



FDA's Approval of Plan B: Women still have no sure access to Over-the-Counter Emergency Contraception

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Plan B is often referred to as emergency contraception (EC) or the "morning after pill." Like other birth control pills, Plan B has been available to all women as a prescription drug and has been proven to effectively and safely prevent pregnancy.¹

On August 24, 2006, the Food and Drug Administration (FDA) approved Plan B as an over-the-counter (OTC) drug. Specifically the FDA chose to approve the sale of Plan B with the following restrictions:

- It is available to individuals 18 and older with proof of ID; and
- It will be dispensed from behind the pharmacy counter only

Entitling women in this country OTC access to EC is a victory for women, reproductive justice activists, and human rights advocates. However, Plan B may still be inaccessible to certain groups of low-income women and advocates must monitor the provision of Plan B for access barriers

The recent approval of Plan B comes almost six years after the American Medical Association (AMA) declared its official policy in support of making Plan B available OTC and after years of controversy surrounding the struggle of FDA scientists to have their recommendation for this approval recognized. The FDA's action is merely a step in the right direction to ensuring reproductive justice for American women over the age of 18.

The potential pharmacy problem: The fact that OTC EC is available only to women 18 years and older discounts the reality that teenagers engage in sexual activity often-times before the age of 18 and risk becoming pregnant. Also because OTC EC can *only* be dispensed from behind the pharmacy counter, the burden is placed on pharmacies which now have the duty to develop and implement procedures for verifying the age of Plan B purchasers. Thus pharmacy-based activities could be uneven or unfair.

Furthermore, the requirement that Plan B be dispensed from behind the counter means that some pharmacies may refuse to stock Plan B (whether for prescription or non-prescription sale) because pharmacies can decide which medications they will and will not carry. If the pharmacy does stock Plan B, some women still may be unable to access the medication because of pharmacy conscientious refusal clauses enacted in some states. These clauses allow individual pharmacists and pharmacy staff to refuse to dispense contraceptives if it violates their moral and/or religious beliefs. For example, Walgreens' policy is that, "Walgreens respects the held views of our employees and recognizes a

¹ Before this decision, eight states (California, Washington, Alaska, Hawaii, New Mexico, Maine, New Hampshire and Massachusetts) passed laws permitting trained pharmacists to dispense emergency contraception without a doctor's prescription.

pharmacist's right of conscientious refusal to dispense a prescription based upon his or her religious beliefs."² Walgreens does provide necessary steps to ensure that the consumer is served by other employees of Walgreens or referred to another location that will provide the medication. However in cases such as these, a woman in a larger city may be inconvenienced temporarily by having to travel to another pharmacy to access Plan B, whereas women in rural areas with few pharmacists within traveling distance may actually be unable to obtain Plan B.

Low-income women still may not have access to Plan B: Right now, the average wholesale price of Plan B is \$27.95 which means that the product will cost this much or more over the shelf which may prove cost-prohibitive to low-income women. Necessary steps still need to be taken to ensure that low-income women, particularly those insured through Medicaid can obtain Plan B. Under federal Medicaid rules, states have the option to cover over-the-counter drugs, but it is not required. Moreover, even when drugs are over the counter, many states require patients to obtain a prescription in order to have Medicaid pay for it. In addition, the barriers mentioned above caused by neighborhood pharmacy refusals to dispense or stock Plan B will continue to restrict access to emergency contraception for low income women, who may have limited access to other pharmacies where Plan B is available.

What you can do: As an advocate it is important for you to monitor the access to Plan B at the state and local level. The National Health Law Program (NHeLP) asks that you report any difficulties encountered by women in obtaining Plan B in your area to us.

NHeLP also encourages you to work with your state Pharmacy Board to adopt rules such as the one recently adopted by Washington. Washington already allows pharmacists to prescribe Plan B OTC (called self-referral). This state is also considering a rule to prove that a pharmacist who personally objects to a legal prescription, such as emergency contraception, would be required to fill it if it's in stock, or face sanctions. While public hearings have yet to be heard on this rule, engaging pharmacists in your advocacy to make EC available OTC to all women over 18 may strengthen your message.

² <http://www.pregnantpause.org/debate/pharm-choice.htm>