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State Mandates for Insurance Coverage of Contraception Before and After Health Reform

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Introduction

Between 1999 and 2006, 28 states adopted requirements that group insurance policies cover drugs and devices prescribed for contraceptive purposes. The coverage requirement was viewed as a discriminatory remedy for women to prevent employer-sponsored insurance from excluding certain prescription drugs and devices for women while providing comprehensive coverage for men.

The most effective birth control methods available to women, *i.e.,* pills, injectable medications, intrauterine devices, and diaphragms, are available only with a prescription. Yet, most group health insurance plans excluded contraception and related services, and this exclusion imposed extra costs on women. Women use more medical services than men during the years that they are at risk for pregnancy because of reproductive and gender-specific conditions.[1] Further, they may need contraception for as long as 30 years.[2]

Because the vast majority of the privately insured were covered by employer-sponsored insurance, the first efforts to address the issue focused on insurance as an employee benefit and the unequal value of the benefits provided to men and women. In 2000, the Equal Employment Opportunity Commission ruled that employer-sponsored coverage that excluded contraceptives and related services violated the Pregnancy Discrimination Act.[3] Although some district courts agreed[4], the Eighth Circuit ruled that the need for contraception was not a "condition related to pregnancy" because contraception is medically indicated only before pregnancy occurs.[5]

When Viagra entered the market in 1998, health insurers often covered the prescription while continuing to exclude coverage of contraceptives. This disparity lent support to the argument that the refusal to cover contraceptives was gender-based discrimination. A proposed Equity in Prescription Insurance and Contraceptive Coverage Act was introduced in Congress several times but never reached a vote.

State legislatures and some state agencies were more receptive to the argument. Maryland passed its contraceptive equity law in 1998.[6] California enacted its

1 *Clinical Preventive Services for Women: Closing the Gap*, Institute of Medicine (2011) (*Closing the Gap*).

2 Statement of the American College of Obstetricians and Gynecologists quoted in Equal Employment Opportunity Commission, *Decision on the Coverage of Contraception*, Dec. 14, 2000, available at http://www.eeoc.gov/policy/docs/decision-contraception.html (hereafter, EEOC Decision).

3 EEOC Decision.

4 *Erickson v. Bartell Drug Co.,* 141 F. Supp.2d 1266, 1273 (W.D. Wash. 2001); *Cooley v. DaimlerChrysler Co.*, 281 F.Supp.2d 979 (E.D. Mo. 2003) .

5 *In re: Union Pacific Employment Practices Litigation*, 479 F.3d 936 (8th Cir. 2007).

6 Md. Laws 1998, ch. 117.

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Women's Contraceptive Equity Act in 1999; the law became effective January 1, 2000. Seven other states also passed contraception coverage mandates in 1999.[7] New York enacted its Women's Health and Wellness Act in 2002. The most recent addition was Colorado in 2010.[8]

The Patient Protection and Affordable Care Act (PPACA)[9] amended section 2713 of the Public Health Service Act to provide that essential coverage will include certain preventive services without any cost sharing by the insured. The preventive services included are those rated A or B by the United States Preventive Services Task Force and any additional preventive services for women recommended in comprehensive guidelines issued by the Health Resources and Services Administration (HRSA). HRSA added contraceptives to the list[10] based upon the recommendations in a report by the Institute of Medicine[11].

This White Paper will analyze the common features of states' mandates concerning contraception coverage for women and briefly compare PPACA's preventive services mandate to those of the states.

Who Must Provide Coverage and Who Must Be Covered

States approach the regulation of health insurance benefits many different ways. They may distinguish insurers based on the type of ownership or corporate form or by the nature of the coverage, *i.e.,* between traditional indemnity policies, health maintenance organizations, and preferred provider organizations. Some states impose the contraceptive coverage requirement both on employer-sponsored coverage and on blanket policies, which may be issued to other groups, such as fraternal associations, churches, schools, or camps. Some states impose their contraceptive mandates on all types of insurers in one statute. Arkansas[12], for example, describes and defines the "health benefit policy," listing a myriad of entities whose products would be covered:

> an individual or group plan, policy, or contract for health care services issued, delivered, issued for delivery, or renewed in this state, including those contracts executed by the State of Arkansas on behalf of state employees by a health care corporation, health maintenance organization, preferred provider organization, accident and sickness insurer, fraternal benefit society, hospital service corporation, medical service corporation, provider-sponsored health care corporation, or other insurer or similar entity.[13]

The Georgia statute is similar.[14] Other states have separate statutes for each type of insurer or policy. For example, Nevada includes its contraceptive coverage mandate in legislation governing individual health benefit policies[15], group and blanket policies[16], HMOs[17], and medical service corporations[18], as well as the self-insured plan for state employees.[19] Similarly, Maine and New Jersey have separate statutes covering coverage offered by different types of entities to groups and additional statutes that address policies issued to individuals.

Another state approach is to focus the requirement on small employer carriers, *i.e.,* insurers with approval to sell coverage to small employers. For example, Arizona carriers who otherwise would be required to accept new small groups may be excused from doing so if they can show they meet standards for financial distress.

State contraceptive coverage mandates apply to comprehensive or major medical coverage. Most states use terms such as "accident and sickness insurance" or "health benefit plan". Some states, such as Arizona, California and Wisconsin, use the term "disability insurance" to refer to health insurance. A few, such as West Virginia, use a term like "basic health insurance" to describe minimum required coverage, but others use the term "basic" to mean a plan that does not include all mandated benefits. Not all policies that cover groups of individuals and their families are offered through employers. Some states apply the requirement to these "blanket policies" that cover groups such as students or members of an organization However, all states agree that certain types of policies are excluded:

- Workers' compensation
- Disease-specific policies, such as those that provide benefits exclusively for cancer
- Medicare-related policies
- Benefits limited to a particular type of service, such as dental or vision coverage

[7] Connecticut, Georgia, Hawaii, Maine, Nevada, New Hampshire, and Vermont.
[8] Colo. Rev. Stat. sec. 10-16-104(3)(a)(i).
[9] P.L. 111-148, sec. 1001.
[10] HRSA, Women's Preventive Services Guidelines.
[11] *Closing the Gap*, supra note 1.
[12] Equity in Prescription Insurance and Contraceptive Coverage Act, Ark. Code §§23-79-1101 *et seq.*
[13] Ark. Code §23-79-1102.
[14] Ga. Code §33-24-59.6.
[15] Nev. Rev. Stat. §§689A.0415, 689A.0417
[16] Nev. Rev. Stat. §§689B.0376, 689B.0377
[17] Nev. Rev. Stat. §§695C.1694, 695C.1695
[18] Nev. Rev. Stat. §§695B.1916, 695B.1918
[19] Nev. Rev. Stat. §287.010(c).

- Automobile coverage
- Liability policies
- Income-protection policies
- Accident-only policies, and
- Credit life or health policies.

Mandates Resulting From Executive Action

In three states, the requirement to cover contraceptives was imposed by the executive branch rather than the legislature. First, in 2001, the Washington Insurance Commissioner adopted a regulation prohibiting exclusion of or limitations on coverage for FDA-approved prescription contraceptives.[20] The regulation declared that the exclusion of contraceptives from coverage in a comprehensive health plan was an unfair insurance practice and prohibited the imposition of waiting periods, formularies and cost sharing requirements different from the requirements for other drugs. The statute governing the high risk pool for individuals requires coverage of contraception, however.[21] In Michigan, the state Civil Rights Commission ruled in 2006 that the state's laws barring sex discrimination in employment required that contraceptives and related services be included when an employer offers comprehensive health insurance benefits.[22] The same year, Montana's Attorney General issued an opinion stating that the exclusion of contraceptives from an otherwise comprehensive employer-sponsored health insurance plan violated state laws that barred sex discrimination in insurance as well as in employment.[23] The tables comparing statutes exclude these three states.

