

**HEALTH PLAN NON-COMPLIANCE ON CONTRACEPTIVE
COVERAGE IN NEW YORK**

New York State Department of Financial Services

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Summary

The New York Department of Financial Services (DFS) conducted an investigation of compliance by insurers, health maintenance organizations (HMOs), and prepaid health service plans (collectively “health plans”) with contraceptive coverage requirements under New York law and the Affordable Care Act (ACA). DFS assessed whether fifteen (15) health plans that offer individual health insurance coverage in New York provide accurate information about coverage of contraceptives when consumers contact them for coverage information.

While some health plans gave accurate and complete information about contraceptive coverage, many health plans are misinforming consumers about contraceptive coverage. In particular, several health plans incorrectly stated that there is cost-sharing for contraceptive drugs or devices, when there is not. In addition, several health plans incorrectly stated that a particular contraceptive drug or device is not covered. This misstatement occurred especially when the health plan was asked about a brand name drug for which no generic exists. Some health plans incorrectly stated that a consumer would have additional co-payments for a provider to insert or implant certain contraceptive methods. Other health plans were unable to provide any of the requested information or refused to provide information unless the caller was already enrolled in a particular plan, contrary to the requirements in New York law.

Health plans must consistently provide consumers with correct information about all aspects of health insurance coverage. Contraceptive coverage is an essential feature of primary care, important to women’s self-determination and health, as well as a key component of improved quality of care at a more affordable cost. DFS demands full compliance with this important consumer protection.

Contraceptive Coverage Background

Contraceptive coverage is essential for ensuring the health and well-being of women. Supplement No. 1 (2017) to Circular letter No. 1 (2003) sets forth the requirements of New York law for contraceptive coverage, indisputable of federal law. Specifically under New York law, insurers and HMOs are required to cover contraceptive drugs and devices.¹ New York law requires health insurance policies that provide coverage of prescription drugs to include coverage for contraceptive drugs and devices approved by the Food and Drug Administration (FDA) or generic equivalents when prescribed by a health care provider legally authorized to prescribe under Title VIII of the Education Law. In addition, insurers and HMOs, except for grandfathered plans,² are required under New York law to include coverage for preventive care

¹ N.Y. Insurance Law §§ 3221(1)(16) & 4303(cc).

² A grandfathered health plan means coverage provided by an issuer in which an individual was enrolled on March 23, 2010, for as long as the coverage maintains grandfathered status in accordance with 42 U.S.C § 18011(e).

and screenings, including contraceptive drugs and devices *at no cost-sharing*.³ Likewise, federal law requires non-grandfathered group and individual health coverage to provide benefits for contraceptive methods approved by the FDA, as outlined in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA), *with no cost-sharing*.⁴ HRSA guidelines include coverage of all FDA-approved contraceptive methods such as barrier methods, hormonal methods, implanted devices, emergency contraception, sterilization procedures for women, and patient education and counseling.⁵

New York law requires that all individual and group non-grandfathered plans must cover, without cost-sharing, at least one form of contraception within each of the methods of contraception that the FDA has identified for women⁶ The contraceptive methods for women currently identified by the FDA include: (1) sterilization surgery for women; (2) surgical sterilization implant for women; (3) implantable rod; (4) IUD copper; (5) IUD with progestin; (6) shot/injection; (7) oral contraceptives (combined pill); (8) oral contraceptives (progestin only); (9) oral contraceptives extended/continuous use; (10) patch; (11) vaginal contraceptive ring; (12) diaphragm; (13) sponge; (14) cervical cap; (15) female condom; (16) spermicide; (17) emergency contraception (Plan B One Step/Next Choice/My Way); and (18) emergency contraception (Ella).⁷

The guidance further indicated that health plans may use reasonable medical management techniques within each of the methods of contraception. However, the guidance stated that there must be an easily accessible waiver mechanism that is available for a woman to obtain coverage of a requested drug. An example cited as a reasonable medical management technique is covering a generic drug without cost-sharing and imposing cost-sharing for the brand name equivalent if a waiver mechanism is available to obtain the brand name drug when there is no generic drug or if the generic drug would be medically inappropriate.

DFS Contraceptive Coverage Investigation

Telephone calls were made to fifteen (15) health plans offering individual health insurance coverage in New York. Each health plan contacted is required by New York law to provide coverage for contraceptive drugs and devices approved by the FDA, including at least one form of contraception within each of the contraceptive methods described above at no cost-sharing. The callers requested information on the coverage and cost-sharing for oral contraceptive pills, the contraceptive patch (Ortho Evra and Xulane), the vaginal ring (NuvaRing), the contraceptive injection (Depo-Provera), emergency contraceptive pills (Ella,

³ N.Y. Insurance Law §§ 3216(i)(17)(E), 3221(l)(8)(E) and (F) & 4303(j)(3).

