

Emergency Contraception Coverage under Family Planning §1115 Waivers

Background

In August 2006, the Food and Drug Administration (FDA) approved emergency contraception/Plan B® (EC) for over-the-counter (OTC) sale for individuals age 18 and over. The FDA placed certain restrictions on access, however, limiting EC to pharmacies and health center clinics (as opposed to convenience stores or gas stations, where other OTC medications can be purchased), and requiring that it be stocked behind the pharmacy counter and only sold to those with a valid form of identification. Despite these limitations, the FDA's long-awaited approval of "over-the-counter" sale allows many individuals (both women and men) to purchase EC without a prescription, making it easier for them to access this time-sensitive product.

Despite this positive advancement, many women still lack easy and timely access to EC. This includes young women and undocumented women,¹ who cannot fulfill the age and identification requirements for OTC purchase, and low-income women. Plan B® is a relatively expensive medication; its wholesale price is \$27, but it can cost as much as \$55 at a pharmacy. The cost of EC makes it unaffordable—or scarcely affordable—for many women. In order to ensure that low-income women are able to access EC, in a timely manner or at all, it is important that an entitlement program such as Medicaid—the largest provider of family planning funds in the U.S.—covers the cost of EC and, specifically, EC OTC. States with family planning §1115 waivers, which extend coverage of family planning supplies and services to women otherwise ineligible for Medicaid, should include coverage of this FDA-approved product in order to ensure that low-income women have equal and timely access to emergency contraception.

This report is intended to build upon and complement the research performed by the National Health Law Program (NHeLP) and documented in *Over the Counter or Out of Reach: A Report on Evolving State Medicaid Policies for Covering Emergency Contraception* (June 2007), and the research recorded in *Emergency Contraception & Medicaid: A State-by-State Analysis and Advocate's Toolkit* (November 2005), by the National Institute for Reproductive Health (formerly the Institute for Reproductive Health Access), NHeLP, the National Latina Institute for Reproductive Health, and Ibis Reproductive Health. Because the supplies and services covered under a state's family planning waiver can differ from the family planning services and supplies covered under the state's Medicaid program, there is a need for research outlining the disparities in EC

¹ Undocumented women face severe barriers to accessing reproductive health care, including EC. However, as they are not eligible for full Medicaid benefits or Medicaid family planning waivers, the unique and wide-ranging challenges limiting undocumented women's access to reproductive health services and supplies will not be addressed in this report.

coverage between women with full Medicaid benefits and women covered under Medicaid family planning waivers. Advocates in states applying for family planning §1115 waivers should be aware that EC will not necessarily be covered under the waiver, even if it is covered under their state's Medicaid program, and should pro-actively work to secure the inclusion of Plan B® in the waiver's list of covered drugs. Advocates in these states are welcome to contact the National Women's Law Center for support in their application process.

Methodology

The purpose of this study was to determine which of the 26 states with family planning waivers include EC/Plan B® in their package of covered family planning services and supplies, and whether that coverage extends to EC purchased OTC or only with a prescription. The results are based on close examinations of the text of these 26 planning waivers and conversations with representatives from the health agencies in each of these states. All conversations took place between September 18th, 2007 and November 19th, 2007. The information included in the second column—"Is EC Covered by (Regular) Medicaid"—is taken from NHeLP's 2007 report, unless otherwise noted. Please see NHeLP's chart of "State Medicaid Coverage of Emergency Contraception (EC) as an Over-the-Counter (OTC) Drug" for further information.

Results

Twenty-one states include emergency contraception (EC) in their package of supplies and services covered under family planning §1115 waivers.

- Representatives from the Medicaid agencies of these 21 states were asked whether the coverage of EC under their family planning waivers extends to EC over-the-counter, or if a prescription is necessary:
 - Sixteen states—**Arizona, Arkansas, California, Delaware, Iowa, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Mexico, North Carolina, Pennsylvania, Rhode Island, Virginia** and **Wisconsin**—require a prescription for EC coverage under their family planning waivers.
 - Four states – **Illinois, New York, Oklahoma** and **Washington**—cover EC OTC under their family planning waivers.
 - In **Oregon**, supplies and services covered under the family planning waiver can only be accessed at family planning clinics. In other words, a prescription is *not* required (and it requires only one "stop" to access EC), but it can only be accessed at a limited number of locations. There are 170 family planning clinics in the state of Oregon, including at least one in every county.