Group Insurance

Most states apply the same mandated benefit requirements to most or all of the various types of health plans offered to employer-sponsored groups, *e.g.,* the traditional nonprofit or for-profit entities that reimburse or pay directly for covered expenses, health maintenance organizations, or provider-sponsored organizations. All of the state statutes that impose contraceptive coverage mandates apply to employer-sponsored group insurance. Some states also apply the mandates to blanket policies, which cover additional types of groups, such as association members, students, or others.[24]

States also take different approaches to regulating self-insured employers, multi-employer welfare arrangements, and employee welfare plans. In general, self-insured employer plans are not required to comply with state insurance mandates, although they must comply with the requirements of the Employee Retirement Income Security Act (ERISA). To the extent that they are self-insured, multi-employer welfare arrangements (MEWA) or trusts (METs) also may not be obligated to comply with state law insurance mandates. However, some states try to regulate MEWAs as insurers to the extent that they are not preempted by ERISA. North Carolina[25], for example, applies its requirements to MEWAs to the extent possible. A New Mexico regulation specifically requires MEWA contracts to comply with the state requirements for health insurance policy contracts.[26] Ohio requires MEWAs to obtain a certificate of authority to operate in the state.[27] The extent to which states attempt to regulate self-insured employers, MEWAs, or METs is beyond the scope of this paper. General information about MEWAs is available at http://www.dol.gov/ebsa/Publications/mewas.html.

Some states even require small employers to provide coverage for contraception.

Small Groups

States that apply the requirement to small employers may excuse small employers who did not provide health coverage before a certain date[28] or who have been uninsured for a minimum period, such as 90 days or six months. The most common definition of a small employer is one that has fewer than 50 full time employees on more than half the days of the year.[29] At least one state excuses some small groups from mandates that would pose a financial hardship. Colorado allows insurers to offer small employers a choice between basic and standard plans, and the basic plan may omit several

[20] Wash. Admin. Code sec. 284-43-822.
[21] Rev. Code Wash. sec. 48.41.110.
[22] Mich. Civ. Rts. Commn., Declaratory Ruling on Contraceptive Equity (Aug. 21, 2006).
[23] Mont. Op. A.G. Vol. 51, No. 16
[24] See, *e.g.,* Ariz. Stat. §20-1404U; Del. Code tit. 18, §3559.
[25] N.C. Gen. Stat. §53-3-178.
[26] N.M.A.C. §13.19.4.20.
[27] Ohio Rev. Code §1739.02.
[28] Colo. Rev. Stat. §10-16-105 excuses from coverage mandates small employers who have not provided health coverage since July 1, 1989.
[29] See, *e.g.,* Wash. Rev. Code §48.43.005(33).

services required of other plans.[30] Contraceptive coverage remains mandatory, however; the statute includes it with maternity coverage. In Arizona, small groups that have been uninsured at least 90 days are exempt from some coverage mandates, including contraceptive coverage.[31] See Table 1 for details.

The Nongroup Market

Seventeen states require carriers to include contraceptive coverage as a standard benefit in policies offered on the individual, or nongroup, market. Several permit an individual to decline the coverage if contraception violates his or her religious or moral beliefs. Nevada excuses insurers that are affiliated with religious organizations that object to contraception from the coverage requirement.[32]

Exemption For Religious Employers

Twenty of the states with contraceptive equity requirements include exceptions for qualifying employers with religious objections to contraception. These exceptions range from very narrow to quite broad. See Table 3 for classification of each state law. The most narrow exceptions are available to religious organizations which meet the following conditions:

1. The purpose of the organization is the inculcation of religious values;
2. The organization primarily employs individuals who subscribe to the faith;
3. The organization primarily serves individuals who subscribe to their faith; and
4. The organization meets the tax exemption requirements of 26 USC 6033(a)(3)(A)(i)33 or (iii).[34]

Entities that meet these qualifications are entitled to a mandatory exemption from filing tax returns. The laws of California, New York, and Oregon fall within this group. [35] The Arizona statutes include this definition, but they also allow an employer to qualify as religiously affiliated if its articles of incorporation state that it is "religiously motivated" and that "religious principles are central to its operations."[36] The Michigan ruling that established the state's requirement contains a religious exemption that incorporates the first three of the above criteria, but it does not require the religious organization to meet the requirements of 26 USC sec. 6033.[37]

A second group of states have contraceptive mandate laws that give more flexibility to religious organizations. The inculcation of religious values may be "a purpose" or "one of the purposes" of the organization. Alternatively, they may describe the religious employer as a qualified "church or church-controlled organization" as defined in section 3121(w)(3) of the Internal Revenue Code. This statutory definition of "church" includes:

> "a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches."

A "church-controlled organization" is an organization controlled by a church and exempt from tax under 26 USC sec. 501(c)(3), unless the entity regularly offers goods, services, or facilities for sale to the public and receives more than 25 percent of its funding from one or both of the following:

- Government entities, or
- Receipts from admissions, sales of merchandise, services, or facilities in activities that are not unrelated trades or businesses. Incidental sales or sales at a nominal price below the entity's cost are not counted toward the exception.

Put more simply, in these states, religious or church-controlled charitable organizations are exempt from the mandate unless they receive significant government funding or charge for goods, services or facilities provided to the public. For example, a church-controlled university or an adoption agency that charges fees to adoptive parents would not qualify for the exemption under this standard, but an elementary school or high school, or a charity that operated a soup kitchen would. The contraception equity laws of Maine and Connecticut are typical examples.

A few states, including Delaware and Maryland, do not define "religious employer" or "religious organization" in the statute, but allow the Department of Insurance to define it by regulation. Maryland's regulations define "religious

[30] Colo. Rev. Stat. §10-16-105.
[31] Ariz. Stat. §20-2341.
[32] Nev Rev. Stat. §689A.0417.
[33] churches, their integrated auxiliaries, and conventions or associations of churches
[34] the exclusively religious activities of a religious order.
[35] Cal. Ins. Code sec. 10123.196, Cal. Health & Welfare Code sec. 1367.25; N.Y. Ins. L. sec. 4303(cc); Or. Rev. Stat. sec. 743A.066
[36] Ariz. Rev. Stat. secs. 20-1057.08(G)(2); 20-1404(Y)(3)(a).
[37] Mich. Civ. Rts. Commn., Declaratory Ruling on Contraceptive Equity (Aug. 21, 2006).

organization" as one organized and operated exclusively for religious purposes.[138] Some states refer to section 501(c)(3) of the Internal Revenue Code rather than sections 6033 or 3121. Section 501(c)(3) provides for tax-exempt status not only for religious organizations, but for organizations devoted to other charitable, educational or scientific purposes, or the prevention of cruelty to children or animals.

Exemptions for Persons with Moral Objections

The broadest exemptions excuse any individuals or entities with religious or moral objections either to contraception in general or to particular methods from paying for or covering those services. Illinois, Missouri, and Washington, for example, provide that individuals or organizations may not be required to cover or pay for services to which they have religious or moral objections. Those who exercise this right must give the employee or patient information about how to access the services. Illinois[39] and Washington[40] include this provision in a general "conscience" law that also applies to health care providers and professionals, including pharmacists.

Religious Organizations' Challenges to State Contraceptive Equity Laws

California's Women's Contraception Equity Act and New York's Women's Health and Wellness Act apply the most stringent standard to determine whether an entity qualifies as a religious employer. A religious employer must meet all of the following requirements:

1. The purpose of the organization must be the inculcation of religious values.
2. It must primarily employ people who share its religious tenets.
3. It must primarily serve people who share its religious tenets.
4. It is a nonprofit organization as described in Internal Revenue Code sec. 6033(a)(2)(A)(i) or (iii).[41]

In both California[42] and New York,[43] local Catholic Charities organizations challenged the statutes as violating their rights to religious liberty under the First Amendment to the United States Constitution. Catholic Charities conceded that many of its employees and clients were not members of the Catholic faith. However, they argued that church teachings required them to pay employees fairly and to provide benefits, including benefits for prescription drugs.

