



## Contraceptive Equity & Self-Insurance

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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>.

If someone receives health insurance through their job, an employer can generally offer two types of plans: fully-insured or self-funded.<sup>1</sup> In a fully insured plan, an employer pays premiums each month to a carrier and if something catastrophic happens, like an employee gets into a car accident or develops complications from coronavirus, the carrier will foot the bill to pay for the employee's coverage in accordance with the policy.

Compare that with a self-funded or self-insured plan. The employer still pays premiums each month to a carrier to administer benefits; however, if an employee needs care that goes beyond the pot of money accrued through premiums, the employer itself is responsible for footing the bill. This is low risk for the carrier and high risk for an employer, and tends to be more common among larger employers because they can spread the risk of costly claims over a large number of workers and dependents.<sup>2</sup>

As an employee policyholder, it can be difficult to discern whether a plan is fully-insured or self-funded. Nonetheless, it is important to determine because the two types of plans have different legal coverage requirements. Fully-insured plans must comply with both state and federal contraceptive coverage laws, including state laws that mandate a higher level of benefits. Therefore, Contraceptive Equity laws apply to non-grandfathered fully-insured plans.

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<sup>1</sup> Emily Bazar, For Millions of Insured Americans, State Health Laws Don't Apply, Kaiser Health News (Nov. 16, 2017), <https://khn.org/news/for-millions-of-insured-americans-state-health-laws-dont-apply/>.

<sup>2</sup> Kaiser Family Foundation, *2020 Employer Health Benefits Survey, Section 10: Plan Funding* (Oct. 8, 2020), <https://www.kff.org/report-section/ehbs-2020-section-10-plan-funding/>.

Employee-sponsored self-funded plans, on the other hand, are not subject to state mandates because their regulation is preempted by the Employee Retirement Income Security Act of 1974 (ERISA). Any for-profit company or non-profit organization can self-insure, and therefore not be required to comply with Contraceptive Equity laws, while the federal birth control requirement does apply to those plans.<sup>3</sup>

States can enact benefit mandates for self-funded plans when the state itself is acting as the employer. The California Public Employees' Retirement System (CalPERS), for example, is a public employer purchaser of health benefits in the state.<sup>4</sup> The legislature can enact standards for public employees' health benefits, including potentially a Contraceptive Equity mandate.<sup>5</sup>

Much like employer sponsored insurance, student health plans can be fully-insured or self-funded. Fully insured student health plans must comply with the federal birth control benefit; however, they may or may not be required to comply with state Contraceptive Equity laws.<sup>6</sup> In California, for example, student health plans are exempted from the state's Knox-Keene Act regulating health care service plans so the state's Contraceptive Equity law does not apply to them.<sup>7</sup>

Self-funded student health plans, unlike self-funded employer sponsored insurance, are **not** subject to the Affordable Care Act. They may or may not be required to comply with state Contraceptive Equity laws, depending on the state's scope of health plan regulation.

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<sup>3</sup> 29 U.S.C. § 1144.

<sup>4</sup> CalPERS, Facts at a Glance: Health Benefits (FY 2019-20), <https://www.calpers.ca.gov/docs/forms-publications/facts-health-benefits.pdf>.

<sup>5</sup> Cal. Gov. Code § 22853.

<sup>6</sup> Kaiser Family Foundation, *Does My Student Health Plan Have to Cover Contraceptives?* <https://www.kff.org/faqs/faqs-health-insurance-marketplace-and-the-aca/does-my-student-health-plan-have-to-cover-contraceptives/>.

<sup>7</sup> Cal. Health & Safety Code § 1343(e)(2).