



# Steps Toward Contraceptive Equity: State Legislative Considerations for the 2023 Session

By [Liz McCaman Taylor](#)

## Background

In the first regular state legislative session post-*Dobbs*, many state policymakers and advocates may seek to shore up contraceptive access in their communities. NHeLP has created a checklist below of considerations for enshrining contraception rights into state law, based on a range of model access policies.

## Checklist

- Does my state have comprehensive contraceptive coverage requirements for state-regulated insurance plans, such as those in [NHeLP's Model Act](#)?
  - ☐ Does my state go beyond the [federal methods framework](#) and require coverage of all contraceptives unless a therapeutic equivalent is already covered?
  - ☐ Does my state require contraceptive coverage for all genders, including external condoms, vasectomy, and contraceptive counseling for all?
  - ☐ Does my state prohibit a prescription requirement for over-the-counter contraception?
  - ☐ Does my state cover a year supply of contraception dispensed at once?
  - ☐ Does my state cover contraception immediately post-partum, separate from the global labor and delivery fee?
  - ☐ Does my state explicitly cover LARC removal for any reason, including desired fertility?
  - ☐ Does my state require student health plans to cover contraception?
  - ☐ Does my state require state employee plans to cover contraception?
  - ☐ Does my state require advanced notice to an employee if their employer-sponsored health plan does not include some or all contraception?

- Does my state robustly fund existing contraceptive access programs?
  - ☐ Has my state expanded Medicaid?
  - ☐ Does my state have a State Plan Amendment for expanded eligibility for Medicaid family planning coverage? Does it include men and people of all ages?
  - ☐ Does my state have a family planning program for those traditionally ineligible for Medicaid, for example due to immigration status?
  - ☐ Does my state have robust Title X programming?
- Does my state take accountability for past reproductive injustices?
  - ☐ Can survivors of state-sponsored involuntary sterilization apply for compensation?
  - ☐ Does my state protect patients from having pelvic examinations performed on them while unconscious or anesthetized without prior written consent?
- Does my state allow all qualified providers to prescribe and dispense contraception within their scope of practice?
  - ☐ Can advanced practice registered nurses, including nurse practitioners and nurse midwives, independently provide some or all contraception?
  - ☐ Can physician associates independently provide some or all contraception?<sup>1</sup>
  - ☐ Can pharmacists independently provide some or all contraception?
  - ☐ Can naturopaths, if licensed in the state, independently provide some or all contraception?

### **Prescribe vs. Dispense**

Some state scope of practice laws explicitly allow non-physician providers to prescribe contraception, while others allow non-physician providers to “dispense or furnish” contraception. Functionally, scope of practice laws using any of these terms, prescribe, dispense, or furnish, should act the same: allowing non-physician providers to independently provide prescription contraceptives.

However, the verbiage may create complications for implementation. When running a prescription through the insurance switch system, a pharmacy must include a National Provider Identifier (NPI) as the prescriber; guidance for non-physician providers and pharmacies should specify the necessary process for obtaining and using their own NPI, or other ways to satisfactorily complete that portion of prescription documentation.

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<sup>1</sup> The health profession formerly known as physician assistant is moving to a new title of physician associate. See <https://www.aapa.org/about/>.

- Does my state protect the confidentiality, privacy, and security of contraceptive users?
  - ☐ Does my state prohibit employer discrimination based on an employee's contraceptive decisionmaking?
  - ☐ Does my state allow individuals insured as dependents to request confidential communications from their insurance provider?
- Do my state laws enable the standard of care for contraception?
  - ☐ Are people of all ages able to access contraception, without parental consent or notification?
  - ☐ Does my state require survivors of sexual assault be offered emergency contraception, at no cost to the survivor?
  - ☐ Are carceral facilities in my state required to allow incarcerated people to continue prescription contraception?
  - ☐ Are pharmacists and pharmacies required to fill all valid prescriptions?
  - ☐ Does my state require contraception, particularly emergency contraception, be available on public higher education campuses?

### Standard of Care

Accepted standards of care are determined by a combination of providers, researchers, and government regulators. For contraceptive care, the most comprehensive, evidence-based practice standards can be found in:

-CDC's [US Medical Eligibility Criteria for Contraceptive Use](#)

-[Providing Quality Family Planning Services: Recommendations from CDC and the US Office of Population Affairs](#)

-[Clinical guidance](#) from the American College of Obstetricians and Gynecologists

## Conclusion

How many check marks did your state get? While there is no perfect state, and even those with robust laws have work to do on implementation, this is an important moment for enshrining contraceptive access. Pick one policy that is most important to you, and investigate its status in your community. Every check mark is a step toward Contraceptive Equity.

For technical assistance determining your state laws, drafting legislation, supporting implementation efforts, or for examples of specific state language, contact Senior Attorney Liz McCaman Taylor at [mccaman@healthlaw.org](mailto:mccaman@healthlaw.org).