

- ***Equal Employment Opportunity Commission (EEOC) Decision:*** In December 2000, the EEOC ruled that an employer's failure to provide coverage for contraceptive drugs, devices, and services when it covers other preventive measures constitutes sex discrimination under federal law.[19] This ruling makes it clear that equal treatment in the workplace means women are entitled to benefits packages that include equitable coverage for prescription contraceptives.
- ***Erickson v. Bartell Drug Co.:*** In June 2000, pharmacist Jennifer Erickson sued her employer, Bartell Drug Co., after Bartell's health plan refused to cover her birth control prescription even though it covered other prescription drugs. In June 2001, a federal district court in Seattle, citing the EEOC decision, ruled that an employer's failure to provide coverage for prescription contraceptives in an otherwise comprehensive prescription drug plan is sex discrimination under federal law. The *Erickson* court was the first in the country to consider a federal sex discrimination claim based on an employer's failure to provide contraceptive coverage. According to the decision, "[T]he exclusion of prescription contraceptives [from a generally comprehensive prescription plan] creates a gaping hole in the coverage offered to female employees, leaving a fundamental and immediate healthcare need uncovered."[20]
- ***Mauldin v. Wal-Mart Stores, Inc.:*** In October 2001, Lisa Smith Mauldin, a customer service manager who earned approximately $12 an hour, sued her employer, Wal-Mart Stores, Inc.,

for excluding prescription contraceptives from its prescription drug plan. In announcing the lawsuit, Mauldin's attorney explained, "For many women like the plaintiff, Lisa Mauldin, the $30 a month cost of birth control pills is an overwhelming financial burden and creates a barrier to obtaining quality health care."[21] The *Mauldin* case is currently before a federal district court in Atlanta.

- ***Dow Jones & Company Settlement***: In December 2002, three Dow Jones & Co. employees successfully negotiated a settlement with the company after filing sex discrimination charges with the EEOC. The charges stemmed from the company's policy of excluding contraceptive coverage from all but one of its health plans. As a result of the settlement, all Dow Jones employees and their dependents will have insurance coverage for all FDA-approved prescription contraceptives and related medical services.[22]

- ***DaimlerChrysler Lawsuit:*** In May 2002, automaker DaimlerChrysler was sued for not including contraceptive coverage in its health insurance plan. One month after four women filed the lawsuit claiming that the DaimlerChrysler Health Care Benefits Plan's exclusion of coverage for prescription contraceptives constituted sex discrimination, DaimlerChrysler expanded its employee benefits package to include coverage for contraceptives. In March 2003, the company's request to dismiss the lawsuit was refused. The court has ordered that this case be referred to alternative dispute resolution.[23]

- ***Alexander v. American Airlines, Inc.:*** In December 2001, American Airlines flight attendant Martina Alexander sued the airline for excluding coverage for contraception, infertility treatments, and Pap smear tests while covering impotence drugs and prostate cancer screening. American Airlines explained that their plan covered only "those expenses that [are] medically necessary to sustain life. That is why pap smears, birth control pills and infertility are not covered. . . . Drugs to treat impotence, such as Viagra, are covered." The case is pending in a federal district court in California.[24]

CONCLUSION

Many employers and insurance companies continue to refuse to cover contraception despite legal rulings finding that failure to provide contraceptive equity is illegal sex discrimination, and research showing health benefits and cost savings. Policymakers must continue to advocate for contraceptive equity laws to ensure that women have access to this basic health care need. Such policies will prevent unintended pregnancies and reduce the need for abortion, and are required as a simple matter of justice and equality.

January 1, 2004

Notes

[1] Rachel Benson Gold, *The Need for the Cost of Mandating Private Insurance Coverage of Contraception,* ALAN GUTTMACHER REP. ON PUB. POL'Y, Aug. 1998, at 5. *See also* Abigail Trafford, *Viagra and the Other Sex Pill,* WASH. POST, May 19, 1998, at Z6.

[2] Trafford, *supra* note 1.

[3] Kaiser Family Foundation (KFF), WOMEN'S HEALTH IN THE UNITED STATES: HEALTH COVERAGE AND ACCESS TO CARE 13 (2002).