- Approximately 40 states have collaborative practice laws,² but only nine of them have laws explicitly applying to EC.
 - **California, New Mexico and Washington** are the only states with family planning waivers *and* explicit EC collaborative practice laws. While Washington’s family planning waiver already covers EC OTC, California and New Mexico’s waiver programs both require prescriptions for EC coverage. Their collaborative practice laws could help women in their states secure timely EC access.
 - **Arizona, Louisiana and Minnesota** are some of the 31 states with laws that permit collaborative practice agreements but do not explicitly apply to EC. They are potentially useful for providing women with more direct access to EC if specifically extended for this purpose.

Five states—Alabama, Florida, Mississippi, South Carolina, and Texas—do not cover EC under their family planning waivers.

- Representatives from **Alabama, Florida, Mississippi** and **South Carolina’s** Medicaid agencies confirmed that EC is not covered under their states’ family planning waivers.
- **Texas’** family planning waiver proposal specifically excludes EC from the list of covered supplies. This exclusion was also confirmed by a representative from Texas’ Department of State Health Services.
- **Florida** and **Texas** are the only two states in which EC is covered by Medicaid but not covered under the family planning waiver. While Texas’ waiver proposal specifically excluded EC from the list of covered supplies, it is as yet unclear why Florida’s waiver program does not cover Plan B®.

² Laws that allow pharmacists to dispense certain medications to patients without a doctor’s prescription, based on established protocol between pharmacists and physicians.

State Coverage of Emergency Contraception (EC) Under Family Planning §1115 Waivers

State	Is EC Covered under the State's Family Planning Waiver?	Is EC Covered under (Regular) Medicaid, either by Prescription or OTC? [See 2007 NHeLP chart for more information]	Is a Prescription Necessary to Receive EC Coverage under the Family Planning Waiver?	Does the State Have a Collaborative Practice Agreement Explicitly Applying to EC?
AL	No.	No. [Confirmed by representative from Alabama's Department of Public Health]	N/A	No.
AZ	Yes.	Yes.	Yes.	No.
AR	Yes.	Yes.	Yes.	No.
CA	Yes.	Yes.	Yes.	Yes.
DE	Yes.	Yes.	Yes.	No.
FL	No.	Yes. [Confirmed by representative from Florida's Department of Health].	N/A	No.
IL	Yes.	Yes.	No.	No.
IA	Yes.	Yes.	Yes.	No.
LA	Yes.	Yes.	Yes.	No.
MD	Yes.	Yes.	Yes.	No.
MI	Yes.	Yes.	Yes.	No.

MN	Yes.	Yes.	Yes.	No.
MS	No.	No.	N/A	No.
MO	Yes.	Yes.	Yes.	No.
NM	Yes.	Yes.	Yes.	Yes.
NY	Yes.	Yes.	No.	No.
NC	Yes.	Yes.	Yes.	No.
OK	Yes.	Yes.	Yes.	No.
OR	Yes.	Yes.	No*	No.
PA	Yes.	Yes.	Yes.	No.
RI	Yes.	Yes.	Yes.	No.
SC	No.	No.	N/A	No.
TX	No.	Yes.	N/A	No.
VA	Yes.	Yes.	Yes.	No.
WA	Yes.	Yes.	No.	Yes.
WI	Yes.	Yes.	Yes.	No.

* In Oregon, waiver beneficiaries do not need a prescription in order to receive EC coverage. However, EC – like all supplies and services included in Oregon’s waiver program – is only covered for waiver beneficiaries if accessed at one of the state’s 170 family planning clinics. In other words, a prescription is not required, but EC can only be accessed at a limited number of locations. In contrast, women with full Medicaid benefits are covered for EC OTC purchased at any Medicaid-enrolled pharmacy.