



**NARAL**  
Pro-Choice America Foundation

## **Insurance Coverage for Contraception: A Proven Way to Protect and Promote Women's Health**

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.<sup>1</sup> It is estimated that without contraception she would have between 12 and 15 pregnancies.<sup>2</sup> Her body and the very course of her life would be governed almost solely by reproduction. Therefore, access to contraception is critical.

Laws promoting insurance coverage for contraception are crucial to protecting and promoting women's health. By guaranteeing that insurers cover prescription contraception to the same extent as other drugs, contraceptive-equity laws help ensure women's access to birth control and ultimately prevent unintended pregnancy and reduce the need for abortion. A recent report by the Guttmacher Institute shows that the rate of unintended pregnancy declines as contraception use increases.<sup>3</sup> Yet, nearly half of the states fail to guarantee contraceptive equity. Policymakers and advocates must continue to advocate for contraceptive-equity laws to help ensure women's access to this basic health-care need.

### **Access to Contraception Improves Women's Health and Prevents Unintended Pregnancy**

In 2006, 36 million U.S. women were without insurance coverage for contraception. Of that number, approximately 23 million were non-Hispanic white, 5 million were non-Hispanic black and 6 million were Hispanic.<sup>4</sup> Inadequate access to contraception carries substantial health risks for all these women.

Not every contraceptive method is medically appropriate for every woman. Many women who use contraception rely on a reversible method that requires a prescription and, typically, a visit to a health-care provider. When all of the common methods of reversible prescription contraception are not available or affordable, 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.

Unintended pregnancy has serious health consequences for both woman and child. Enhanced and improved access to contraception reduces unintended pregnancy and thereby benefits both women's and children's health.

- Women facing unplanned pregnancies are less likely to identify health risks associated with pregnancy prior to conception, and, therefore, often do not take full advantage of the health options available to manage such conditions safely during pregnancy.<sup>6</sup>
- Women facing unintended pregnancy are more likely to delay prenatal care.<sup>7</sup> Studies have repeatedly shown that early and regular prenatal care is beneficial to both a woman and her pregnancy. Prenatal care allows health providers to prevent, detect, and treat problems early in a woman’s pregnancy before they become serious for either the woman or baby.<sup>8</sup>
- Statistically speaking, 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.<sup>9</sup>

**Did You Know?**

Cost is a major reason why some women cannot use contraception consistently – or even at all.<sup>5</sup>

**Insurance Coverage for Contraceptives Saves Money**

By preventing unintended pregnancies, insurance coverage for contraceptives also saves money.

- Insurers generally pay the medical costs of unintended pregnancy, including: full-term pregnancy (\$8619), ectopic pregnancy (\$4994), miscarriage (\$1038), and less often, abortion (\$416).<sup>10</sup>
- Studies show that any increase in cost due to contraceptive coverage is minimal and countered by the decrease in costs associated with unintended pregnancy. According to a Guttmacher Institute 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.<sup>11</sup> 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.<sup>12</sup>

**Contraceptive-Equity Laws Make a Real Difference in Women’s Lives**

Through laws, regulations, or legal opinions, 27 states now ensure that health-insurance plans that cover prescription drugs provide equitable coverage for contraceptives (AZ, AR, CA, CT, DE, GA, HI, IL, IA, ME, MD, MA, MI, MO, MT, NV, NH, NJ, NM, NY, NC, OR, RI, VT, WA, WV and WI).<sup>13</sup>

As a recent study by the Guttmacher Institute reveals, passage of these state contraceptive equity laws has dramatically improved insurance coverage for contraception, enhancing women's health and well-being. For example:

- In 1993, only 28 percent of employer-purchased insurance plans covered a full range of contraceptive methods. By 2002, that figure had almost tripled, to 86 percent. That is, almost nine in 10 group health insurance plans purchased by employers for their employees now cover a full range of prescription contraceptives.<sup>14</sup>
- In 1993, 28 percent of employer-purchased insurance plans covered none of the most common contraceptive methods at all. By 2002, that figure had plummeted to two percent.<sup>15</sup>
- In states with contraceptive-equity laws, women's access to contraceptive coverage has expanded dramatically. Insurance plans in these states are more likely to provide a full range of contraceptive methods.<sup>16</sup>
- State contraceptive-equity laws have a positive influence even in states lacking such laws. Nationally determined insurance plans, in use both in states with and without contraceptive-equity laws, typically provide contraceptive coverage in *all* states in accordance with the mandates.<sup>17</sup>

### **Contraceptive-Equity Laws: Much Work Remains**

Despite these impressive strides toward contraceptive equity, many women still lack contraceptive coverage. For example, approximately half of all Americans that have employer-sponsored insurance coverage work for employers that opt for self-insured plans, which are regulated by the federal government and are exempt from contraceptive-equity laws and other state laws under the Employee Retirement Income Security Act (ERISA).<sup>18</sup>

Given that almost two-thirds of all adult women get their health insurance through employers,<sup>19</sup> continued advocacy for contraceptive-equity laws is imperative.