In both cases, the charities argued that the requirement violated the Free Exercise Clauses of the federal and state constitutions. A violation of the Free Exercise Clause may be found when the law requires conduct that is forbidden by the individual's religion or when it forbids conduct that is required by the religion. However, where the language of the law is neutral concerning religion, and the law applies to the public generally, an incidental burden on the exercise of religion may be acceptable. The court will balance the interests of the state in achieving the purpose of the law against the burden on the challenger's religious practice.

The courts of both California and New York upheld laws that exempted churches but not religious charities from the coverage mandate.

In both cases, the courts considered the purposes of the legislation and the language of the statute. The New York Women's Health and Wellness Act described the purposes as the promotion of women's health and promotion of equal treatment of women. The legislature had considered evidence of the disparity between men and women in the burdens of the cost of health care. The exclusion of prescription contraception from policies that cover all prescription items that men might need contributed to the disparity. The language of the statutes was neutral toward religion; it applied to employer-sponsored group insurance in general.

The plaintiffs argued that the laws that affect rights under the Free Exercise Clause required "strict scrutiny," meaning that the law is constitutional only if the state's purpose is compelling and the law is written as narrowly as possible to minimize the impact on religious practice. The California Supreme Court ruled that if strict scrutiny was required, the law passed the test. Promoting women's health and ending discrimination were compelling interests, and the statutory definition of religious employers who were exempt from the requirement

[38] Code of Md. Adm. Reg. sec. 31-11-06-02B(58).
[39] 745 Ill. Comp. Stat. 70/1 *et seq.*
[40] Wash. Rev. Code sec. 48.43.065.
[41] Cal. Ins. Code secs. 10123.196(d); Cal. Health & Safety Code sec. 1367.25(b)(1); N.Y. Ins. L. sec. 4303(cc)(1)(A).
[42] *Catholic Charities of Sacramento, Inc. v Superior Court*, 32 Cal. 4th 527, 85 P.3d 67 (Cal. 2004).
[43] *Catholic Charities of the Diocese of Albany v. Serio*, 7 N.Y. 3d 510 (2006).

accommodated religious beliefs. New York, on the other hand, ruled the strict scrutiny analysis was not required under the decisions of the United States Supreme Court.

But in all other respects, the two courts agreed. The legislature of each state had considered whether to apply the exemption to all employers operated by religious organizations, such as charities, and had chosen not to do so. The employees of organizations that fit the statutory definition have agreed to abide by the church teachings. However, the religiously affiliated organizations, which have broader purposes and employ people who are not members of the faith, should be bound by the same laws as other employers.

In both cases, the religious organizations argued that requiring them to include prescription contraceptives in their benefits compelled them to support, and to communicate support of, activities that violated their religious beliefs. The courts rejected this argument, however. The law did not compel the plaintiffs to pay for contraceptives, only to pay for health insurance that included them as a benefit if they provided health insurance that covered prescription drugs. The charities were not legally obligated to cover prescription drugs at all. The connection was too attenuated to be considered compulsory speech or support of the activity. The California Court noted that the plaintiffs were free to express their opposition to the use of birth control.

Challenges by Secular Entities

A commercial entity and its two Catholic shareholders have challenged the Illinois contraceptive coverage mandate[44] on the ground that it conflicts with the state Religious Freedom Restoration Act[45] and the Religious Freedom and Health Care Right of Conscience Act (HCRCA).[46] A circuit court in Du Page County granted a temporary restraining order (TRO) on January 15, 2013. The court noted that the HCRCA contains legislative findings declaring the intent to protect the "right of conscience of all persons, whether acting individually, corporately, or in association with other persons" from any discrimination, disqualification, or liability for the refusal to pay for or arrange for the payment of health care services. The law further specifies that it protects health care payers, defined as "a health maintenance organization, insurance company, management services company, or any other entity that pays for or arranges for payment of … health care or medical care… ."[47] In addition to the HCRCA, the court found that the Religious Freedom Restoration Act appeared to give the plaintiffs protectable rights. The court then found that because of the nature of the rights, any threat of harm was irreparable, and there was no adequate remedy at law.[48] Therefore, it enjoined the state from enforcing the requirement.

Missouri's legislative battle. Until September 2012, the Missouri statute required most health plans that covered prescription drugs to cover contraceptive drugs and devices approved by the Food and Drug Administration[49] If an eligible employer elected not to cover them, the group policy had to include a conspicuous notice to individual plan members stating: (1) whether the plan includes or excludes coverage of contraceptives; (2) that if the group policy includes contraceptive coverage, the individual may request a policy without it; and (3) if the employer or group purchaser has excluded coverage, the carrier must allow the individual to purchase contraceptive coverage at an additional premium. The employer could not know which choice the employees made, and the policy may not exclude contraceptive drugs or devices prescribed for purposes other than preventing pregnancy.

A federal court struck down a 2012 Missouri law that directly opposed the federal mandate.

In September 2012, over the veto of Governor Jay Nixon, the Missouri legislature passed amendments to the Missouri statute to require health insurers to offer all group purchasers policies that excluded contraceptives whether or not they qualified as "religious employers". Any purchaser of a health plan was given the right to refuse coverage for contraception.[50] This legislation directly opposed the requirements of PPACA.

In November 2012, the Insurance Market Division of the Missouri Department of Insurance, Financial Institutions and Professional Registration filed charges against two insurers, Health Alliance and HMO Missouri, for alleged violation of Mo. Rev. Stat. sec. 376.1199 because they did not offer policies that

[44] 215 Ill. Comp. Stat. 5/356z.4
[45] 775 Ill. Comp. Stat. 35/1 *et seq.*
[46] 745 Ill. Comp. Stat. 70/1 *et seq.*
[47] 745 Ill. Comp. Stat. 70/3(f).
[48] *Yep v Illinois Department of Insurance*, (18th Cir. No. 12 CH 5575, January 15, 2013).
[49] 2001 HB 762, enacted June 21, 2001.
[50] SB 749, enacted Sept. 12, 2012.

excluded coverage of contraceptives. The Department issued cease and desist orders to the two plans.

The Missouri Insurance Coalition, a nonprofit organization representing the insurance industry, sued for an injunction against enforcement of the state law on the ground that it conflicted with the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148)[51], and it was not possible to comply with both laws. Thus, insurers who did not offer plans excluding contraceptives risked fines and other penalties from the state, but those who complied with the Missouri law would risk fines and penalties under federal law, as would the employers. The court entered a temporary restraining order enjoining enforcement of the law in December. On March 14, 2013, the court granted a declaratory judgment[52] that the amendments made by SB 749 were invalid because they are preempted by PPACA. The requirement to offer and sell policies excluding contraceptive coverage to entities that are not religious organizations conflicted directly with PPACA.

Obligations of Religious Employers. An employer who has qualified for a state's exemption often will have obligations to employees. Fourteen of the states with exemptions require either the employer or the issuer of the insurance to notify employees that contraception is not covered. Most require the employer to notify the employee. New York requires the employer to notify the employee that contraceptives will not be covered and requires the insurer to provide notice of the alternative option for coverage.[53]

The timing of the notice varies. California requires notice with the offer of employment. Connecticut, North Carolina, and Texas specify that the notice must be included in the application for coverage, the policy, and the sales brochure. Three states require that notice be given at enrollment or with the certificate of coverage. Two simply call for "reasonable and timely notice."