[4] KFF & HEALTH RESEARCH AND EDUCATIONAL TRUST, EMPLOYER HEALTH BENEFITS: 2003 ANNUAL SURVEY 106-10 (2003).

[5] Gold, *supra* note 1, at 6.

[6] *Id.*

[7] *Id.*

[8] THE BEST INTENTIONS: UNINTENDED PREGNANCY AND THE WELL-BEING OF CHILDREN AND FAMILIES 82 (Sarah S. Brown & Leon Eisenberg eds., 1995).

[9] *Id.* at 81.

[10] *Id.*

[11] James Trussell et al., *The Economic Value of Contraception: A Comparison of 15 Methods,* 85 AM. J. PUB. HEALTH 494, 497, 500 (1995).

[12] JACQUELINE DARROCH, THE ALAN GUTTMACHER INSTITUTE, COST TO EMPLOYER HEALTH PLANS OF COVERING CONTRACEPTIVES, Summary, Methodology and Background (1998).

[13] Washington Business Group on Health, *Promoting Healthy Pregnancies: Counseling and Contraception as the First Step,* FAM. HEALTH IN BRIEF, Aug. 2000.

[14] NARAL Pro-Choice America Foundation, Nationwide Poll of U.S. Voters (Apr. 2001) (on file with NARAL Pro-Choice America).

[15] KFF, Kaiser Family Foundation National Survey on Insurance Coverage of Contraceptives, Questionnaire and Toplines (June 1998).

[16] NARAL PRO-CHOICE AMERICA & NARAL PRO-CHOICE AMERICA FOUNDATION, WHO DECIDES? A STATE-BY-STATE REPORT ON THE STATUS OF WOMEN'S REPRODUCTIVE RIGHTS (13th ed. 2004), *available at* www.prochoiceamerica.org/whodecides.

[17] S.B. 541, 78th Leg., Reg. Sess. (Tex. 2003) (codified at TEX. INS. CODE ANN. § 3.80).

[18] Equity in Prescription Insurance and Contraceptive Coverage (EPICC) Act of 1997, H.R. 2174, S. 766, 105th Cong. (1997); EPICC Act of 1999, H.R. 2120, S. 1200, 106th Cong. (1999); EPICC Act of 2001, H.R. 1111, S. 104, 107th Cong. (2001); EPICC Act of 2003, H.R. 2727, S. 1396, 108th Cong. (2003); S.A. 258 (proposed amendment to S. 3), 108th Cong. (2003).

[19] Equal Employment Opportunity Commission (EEOC), Decision on Coverage of Contraception (Dec. 14, 2000), *at* http://www.eeoc.gov/policy/docs/decision-contraception.html.

[20] *Erickson v. Bartell Drug Co.*, 141 F. Supp. 2d 1266, 1277 (W.D. Wash. 2001).

[21] *Mauldin v. Wal-Mart Stores, Inc.*, 1:010cv2755 (N.D. Ga. Oct. 16, 2001) (class action complaint); Press Release, Milberg Weiss Bershad Hynes & Lerach, LLP, Milberg Weiss Announces Class Action Discrimination Suit Against Wal-Mart, Inc. for Failure to Include Prescription Contraceptive Coverage in its Employee Health Plan (Oct. 17, 2001) (on file with NARAL Pro-Choice America).

[22] Planned Parenthood Federation of America—Dow Jones Joint Statement (Dec. 5, 2002), *at* http://www.covermypills.org/latest/index.asp?id=45.

[23] *Cooley v. DaimlerChrysler Corp.*, 281 F. Supp. 2d 979 (E.D. Mo. 2003); *Cooley v. DaimlerCrysler Corp.*, No. 4:020cv00780 ERW (E.D. Mo. Dec. 2, 2003) (order); Anne Marie Chaker, *How to Get Your Company to Pay for the Pill*, WALL ST. J., July 31, 2002, at D1.

[24] *Alexander v. American Airlines, Inc.*, No. 01-10764, at 4 (C.D. Cal. Dec. 13, 2001) (complaint for damages).