### The Need for Federal Legislation

Federal legislation is necessary to ensure nationwide, private health insurance coverage for contraception. For example, in *In re: Standridge v. Union Pac. R.R. Co.*, the Eighth Circuit Court of Appeals held that denying coverage for contraceptives did not discriminate against female employees in violation of Title VII, reasoning that Union Pacific did not offer benefits for contraceptives to either women or men, and that since contraception is used before pregnancy, it does not qualify as a pregnancy-related condition. The health plan at issue provided coverage for a variety of prescription drugs, including drugs to treat male erectile dysfunction, but excluded all six methods of prescription contraception.<sup>20</sup>

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 other legislation. It was also added as an amendment in the FY’06 Budget Resolution, but anti-choice lawmakers voted against this commonsense measure, killing the amendment.<sup>21</sup> Passage of EPICC would ensure contraceptive-equity for women in self-insured plans, as well as for women living in states without contraceptive equity requirements.

### **Failure to Cover Contraceptives in Sex Discrimination**

The federal Equal Employment Opportunity Commission and federal courts have decidedly stated that refusal to provide contraceptive coverage constitutes sex discrimination and, as a result, a number of companies have been required to or have voluntarily started offering contraceptive coverage.

- ***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.<sup>22</sup> 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 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 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.”<sup>23</sup>

- ***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.”<sup>24</sup> In December 2006, the Mauldin case was dismissed from federal district court in Atlanta, as a result of Walmart’s decision to cover prescription contraceptives in its basic employee health plan.<sup>25</sup>
- ***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.<sup>26</sup>
- ***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 ordered that the case be referred to alternative dispute resolution,<sup>27</sup> and in March 2005, the parties reached a settlement.
- ***EEOC v. United Parcel Services***: In April 2001, a federal district court in Minnesota held that the EEOC stated a claim for intentional disparate treatment and disparate impact when it alleged that UPS’s exclusion of oral contraceptives from a health benefit plan constituted sex discrimination. The court rejected United Parcel Services’s claim that the exclusion was gender neutral and refused to dismiss the case.<sup>28</sup>

### **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 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.<sup>29</sup>

### **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 ensuring health insurance companies cover the cost of contraception.<sup>30</sup>
- 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.<sup>31</sup>

### **Conclusion**

Many employers and insurance companies, particularly in states without contraceptive-equity laws, 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 help prevent unintended pregnancies and reduce the need for abortion and are required as a simple matter of justice and equality.

January 1, 2010

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

<sup>2</sup> Abigail Trafford, *Viagra and the Other Sex Pill*, WASH. POST, May 19, 1998, at Z6.

<sup>3</sup> Guttmacher Institute, *Abortion Worldwide: A Decade of Uneven Progress* (Oct. 14, 2009) at <http://www.guttmacher.org/pubs/AWWfullreport.pdf> (last visited October 14, 2009).

<sup>4</sup> Guttmacher Institute, *Facts on Publicly Funded Contraceptive Services in the United States* (Feb. 2009) at [http://www.guttmacher.org/pubs/fb\\_contraceptive\\_serv.html](http://www.guttmacher.org/pubs/fb_contraceptive_serv.html) (last visited October 9, 2009).

<sup>5</sup> For example, some women delay refilling oral contraceptives or obtaining periodic injections if the monetary cost is too high. Adam Sonfield & Rachel Benson Gold, *New Study Documents Major Strides in Drive for Contraceptive Coverage*, GUTTMACHER REP. ON PUB. POL'Y 5 (2004).

<sup>6</sup> THE BEST INTENTIONS: UNINTENDED PREGNANCY AND THE WELL-BEING OF CHILDREN AND FAMILIES 82 (Sarah S. Brown & Leon Eisenberg eds., 1995).

<sup>7</sup> THE BEST INTENTIONS: UNINTENDED PREGNANCY AND THE WELL-BEING OF CHILDREN AND FAMILIES 81 (Sarah S. Brown & Leon Eisenberg eds., 1995).

<sup>8</sup> The National Women's Health Information Center, *Frequently Asked Questions about Prenatal Care* (Nov. 2002), at <http://www.4woman.gov/faq/prenatal.pdf> (last visited Oct. 29, 2007); March of Dimes, *Prenatal Care*, at [http://www.marchofdimes.com/pnhec/159\\_513.asp](http://www.marchofdimes.com/pnhec/159_513.asp) (last visited Oct. 29, 2007).