Availability of Alternative Insurance. Six of the states that require notice also provide for alternative coverage for contraceptives. For example, New York requires that group coverage for contraceptives be issued in a separate rider. A religious employer must notify prospective enrollees that contraceptives are not covered. At enrollment, the insurer must notify the employees of their right to purchase the coverage separately at the prevailing small group community rate. The notice must include the amount of the premium. [54]

The Connecticut law states that the employer or insurer may provide alternative limited coverage. The cost, terms, and availability of the alternate coverage may not differ from other prescription drug coverage available to the insured. [55]

Missouri requires insurers to inform enrollees at the time of enrollment whether the policy covers contraception. If contraception is excluded, the insurer must notify the enrollee that he or she has the right to buy separate contraception coverage. Conversely, if the policy includes coverage of contraception, the insurer must notify the employee of the right to exclude coverage for contraception. The same principle applies to coverage of abortion.[56]

Coverage for Purposes Other than Contraception

Eleven of the states that allow an exception for religious employers or insurers require coverage of contraceptives prescribed for purposes other than contraception.[57] The language varies. The least restrictive versions read, "Nothing in this section shall be construed to exclude coverage for prescription drugs prescribed for reasons other than contraceptive purposes." The New York and Connecticut laws use this language. A few states give examples of acceptable medical reasons for overriding the religious employer's prohibition. For example, California's statute lists decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or prescription contraception "necessary to preserve the life or health of the insured."[58] Hawaii and West Virginia have similar laws. A few state statutes provide that the prescription contraception necessary to preserve the life or health of the beneficiary may not be excluded. The statutes in Maine, New Jersey, and North Carolina fall into this category. See Table 4 for requirements of each state.

Arizona's statutes[59] outline a process for an employee to get coverage for prescription contraceptives for noncontraceptive purposes. The employer must submit an affidavit to the insurer detailing the drugs or methods

[51] P.L. 111-148, sec. 1001(5) added section 2713 to the Public Health Service Act, codified at 42 U.S.C. sec. 300gg-13. This provision requires group health plans and issuers of group health coverage to include preventive services designated by the Health Resource and Services Administration (HRSA). The HRSA guidelines require contraception as preventive care. See/ http://www.hrsa.gov/womensguidelines/

[52] *Missouri Insurance Coalition v Huff,* E.D. Missouri, No. 4:12CV02354 AGF, March 14, 2013.

[53] N.Y. Ins. L. sec. 4303(cc).

[54] N.Y. Ins. L. sec. 4303(cc).

[55] Conn. Gen. Stat. sec. 38a-503e.

[56] Mo. Rev. Stat. sec. 376.1199(6).

[57] They are: Arizona, California, Connecticut, Hawaii, Maine, Missouri, New Jersey, New York, North Carolina, and West Virginia. See Table 4.

[58] Cal. Health & Safety Code sec. 1367.25(c); Cal. Ins. Code sec. 10123.196(e).

[59] See, *e.g.,* Ariz. Stat. sec. 20-1057.08.C.

that will not be covered. The employee may be required to pay in advance for the drug or service and then submit a request for reimbursement accompanied by evidence that the prescription was not for a purpose covered by the employer's objection, which may include abortion, abortifacients, and sterilization as well as contraception. The statute specifies that the employer has no right to any of the employee's protected health information. The insurer may charge an administrative fee for handling these claims.

Scope of Coverage

Nearly all state contraceptive equity laws require insurers to cover all forms of birth control that require a prescription and have been approved by the Food and Drug Administration (FDA), *i.e.,* pills, intrauterine devices (IUDs), and barrier methods. Related outpatient services also are specifically covered under all but six statutes.[60] See Table 4 for details as to each state.

In general, the statutes require contraceptive drugs and devices to be covered to the same extent as other prescription drugs and devices. Many explicitly allow insurers to use formularies that limit the drugs or other items available to a list. Four states specify that the formulary must include oral, injectable, and implanted drugs, IUDs, and barrier methods.

In general, formularies may be open, allowing for coverage of a nonformulary drug, usually with increased cost sharing, or closed. Eleven states use the term "formulary " to describe the permissible restrictions. A few state statutes specifically authorize a closed formulary. Four others assume that the insurer will use a formulary and simply require that limits on contraceptive drugs and devices be comparable to the limits on other drugs and devices. Hawaii's law requires that the formulary include at least one brand each of the monophasic, multiphasic, and progestin-only varieties of oral contraceptives.

Coverage of nonformulary drugs. Most states do not require the insurer to have any procedure for requesting an exception to allow coverage of a drug that is not on the formulary. California, Hawaii, and Ohio require an exception process, however, if the physician believes that the patient's medical condition puts her at risk for adverse side effects or the formulary drug has been ineffective. To the extent that state laws require coverage of contraceptives to be equivalent to coverage of other drugs, an exception process would be required if the insurer has one for other drugs or devices.

Contraceptives not required to be covered. Some state laws provide that certain drugs are not required to be covered. Eight states specify that drugs or devices that cause abortion or are designed to terminate a pregnancy are not required to be covered. Some states explicitly exclude mifeprestone, also called RU-486, from the list of required drugs. North Carolina excludes Preven, a form of emergency contraception. Another state excludes any coverage of emergency contraception generally.

The California and Iowa statutes both provide that insurers are not required to cover experimental or investigational drugs. Several other states require insurers to provide coverage of experimental or investigational drugs or devices only to the extent that they cover other such drugs or devices.

Nonprescription contraceptives. Nearly all states require coverage of drugs and devices available by prescription. Where the statutes require coverage of prescription contraceptives, nonprescription drugs and devices are excluded. Nevada's law does not use the word "prescription." Washington requires insurers to cover nonprescription contraceptive drugs and devices to the extent that they cover other nonprescription drugs and devices.

Emergency contraceptives. The FDA first approved the prescription use of emergency contraception in 1998. Most of the contraception equity laws were enacted between 1999 and 2005, when emergency contraceptives were available only with a prescription. Unless a statute specifically excluded emergency contraception, a requirement to cover all FDA-approved drugs prescribed by a licensed practitioner automatically included prescribed emergency contraceptives. However, since 2006, when the FDA allowed the sale of Plan B® (levonorgestrel) over the counter (OTC), a prescription has not been required for women who are at least 18 years old. A prescription was still required for women under age 18.

In the spring of 2013, after a federal court found[61] that the FDA's refusal to approve OTC use by anyone at risk for unintended pregnancy was arbitrary and capricious, the FDA reduced the age limit to 15. Subsequently, on June 20, 2013, the agency announced the approval of OTC sales of Plan B One-Step® without restrictions. [62] Because most health insurance plans exclude coverage of OTC items, one consequence of the agency's action is that insurers may exclude coverage of Plan B. Another emergency contraceptive, ella® (ulipristal acetate), is still available only with a prescription.

[60] Arkansas, California, Connecticut, Georgia, New York, and Rhode Island. See Table 4.

[61] *Tummino v Hamburg,* (E.D. N.Y. April 4, 2013)..

[62] See FDA announcement.

Cost Sharing Limits and Related Protections

No state requires health plans to cover contraceptives without any cost sharing whatsoever. Seventeen states specifically prohibit copayments, coinsurance, or deductibles, or other cost sharing that exceed the same types of charges applied to comparable services.[63] The terminology used differs somewhat. For example, Arkansas[64] and Hawaii[65] prohibit unusual charges or surcharges. More frequently states use language stating copayments, deductibles, coinsurance may be no greater than, or no higher than, or may not exceed those imposed for other drugs or outpatient services.[66]

Several state statutes provide that cost sharing or other requirements for contraceptive coverage must be equally imposed to those required for other services.[67] North Carolina requires that the cost sharing for contraceptives be the same as for other drugs or services, but makes an exception for devices; the copayment may be proportionate to the useful life of the device. The statutes of four states do not mention cost sharing specifically but require that contraceptives be covered under the same terms and conditions as other drugs or services[68] or that the availability of benefits must be equal to other benefits.[69]

The Connecticut, California, Colorado, Ohio, and Rhode Island statutes do not provide specifically for cost sharing or other conditions on the availability of the benefit generally. However, Connecticut requires that any substitute coverage offered to employees of exempt religious employers cost no more than comparable prescription drug coverage.[70] New York has a similar provision.[71] See Table 5 for details for each state.