⁴ Public Health Service Act § 2713 (42 U.S.C. § 300gg-13).

⁵ <http://www.hrsa.gov/womensguidelines/>

⁶ See, https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/aca_implementation_faqs26.pdf

⁷ See, https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/downloads/aca_implementation_faqs26.pdf

Plan B One Step, Next Choice and My Way), IUDs (Skyla, Mirena, Liletta and ParaGard), and the contraceptive implant (Nexplanon).

The callers found that some health plans provided complete and accurate information regarding contraceptive coverage. Three health plans correctly answered each of the coverage and cost-sharing inquiries. Another health plan correctly answered most of the coverage and cost-sharing inquiries.

The remaining eleven (11) health plans either provided inaccurate responses to questions regarding contraceptive coverage, indicated that they did not know the answer to the question, or declined to provide a response to the questions:

- Six (6) health plans provided a significant number of inaccurate responses;
- Two (2) health plans provided some inaccurate information and refused to provide much of the remaining information;
- Two (2) health plans provided some inaccurate information and indicated that they did not know the answer for some of the information; and
- One (1) health plan declined to provide any information.

The health plans that provided inaccurate responses often incorrectly responded that there is cost-sharing for contraceptive drugs or devices. In fact, seven (7) health plans provided misinformation regarding cost-sharing for contraceptive coverage, incorrectly stating that contraceptive coverage would have cost-sharing. The majority of health plans provided inconsistent information. In some calls, they incorrectly stated that a particular contraceptive drug or device is not covered, especially when the health plan was asked about a brand name drug for which no generic exists. For example, the emergency contraceptive pill, Ella, does not have a generic equivalent, and five (5) health plans wrongly indicated that this form of contraception was not covered. In addition, the ParaGard IUD does not have a generic equivalent and six (6) health plans incorrectly indicated that this form of contraception was not covered.

In addition, three (3) health plans incorrectly informed callers that cost-sharing would be charged for a provider's services for insertion or implantation of certain contraceptive methods. These plans incorrectly indicated that cost-sharing would be charged for administering the shot, the IUD and/or the implant. As noted, services related to follow-up and management of side

effects, counseling for continued adherence, and device removal for contraceptive drugs and devices are required by New York law to be covered without cost-sharing.⁸

With respect to the health plans that were unable to provide any of the requested information or refused to provide information unless the caller was enrolled in a particular plan:

- One (1) health plan stated that information on cost-sharing could not be given over the phone for new members;
- One (1) health plan would not provide any cost-sharing information because the customer service representative did not think the caller was eligible for coverage; and
- One (1) health plan would not provide any of the requested information.

Refusals to provide information are clearly impermissible under Sections 3217-a and 4324 of New York Insurance Law which provide that, upon request, a health plan must supply a prospective subscriber with information, including an explanation of a subscriber's financial responsibility for payment of premiums, coinsurance, co-payments, deductibles and any other charges for covered services and non-covered health care procedures, treatments or services.

In addition to providing incorrect information, many health plans had a difficult time locating the correct person at the health plan to respond to questions about contraceptive coverage. Five (5) health plans transferred the callers to several different representatives before finding one who could provide any information. Four (4) health plans put callers on hold for extended periods of time, some lasting as long as 20 minutes.

DFS Next Steps

As a result of the errors found during the investigation, DFS will take several actions:

1. Require a corrective action plan and related relief from all health plans that failed to provide accurate or complete information.
2. Demand information and documentation from health plans regarding their coverage and reimbursement of contraceptive drugs and devices under health insurance policies. Specifically, DFS will obtain information about contraceptive claims submitted and

⁸ See, Insurance Law §§ 3216(i)(17)(E), 3221(l)(8)(E) and (F) and 4303(j)(3); *see also*, https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs12.html

whether the claims were appropriately paid, with no cost-sharing imposed. DFS will also investigate complaints and appeals involving contraceptive coverage.

3. Take further regulatory action as necessary so that all health plans cover the full range of FDA-approved contraceptive delivery methods at no cost-sharing.

As primary regulator for New York's health plans, DFS is committed to ensuring that all consumers receive accurate and complete information and the coverage to which they are entitled under the law. The requirements for coverage of contraceptives and the prohibitions on cost-sharing are important consumer protections and health plans must fully comply with these requirements.