<sup>9</sup> THE BEST INTENTIONS: UNINTENDED PREGNANCY AND THE WELL-BEING OF CHILDREN AND FAMILIES 81 (Sarah S. Brown & Leon Eisenberg eds., 1995).

<sup>10</sup> James Trussell et al., *The Economic Value of Contraception: A Comparison of 15 Methods*, 85 AM. J. PUB. HEALTH 494, 497, 500 (1995).

<sup>11</sup> Jacqueline Darroch, The Alan Guttmacher Institute, *Cost to Employer Health Plans of Covering Contraceptives*, Summary, Methodology and Background (1998).

<sup>12</sup> Washington Business Group on Health, *Promoting Healthy Pregnancies: Counseling and Contraception as the First Step*, Sept. 2000, at 8.

<sup>13</sup> NARAL PRO-CHOICE AMERICA & NARAL PRO-CHOICE AMERICA FOUNDATION, *Who Decides? The Status of Women's Reproductive Rights in the United States* (19th ed. 2010), available at [http://www.prochoiceamerica.org/choice-action-center/in\\_your\\_state/who-decides/](http://www.prochoiceamerica.org/choice-action-center/in_your_state/who-decides/).

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Although Texas enacted a contraceptive equity law in 2001, the state enacted a law in 2003 allowing insurers to issue plans that do not include state-mandated health benefits, including coverage for contraception. As a result, Texas now allows insurers to offer, and employers to select, plans without coverage of contraceptive services and supplies. TEX. INS. CODE ANN. Art. 3.80.

<sup>14</sup> Adam Sonfield et al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, 2002*, 36 PERSP. ON SEXUAL & REPROD. HEALTH 76 (2004). See also Adam Sonfield & Rachel Benson Gold, *New Study Documents Major Strides in Drive for Contraceptive Coverage*, ALAN GUTTMACHER REP. ON PUB. POL'Y, June 2004, at 4.

<sup>15</sup> Adam Sonfield et al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, 2002*, 36 PERSP. ON SEXUAL & REPROD. HEALTH 76 (2004).

<sup>16</sup> Adam Sonfield et al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, 2002*, 36 PERSP. ON SEXUAL & REPROD. HEALTH 78 (2004).

<sup>17</sup> Adam Sonfield et al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, 2002*, 36 PERSP. ON SEXUAL & REPROD. HEALTH 77 (2004).

<sup>18</sup> Adam Sonfield et al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, 2002*, 36 PERSP. ON SEXUAL & REPROD. HEALTH 72 (2004). Distinct from plans purchased by employers from insurance companies, self-insured plans are those in which the employer pays directly for some/all of its employees' medical expenses and assumes the risk of unexpectedly high expenses.

<sup>19</sup> Kaiser Family Foundation (KFF), *Women's Health in the United States: Health Coverage and Access to Care* at 13 (2002).

<sup>20</sup> *Standridge v. Union Pac. R.R. Co.*, 479 F.3d 936 (8th Cir. 2007).

<sup>21</sup> 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).

<sup>22</sup> Equal Employment Opportunity Commission (EEOC), Decision on Coverage of Contraception (Dec. 14, 2000), at <http://www.eeoc.gov/policy/docs/decision-contraception.html> (last visited Oct. 29, 2007).

<sup>23</sup> *Erickson v. Bartell Drug Co.*, 141 F. Supp. 2d 1266, 1277 (W.D. Wash. 2001).

<sup>24</sup> *Mauldin v. Wal-Mart Stores, Inc.*, 1:010cv2755 (N.D. Ga. Oct. 16, 2001) (class action complaint); *Mauldin v. Wal-Mart Stores, Inc.*, 1:010cv2755, 2002 WL 2022334 (N.D. Ga. Aug. 23, 2002) (class certification); 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).

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<sup>25</sup> Press Release, National Women's Law Center, *Wal-Mart Changes Course, Adds Prescription Contraceptive Coverage to Its Health Insurance Plan* (Dec. 21, 2006).

<sup>26</sup> Planned Parenthood Federation of America—Dow Jones Joint Statement (Dec. 5, 2002).

<sup>27</sup> *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.

<sup>28</sup> *Equal Employment Opportunity Commission v. United Parcel Service*, 141 F. Supp.2d 1216 (D. Minn. 2001).

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

<sup>30</sup> NARAL Pro-Choice America Foundation, *Nationwide Poll of U.S. Voters* (Apr. 2001).

<sup>31</sup> KFF, *Kaiser Family Foundation National Survey on Insurance Coverage of Contraceptives, Questionnaire and Toplines* (June 1998).