In addition to requiring equal cost sharing and coverage for contraceptives, five state statutes prohibit any reduction of reimbursement for contraceptive drugs or services.[72] Three of them also bar insurers from using payments or other incentives for providers to withhold contraceptive services or for insured persons to accept less than full benefit. The insurers also are prohibited from refusing to enroll or renew an individual's coverage because she has used contraceptives in the past or may use them in the future.[73]

The Effect of Health Reform on Contraceptive Coverage Mandates

The coverage of the preventive health services mandate included in the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148) differs from state contraception mandates in several ways. First, PPACA does not specify that contraception must be included in all group health insurance policies. Rather, Pub. Hlth. Serv. Act §2713, added by PPACA section 1001, requires that essential coverage include preventive services rated A or B by the United States Preventive Services Task Force and any additional preventive services for women recommended in comprehensive guidelines issued by the Health Resources and Services Administration (HRSA). The guidelines[74] specify that contraceptive methods and counseling are preventive services for which coverage should be required as essential health benefits. HRSA based its recommendations in part on the Institute of Medicine publication, *Clinical Preventive Services for Women: Closing the Gap.*[75]. In contrast, all but two of the state laws affirmatively require coverage of contraceptives.

State mandates will still apply to grandfathered plans.

Second, all state mandates have permitted carriers to require cost sharing equal to the cost sharing required for similar services, *i.e.,* prescription drugs or devices and outpatient services. PPACA prohibits any cost sharing requirement for preventive services.

To the extent that an employer-sponsored plan is "grandfathered," the new mandated benefits under PPACA will not apply. However, the state mandates

[63] Arizona, Arkansas, Georgia, Hawaii, Illinois, Iowa, Maryland, Nevada, New Mexico, New York, North Carolina, Texas, Vermont, Virginia, West Virginia, and Wisconsin. See Table 5.
[64] Ark. Code sec. 23-79-1104.
[65] Haw. Rev. Stat. secs. 431:10A-116.6(b),432:1-604.5(b).
[66] See, *e.g.,* 215 Ill. Comp. Stat. sec. 5/356z.4(a); Iowa Code sec. 514C.19(3)(a).
[67] See, *e.g.,* Ga. Code sec. 33-24-59.6(d), Va. Code sec. 38.2-3407.5:1.
[68] See, *e.g.,* Del. Code tit. 18, sec. 3559; Mass. Gen. L. ch. 176A, sec. 8W; N.H. Rev. Stat. sec. 420-A:17-c.
[69] N.J. Rev. Stat. sec. 17:48-6ee.
[70] Conn. Gen. Stat. sec. 38a-503e.
[71] N.Y. Ins. L. sec. 4322.
[72] See, *e.g.,* Ga. Code sec. 33-24-59.6.
[73] Iowa Code sec. 514C.19; Nev. Rev. Stat. sec. 689A.0415; W. Va. Code sec. 33-16E-6.
[74] http://www.hrsa.gov/womensguidelines/
[75] *Closing the Gap,* supra note 1.

that applied before 2014 will still apply. The federal Religious Freedom Restoration Act (RFRA) (42 USC sec. 2000bb-1 *et seq.*) does not apply to state laws, so that a state may uphold a law that applies to employers or insurers in general if they find the laws is reasonable and is not targeted at religion.[76] If a state has enacted both a mandate for coverage of contraceptives and its own RFRA, the issue may be litigated in state court.

Treatment of Religious Objections Under Health Reform

The *Interim final rule* published in August 2011 defined "religious employer" almost exactly as the California and New York statutes do:

1. The inculcation of religious values must be the purpose of the organization;
2. The organization must primarily employ members of the faith;
3. The organization must primarily serve members of the faith; and
4. The organization must qualify as a nonprofit entity under Internal Revenue Code sec. 6033(a)(3)(A)(i) or (iii).[77]

The regulation was to apply to plan years beginning on or after August 1, 2012. Religious organizations and other conservatives expressed vehement opposition to these limits, however. Although the administration finalized the rule in March 2012, it announced a "safe harbor"[78] under which it would not enforce the requirements against nonprofits that have consistently not covered, or have unsuccessfully attempted not to cover, either all recommended contraceptives or the contraceptives identified on a list, because of religious objections, since February 10, 2012.

On June 28, 2013, HHS released a *Final rule*[79] amending the regulations and providing additional guidance. The safe harbor has been extended until the first plan year that begins on or after January 1, 2014.

The new definition of "religious employer" is "an organization that is organized and operates as a nonprofit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code."[80] The requirements of the earlier final rules concerning the inculcation of religious values as the purpose of the organization, and that it employ and serve primarily individuals who share its religious beliefs, were deleted from the final rule in order to avoid excluding churches that provide charitable services to the community.

HHS' final rule on contraception coverage was an innovative attempt to accommodate religious charities.

The final rule also provides for an "accommodation" for "eligible organizations." An eligible organization must meet the following requirements: (1) have religious objections to some or all of the contraceptive services required to be covered; (2) hold itself out as a religious organization; and (3) self-certify that it satisfies the criteria. An eligible organization does not qualify as a religious employer, but the regulations accommodate the organization's religious beliefs by severing any connection between the payment of insurance premiums and the coverage of contraception. Instead, the insurer must pay for the services from separate funds.

The eligible organization will file the self-certification with the issuer of the plan. The issuer will notify the plan members, *i.e.*, employees or students, that they have a right to separate payment for contraceptive services from the issuer. No fee, premium, copayment, or other charge may be imposed for the coverage or the services. Rather, the issuer must keep the premiums paid by the eligible organization separate from the funds it uses to pay for contraceptive services. It will be compensated through a reduction in the user fees it will pay to the health insurance exchange.

If the eligible organization is a self-insured employer, the employer's third party administrator (TPA) will pay for the contraceptive services. The regulations prohibit

[76] *City of Boerne v Flores,* 521 US 507 (1997).
[77] *Interim final rule,* 76 FR 46621 (Aug. 3, 2011).
[78] Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans, and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing. Reissued June 28, 2013.
[79] *Final rule,* 78 FR 39870 (July 2, 2013).
[80] These provisions describe "churches, their integrated auxiliaries, and conventions or associations of churches" and "the exclusively religious activities of a religious order," respectively.

the eligible organization from interfering with the TPA's payment for the services.

The new regulations will not permit for-profit entities to be treated either as religious employers or as eligible organizations. Profitmaking entities will all be treated alike.

