



Contraceptive Equity & Medicaid

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Contraceptive Equity laws require coverage of all unique contraceptives without inappropriate medical management. This fact sheet is part of a series of primers on health law issues that may arise when advocating for state Contraceptive Equity laws. To access additional primers, visit <https://healthlaw.org/contraceptive-equity-primers>.

Federal Medicaid law requires states to cover “family planning services and supplies” without cost-sharing.¹ As with most other Medicaid services, states have some discretion to determine what family planning services and supplies to cover in their programs, as long the coverage is “sufficient in amount, duration, and scope to reasonably achieve its purpose.”² Notably, unlike the ACA’s birth control requirement, federal Medicaid law does not explicitly require coverage of all FDA (Food and Drug Administration)-recognized methods. Federal law does explicitly prohibit cost-sharing for family planning in Medicaid.³

Contraceptive Equity laws can be written to apply all provisions to Medicaid, in addition to other non-grandfathered health plans. This is important because Medicaid managed care plans – through which the majority of Medicaid enrollees receive their coverage – often apply medical management policies like step therapy and prior authorization to family planning. Federal regulations acknowledge that Medicaid managed care organizations (MCOs) may adopt methods and procedures to safeguard against unnecessary use of services.⁴ Often referred to

¹ 42 U.S.C. §§ 1396d(a)(4)(C), 1396a(a)(10); 42 C.F.R. § 447.56(a)(2)(ii) (prohibiting imposition of cost-sharing for family planning services and supplies). States do not have to cover family planning services and supplies for individuals who qualify for Medicaid due to their status as medically needy. See also 42 U.S.C. § 1396o(a)(2)(d).

² 42 C.F.R. § 440.230(b); CMS, State Medicaid Manual § 4270.B.

³ 42 C.F.R. §§ 438.108, 447.56(a)(2)(ii).

⁴ 42 C.F.R. § 438.210(a)(3)(iii) (allowing plans to place limits on services for the purpose of utilization control so long as the services furnished can reasonably be expected to achieve their purpose), 438.201(b)-(d) (establishing requirements for prior authorization processes).

as “utilization management,” these methods and procedures may include requiring prior authorization for services, step therapy (requiring trial and failure of one drug or device before authorizing an alternative drug or device), and quantity limits on services or prescription drugs. Such policies can delay or prevent access to appropriate contraceptive methods and increase the risk of unintended pregnancy.

Some Medicaid enrollees, and in particular those in the ACA’s Medicaid expansion population, receive their benefits through Alternative Benefit Plans (ABPs). ABPs must cover all of the contraceptive services that most commercial insurance plans must cover under the ACA, without cost-sharing.⁵ A growing number of states also align their ABPs with Medicaid for the non-expansion population, in which case those enrolled in traditional Medicaid have coverage that meets the ACA’s contraceptive coverage standards. Depending on how the state aligns its benefits, advocates may consider whether application of a Contraceptive Equity law to Medicaid managed care, Medicaid fee-for-service, and/or the Children’s Health Insurance Program (CHIP) would be beneficial in their states.⁶

⁵ 42 C.F.R. § 440.347(a); 45 C.F.R. §§ 156.115(a)(4), 147.130(a)(1)(iv).

⁶ The Children’s Health Insurance Program (CHIP) provides health coverage to eligible children up to age 19, and states have the option to implement this coverage through Medicaid, through a separate CHIP program, or through a combination program (i.e. children ages 0-5 are in Medicaid and age 6-18 in a separate program). In states that operate CHIP through Medicaid, children’s coverage must comply with state and federal Medicaid contraceptive coverage requirements, including Contraceptive Equity laws. In states that operate CHIP as a separate or combination program, a Contraceptive Equity provision can help guarantee contraceptive coverage for young adults.