The preventive services mandate regulations reflect a compromise between the administration's original position and the concerns of charities and institutions of higher education. The goals of protecting women's health and maximizing access to necessary services remain paramount. Only organizations whose primary function is worship or religious teaching will be completely exempt from the mandate. At the same time, church-run institutions of higher education and charities that serve the public will not be obliged to support activities or services that they consider sinful. By requiring the administrators or issuers of coverage to pay those expenses directly, the policy accommodates religious organizations while assuring that employees and students get the health care they need. ■

Table 1: State Statutes Governing Health Insurance Coverage of Contraception

State	Citation
Arizona	Ariz. Stat. §20-2329
Arizona	Ariz. Stat. §20-1057.08
Arizona	Ariz. Stat. sec. 20-1402
Arizona	Ariz. Stat. sec. 20-2341
Arizona	Ariz. Stat. sec. 20-1404
Arkansas	Ark. Stat. Ann. Sec. 1101 through 1104
California	Cal. Ins. Code sec. 10123.196
California	Cal. Health &Safety Code sec. 1367.25
Colorado	Col. Rev. Stat. sec. 10-16-104
Colorado	Col. Rev. Stat. sec. 10-16-105
Connecticut	Conn. Gen. Stat. sec. 38a-503e
Connecticut	Conn. Gen. Stat. sec. 38a-530e
Delaware	Del. Code Title 18, sec. 3559
Georgia	Ga. Code sec. 33-24-59.6
Hawaii	Haw. Rev. Stat. sec. 431:10A-116.6
Hawaii	Haw. Rev. Stat. sec. 431:10A-116.7
Illinois	215 Ill. Comp. Stat. sec. 5/356z
Illinois	215 Ill. Comp. Stat. sec. 125/5-3
Illinois	215 Ill. Comp. Stat. sec. 165/10
Illinois	745 Ill. Comp. Stat. sec. 70/
Iowa	Iowa Code sec. 514C.19
Maine	Me. Rev. Stat. ann. Title 24A, sec. 4247
Maine	Me. Rev. Stat. ann. Title 24A, sec. 2756
Maine	Me. Rev. Stat. Ann. Title 24, sec. 2847G
Maine	Me. Rev. Stat. Ann. Title 24, sec. 2332J
Maryland	Md. Ins. Code. Ann. Sec. 15-826
Maryland	Md. Laws, Ch. 117 (1998)
Massachusetts	Mass. Gen. Laws ch. 175, sec. 47W
Massachusetts	Mass. Gen. Laws ch. 176A, sec. 8W
Massachusetts	Mass. Gen. Laws ch. 176B, sec. 4W
Massachusetts	Mass. Gen. Laws ch. 176G, sec. 4O
Michigan	Mich. Civ. Rts. Comm'n, Declaratory Ruling
Missouri	Mo. Rev. Stat. sec. 376.1199
Missouri	Mo. SB 749 (2012)
Montana	56 Mont. Att'y Gen. Op. 16
Nevada	Nev. Rev. Stat. sec. 689A.0415,
Nevada	Nev. Rev. Stat. sec. 689A.0417
Nevada	Nev. Rev. Stat. sec. 689B.0377
Nevada	Nev. Rev. Stat. sec. 689B.0376
Nevada	Nev. Rev. Stat. sec. 695C.1694
Nevada	Nev. Rev. Stat. sec. 695C.1695
Nevada	Nev. Rev. Stat. Sec. 695B.1916
Nevada	Nev. Rev. Stat. Sec. 695B.1918
Nevada	Nev. Rev. Stat. Sec. 287.010(c).
New Hampshire	N.H. Rev. Stat. sec. 420-B:8-gg
New Hampshire	N.H. Rev. Stat. sec. 415:18-i
New Hampshire	N.H. Rev. Stat. sec. 420A:17-c
New Jersey	N.J. Rev. Stat. sec. 17:48-6ee
New Jersey	N.J. Rev. Stat. sec. 17B:26-2.1y
New Jersey	N.J. Rev. Stat. sec. 26:2J-4.30
New Jersey	N.J. Rev. Stat. sec. 17:48A-7bb
New Jersey	N.J. Rev. Stat. sec. 17:48F-13.2
New Jersey	N.J. Rev. Stat. sec. 52:14-17.29j
New Jersey	N.J. Rev. Stat. sec. 17:48E-35.29
New Jersey	N.J. Rev. Stat. sec. 17B:27-46.1ee
New Mexico	N.M. Stat. sec. 59A-22-42
New Mexico	N.M. Stat. sec. 59A-46-44
New York	N.Y. Ins. L. sec. 4303(cc)
New York	N.Y. Ins, L. sec. 4322
North Carolina	N.C. Gen. Stat. sec. 58-3-178
Ohio	Ohio Rev. Code sec. 1751.01(A)(1)(h)
Oregon	Ore. Rev. Stat. sec. 743A.066
Rhode Island	R.I. Gen. Laws sec. 27-18-57
Rhode Island	R.I. Gen. Laws sec. 27-19-48
Rhode Island	R.I. Gen. Laws sec. 27-20-43
Rhode Island	R.I. Gen. Laws sec. 27-41-59
Texas	Tex. Ins. Code secs. 1369.101 et seq
Vermont	8 Vt. Stat. Ann. sec. 4099c
Virginia	Va. Code Ann. sec. 2.2-2818
Virginia	Va. Code Ann. sec. 38.2-3407:5.1
Washington	Wash. Rev. Code sec. 48.41.110
Washington	Wash. Admin. Code sec. 284-43-822
West Virginia	W. Va. Code sec. 33-16E-1
West Virginia	W. Va. Code sec. 33-16E-2
West Virginia	W. Va. Code sec. 33-16E-3
West Virginia	W. Va. Code sec. 33-16E-4
West Virginia	W. Va. Code sec. 33-16E-5
West Virginia	W. Va. Code sec. 33-16E-6
West Virginia	W. Va. Code sec. 33-16E-7
Wisconsin	Wis. Stat. sec. 632.895(17)
Wisconsin	Wis. Stat. sec. 609.805

At the time of publication, the following states do not have relevant statutory provisions related to contraception coverage and are therefore excluded from this table: Alabama, Alaska, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, and Wyoming.

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Table 2: Requirements for Religious Exemption from Mandate

State	Who May Be Exempt from Requirement	Description	Tax Status Required	Purpose to Inculcate Religioius Values	Primarily Employ Own Members	Primarily Serve Members
Arizona[1]	Religiously Affiliated Employer	No provision	IRC sec. 6033	N	Y	Y
Arkansas	Religious Employer:	No provision	IRS sec. 501(c)(3)	AP	Y	
California	Religious Employer	Organized and operated for religious purposes	IRS sec 6033	O	Y	Y
Colorado	No provision	No provision	No provision	No provision	No provision	No provision
Connecticut	Religious Employer	No provision	IRS sec. 3121 (w)(3)(A) or church affiliated organization	No provision	No provision	No provision
Delaware	Religious Employer	Not defined in statute	No provision	No provision	No provision	No provision
Georgia	No provision	No provision	No provision	No provision	No provision	No provision
Hawaii	Religious Employer	Includes educational, nonprofit, health care, or other organization owned or controlled by religious employer	IRS sec. 501(c)(3)	O	Y	Y
Illinois	Anyone whose religious beliefs or conscience do not permit paying for or providing the services	Not defined in statute.[2]	No provision	No provision	No provision	No provision
Iowa	No provision	No provision	No provision	No provision	No provision	No provision
Maine	Religious Employer	A church, convention, or association of churches or an elementary or secondary school that is controlled, operated, or principally supported by a church, etc., as defined in sec. 3121(w)(3)(A)	IRS sec. 501(c)(3)	No provision	No provision	No provision
Maryland	Religious Employer	Not defined in statute[3]	IRS sec. 501(c)(3)	No provision	No provision	No provision
Massachusetts	Religious Employer	Church or qualified church-controlled organization as defined	IRS sec. 3121(w)(3)(A), (B)[4]	No provision	No provision	No provision
Michigan	Religious Employer		IRS sec. 501(c)(3)	O	Y	Y
Missouri	Any person or entity purchasing a health benefit plan	No restrictions	No provision	No provision	No provision	No provision
Nevada	Insurer affiliated with a religious organization	No further definition	No provision	No provision	No provision	No provision
New Hampshire	No provision	No provision	No provision	No provision	No provision	No provision
New Jersey	Religioius Employer	A church, convention, or association of churches or an elementary or secondary school that is controlled, operated, or principally supported by a church, etc., as defined in sec. 3121(w)(3)(A)	IRS sec. 501(c)(3)	No provision	No provision	No provision
New Mexico	Religious Entity Purchasing Coverage	No further definition	No provision	No provision	No provision	No provision
New York	Religious Employer	No provision	IRC sec 6033(a)(2)(A)(i) or (iii)	O	Y	Y

Table 2: Requirements for Religious Exemption from Mandate (cont'd)

State	Who May Be Exempt from Requirement	Description	Tax Status Required	Purpose to Inculcate Religioius Values	Primarily Employ Own Members	Primarily Serve Members
North Carolina	Religious Employer	Organized and operated for religious purposes	IRS sec. 501(c)(3)	A	Y	No provision
Ohio	No provision	No provision	N/A	N/A	N/A	N/A
Oregon	Religious Employer	No provision	IRC sec 6033(a)(2)(A)(i) or (iii)	O	Y	Y
Rhode Island	Religious Employer	Church or qualified church-controlled organization as defined	IRS sec. 3121	No provision	No provision	No provision
Texas	Issuer of plan that is associated with a religious organization	No further definition	No provision	No provision	No provision	No provision
Vermont	No provision	No provision	No provision	No provision	No provision	No provision
Virginia	Any purchaser can refuse; coverage is not mandatory	No provision	No provision	No provision	No provision	No provision
Washington	Issuer of plan or purchaser with religious or moral objections	No restrictions	No provision	No provision	No provision	No provision
West Virginia	Religious employer	Sincerely held religious or moral beliefs are central to operation of organization and listed as tax exempt under statute or listed in Official Catholic Directory published by P.J. Kennedy & Sons	IRS sec. 501(c)(3) or 3121	No provision	No provision	No provision
Wisconsin	No provision	No provision	No provision	No provision	No provision	No provision

O = Only Purpose P= Primary Purpose or One of the Primary Purposes A=Among the Purposes N= Not Required Y= Required

Notes

[1] Alternatively, the employer may qualify as "religiously affiliated" if the articles of incorporation or similar documents state that the organization is religiously motivated and that religious principles are central to its operations.

[2] The Illinois Health Care Right of Conscience Act shields from liability payers who refuse to pay for services that violate their ethical principles as described in their governing documents.

[3] Md. Admin. Reg. sec. 31-11-06.02(58) defines "religious organization" as "an entity that is organized and operated exclusively for religious purposes and has obtained a tax exemption under §501(c)(3) of the U.S. Internal Revenue Code."

[4] 26 USC §3121(w)(3)(B) excludes from the definition of church controlled organization an entity that regularly offers goods or services to the public and gets more than 25 percent of its income from sales of goods or services, unrelated businesses, or the government.

At the time of publication, the following states do not have relevant statutory provisions related to contraception coverage and are therefore excluded from this table: Alabama, Alaska, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, and Wyoming.

Table 3: Rights of Employees of Exempt Employers

State	Documentation Required for Exemption	Employee Notification Required	Who Gives Notice	Time of Notification	Must Substitute Insurance Be Available	Who Bears Cost of Substitute Insurance	Contents of Notice
Arizona	Written affidavit filed with insurer	No[1]	N/A	N/A	N/A	N/A	N/A
Arkansas	Not specified	No		N/A	N/A	N/A	N/A
California	Request exclusion from insurer	Yes	Employer	When employment offered	No	N/A	List the methods that employer will not cover
Connecticut	Request exclusion from insurer	Yes	Insurer	In policy, application, and sales brochure	Yes, if insurer,health care center, hospital, or medical service corporation is "owned, operated, or substantially controlled" by religious organization	Cost to employee may not differ from other prescription drug coverage	Contraceptives are excluded. Type size specified
Delaware	Request exclusion from insurer	Yes	Employer	Reasonable and timely	No	N/A	N/A
Hawaii	Request exclusion from insurer	Yes	Employer	On enrollment	Yes	Employee. Cost may not exceed the employee's pro rata share of what the employer would have paid.	List the methods that employer will not cover; Description of how employee can access contraceptive services
Illinois	Religious or moral position must be in payer's governing documents	N/A	N/A	N/A	N/A	N/A	N/A
Maine	Request exclusion from insurer	Yes	Employer	Before enrollment and at enrollment	No	N/A	N/A
Maryland	Request exclusion from insurer	Yes	Employer	Reasonable and timely	No	N/A	N/A
Massachusetts	Request exclusion from insurer	No	N/A	N/A	N/A	N/A	N/A
Missouri	Request exclusion from insurer	Yes	Insurer	At enrollment	Yes	Employee	Whether contraception is or is not covered, and that employee has the right to buy coverage not provided or to refuse coverage that is offered
Nevada	Exemption belongs to insurer, not employer.	Yes [2]	Insurer [2]	With certificate of coverage[2]	No	N/A	Exclusion.
New Jersey	Request exclusion from insurer	Yes	Employer	Before and at enrollment (prospective and actual insureds)	No	N/A	N/A
New Mexico	N/A	No	N/A	N/A	N/A	N/A	N/A

Table 3: Rights of Employees of Exempt Employers (cont'd)

State	Documentation Required for Exemption	Employee Notification Required	Who Gives Notice	Time of Notification	Must Substitute Insurance Be Available	Who Bears Cost of Substitute Insurance	Contents of Notice
New York	Request exclusion from insurer	Yes	Employer and Insurer	Before enrollment	Yes	Employee	Employer: Services not covered Insurer: Right to purchase rider to cover the services and amount of additional premium
North Carolina	Request exclusion from insurer	Yes	Insurer	Not stated, but must be included in application, sales brochure, and plan	No	N/A	Exclusion. Type size specified
Rhode Island	Not specified	Yes	Employer	Before enrollment	No	N/A	Specific services excluded
Texas	N/A	Yes	Issuer of plan	Not stated, but must be included in coverage document, statement of benefits, sales brochure, and informational material	No	N/A	Exclusion
Washington	Not specified	Yes	Insurer	At enrollment	Yes[3]	Not addressed	Services excluded, how to access services or coverage
West Virginia	Listed in definition	Yes	Insurer	Before enrollment	Yes	Employee	Services excluded

Notes

[1] Arizona: Statute does not require notice, but provides a procedure for employee to be reimbursed when contraceptives are prescribed for other medical purposes.

[2] Nevada: The insurer also must notify the group policyholder or prospective insured, as applicable, before coverage is issued.

[3] Washington: Insurer must have and submit to Insurance Commissioner a process for assuring access to services while respecting the right of employers and purchasers to refuse to provide coverage. Insurance Commissioner sets criteria for process.

At the time of publication, the following states do not have relevant statutory provisions related to contraception coverage and are therefore excluded from this table: Alabama, Alaska, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, and Wyoming.

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Table 4: Scope of Coverage

State	Items Required to Be Covered	Formulary or Coverage Limits Allowed	Items Must Be Covered for Noncontraceptive Purposes	Exclusions From Required Coverage	Emergency Contraception	Nonprescription Drugs and Devices Covered
Arizona	Oral, injectable, implants, IUD, prescription barrier methods	Yes	Yes	Not addressed	Not addressed	Not addressed
Arkansas	Prescribed drugs and devices approved by FDA for contraception; parity	Yes, must include oral, injectable, IUD, implant, prescription barrier methods	No provision	Abortions, abortifacients, emergency contraception	Not required	Not addressed
California	A variety	Yes	Yes	Experimental or investigational treatments	Not addressed	Not addressed
Colorado*	Drugs, devices, implants, hormone injections, IUDs, to be covered to the same extent as other drugs, devices, injections, etc.	Not specified, but consistent with terms of requirements	Not addressed	Mifeprestone, RU-486, other drugs that induce medical abortion; Nonprescription methods	Required	Not required
Connecticut	Shall not exclude prescription drugs and devices approved by FDA	Not addressed	Yes	Not addressed	Not addressed	Not addressed
Delaware	Under terms and conditions applicable to other benefits	Not specified, but consistent with terms of requirements	No	Not addressed	Not addressed	Not addressed
Georgia	Must include oral, implant, and injectable drugs, IUDs, prescription barrier methods	Yes	No	Not addressed	Not addressed	Not addressed
Hawaii	Coverage for oral contraceptives must include at least one from monophasic, multiphasic, and progestin-only categories.	Yes	Yes, including necessity to preserve enrollee's life or health	Not addressed	Not addressed	Not addressed
Illinois	All FDA-approved drugs and devices	Not addressed	Not addressed	Abortion, sterilization	Not addressed	Not addressed
Iowa	May require generic or require the enrollee to pay the difference between the cost of the generic and brand name drug	Generics	Not addressed	Experimental or investigational drugs or devices	Not addressed	Not addressed
Maine	All FDA-approved drugs and devices	Nn same basis as other drugs are covered	Yes, including necessity to preserve enrollee's life or health	Drugs or devices intended to terminate a pregnancy	Not addressed	Not addressed
Maryland	All FDA-approved drugs and devices.	Not addressed	No	Not addressed	Not addressed	Not addressed
Massachusetts**	Formulary must cover all FDA approved methods	Yes	No	Not addressed	Not addressed	Not addressed
Missouri	All FDA-approved drugs and devices (except abortifacients)	Assumes formulary for other drugs, not addressed directly	Yes	drugs or devices intended to induce abortion	Not addressed	Not addressed
Nevada	All: any prescribed drug or device	Not addressed	No	Not addressed	Not addressed	Not addressed, but law doesn't specify prescription drugs
New Hampshire	All prescription methods approved by FDA	On same terms as other services	Not addressed	Not addressed	Not addressed	Not addressed

Table 4: Scope of Coverage (cont'd)

State	Items Required to Be Covered	Formulary or Coverage Limits Allowed	Items Must Be Covered for Noncontraceptive Purposes	Exclusions From Required Coverage	Emergency Contraception	Nonprescription Drugs and Devices Covered
New Jersey	Prescription female contraceptives, including but not limited to birth control pills and diaphragms	Not addressed	Yes	Not addressed	Not addressed	Not addressed
New Mexico	Prescription contraceptives approved by FDA	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed
New York	drugs or devices approved by FDA (doesn't say all)	"Or generic equivalents"	Yes	Not addressed	Not addressed	Not addressed
North Carolina	Prescribed contraceptive drugs and devices	Same limitations as apply to other drugs and devices under plan	Yes	RU486, Preven or equivalent	Not addressed	No
Ohio	Voluntary family planning	Per general provisions	Not addressed	Not addressed	Not addressed	Not addressed
Oregon	Prescription drug or device approved by FDA	Same limitations as apply to other drugs and devices under plan (examples all are $)	Not addressed	Not addressed	Not addressed	Not addressed
Rhode Island	FDA-approved prescription contraceptives	Not addressed, regulations generally allow formularies	No	RU486	Not addressed	Not addressed
Texas	FDA-approved prescription contraceptives	Yes, if applied to other drugs	Religious or health care employer may not exclude contraceptives necessary to life or health of enrollee	Abortifacients or drugs that terminate pregnancy	Not addressed	Not addressed
Vermont	All prescription drugs or devices approved by FDA	Not addressed	Not addressed	Not addressed	Not addressed	No
Virginia	Formulary must cover oral, implant, injectable, IUD and prescription barrier methods	Closed formulary OK	Not addressed	Not addressed	Not addressed	Not addressed
Washington	Drugs and contraceptive devices requiring a prescription: regulations require drugs, devices, and prescription barrier methods.	Regulations allow closed formulary if the plan uses one for other drugs	Not addressed	Not addressed	Yes	If other nonprescription drugs/devices are covered
West Virginia	Prescription drugs and devices approved by FDA	Yes	Yes	Not addressed	Not addressed	Not addressed
Wisconsin	Drugs and devices approved by FDA	Not addressed specifically, must be the same as for other services	Yes	Not addressed	Not addressed	Not addressed

Notes

* Details are in regulations, statute generally requires parity

** Other regulations govern formularies in general

At the time of publication, the following states do not have relevant statutory provisions related to contraception coverage and are therefore excluded from this table: Alabama, Alaska, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, and Wyoming.

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Table 5. Cost Sharing Limits and Other Protections

State	Cost Sharing Provision	No Waiting Period	No Discrimination	Other
Arizona	Deductibles, coinsurance, copayments, other cost containmnet may not exceed those for other drugs on same formulary tier	Not addressed	Not addressed	Insurer handles claims for noncontraceptive use. No right to employee's protected health information
Arkansas	May not impose any charge not equally imposed on individuals in the same benefit category, class, insurance level	Not addressed	Not addressed	May not reduce allowable reimbursement
California	None	Not addressed	Not addressed	
Colorado	None	Not addressed	Not addressed	
Connecticut	None	Not addressed	Not addressed	
Delaware	Terms and conditions applicable to other benefits	Not addressed	Not addressed	
Georgia	May not impose any charge not equally imposed on other service, in same benefit category, class	Not addressed	Not addressed	May not reduce allowable reimbursement
Hawaii	No unusual copayment, charge	Yes	Not addressed	
Illinois	No copayment, coinsurance, deductible or other cost sharing limit greater than for other drugs	Yes	Not addressed	
Iowa	No greater than for other services or drugs	Not addressed	Yes	May not reduce allowable reimbursement re: the service or to providers; no payments to providers to withhold contraceptives, no incentives to insured to accept less than full benefits or not use
Maine	Terms and conditions applicable to other benefits	Not addressed	Not addressed	
Maryland	No copayment, coinsurance, deductible or other cost sharing limit greater than (different from) for other drugs	Not addressed	Not addressed	
Massachusetts	Terms and conditions applicable to other benefits	Not addressed	Not addressed	
Missouri	Either at no charge or at same level as other drugs	Not addressed	Not addressed	
Nevada	No higher than for other services or drugs	Not addressed	Yes	May not reduce allowable reimbursement, no payments to providers to withhold contraceptives, no incentives to insureds not to use
New Hampshire	Terms and conditions applicable to other benefits	Not addressed	Not addressed	
New Jersey	Benefit to same extent as other outpatient services	Not addressed	Not addressed	
New Mexico	Deductibles and coinsurance consistent with other benefits	Not addressed	Not addressed	
New York	Deductibles and coinsurance consistent with other benefits	Not addressed	Not addressed	
North Carolina	Same as for other benefits	Not addressed	Not addressed	
Ohio	None	Not addressed	Not addressed	
Oregon	Conditions equal to those applied to other benefits	Not addressed	Not addressed	
Rhode Island	None	Not addressed	Not addressed	
Texas	Same or less than for other benefits	Yes	Not addressed	

Table 5. Cost Sharing Limits and Other Protections (cont'd)

State	Cost Sharing Provision	No Waiting Period	No Discrimination	Other
Vermont	No rate, term or condition that places a greater financial burden	Not addressed	Not addressed	
Virginia	No copayment, etc not equally applied to all benefits	Not addressed	Not addressed	No reduction in reimbursement
Washington	Same as for other benefits	Unless applied to other benefits	Not addressed	
West Virginia	No greater than for other services or drugs	Unless applied to other benefits	Not addressed	
Wisconsin	Requirements must apply generally to all benefits	Not addressed	Not addressed	

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