

Coverage of Over-the-Counter Oral Contraceptives: Federal Employees Health Benefits Program

Over-the-counter (OTC) availability of a Food and Drug Administration (FDA)-approved oral contraceptive could be an important option for addressing logistical obstacles to contraceptive access and consistent use, including among federal employees and their dependents. However, for an OTC oral contraceptive to meet its potential, federal programs, including the Federal Employees Health Benefits (FEHB) Program, will need to take steps to ensure that it is fully covered by health insurance plans, and that all OTC contraceptives are covered without cost-sharing and without a prescription.

Current Contraceptive Coverage Policy

Congress first [required FEHB plans](#) to cover the full range of FDA-approved contraceptive drugs and devices in 1998, as part of an annual appropriations law. That requirement has been renewed in subsequent appropriations laws and is still in effect. Notably, it is not limited to prescription contraceptives.

Since 2011, the FEHB Program has followed the Affordable Care Act's (ACA) contraceptive coverage benefit, which requires plans to cover the full range of contraceptive products and services, without patient out-of-pocket costs like copayments and deductibles. **The Office of Personnel Management (OPM) has repeatedly issued [Carrier Letters](#) requiring FEHB plans to conform to updates to the ACA contraceptive coverage benefit.**

The most recent relevant Carrier Letter was issued in [August 2022](#) and requires carriers to conform with a [July 2022 Frequently Asked Questions](#) (FAQs) document prepared jointly by the Departments of Labor, Health and Human Services (HHS), and the Treasury. Among other topics, the August 2022 letter echoes language from the tri-department FAQ about coverage of OTC contraceptives: FEHB plans are required to cover OTC contraceptives when they are prescribed (including emergency contraception prescribed for advanced provision), and plans are specifically “encouraged” to cover OTC emergency contraceptives without out-of-pocket costs even when purchased without a prescription.

There is clear precedent for FEHB plans to cover OTC products without a prescription: In [January 2022](#), OPM required carriers to cover OTC COVID-19 tests, without a prescription or out-of-pocket costs (again following tri-department requirements for private plans). That Carrier Letter also required plans to “provide education and information resources” to help beneficiaries understand “how to obtain OTC COVID-19 tests directly from their FEHB plan or designated sellers.”

Notably, [federal statute](#) gives OPM broad authority to negotiate with carriers to set benefits, including “such maximums, limitations, exclusions, and other definitions of benefits as the Office considers necessary or desirable.” As [argued by the federal government recently](#) (in the wake of a court decision negatively impacting a different part of the ACA's preventive services requirement), this authority allows OPM to set

benefit requirements that go beyond what is required under the ACA.

Recommendations for OTC Contraceptive Coverage

Note: These steps assume that the Departments of Labor, HHS, and Treasury have issued FAQs to clarify that the ACA requires coverage of OTC contraception without cost-sharing and without a prescription, [as recommended by CAI](#).

OPM should take steps to require coverage of an FDA-approved OTC oral contraceptive under the FEHB Program and to require coverage of all OTC contraceptives without cost-sharing and without a prescription. Specifically, OPM needs to:

- 1. Issue a Carrier Letter that aligns coverage for an FDA-approved OTC oral contraceptive and for OTC contraceptives generally with anticipated tri-department guidance for ACA plans.**
 - a. The Carrier Letter should explicitly require FEHB plans to provide **coverage of the new OTC oral contraceptive product**, without out-of-pocket costs.
 - b. The Carrier Letter should also explicitly require FEHB plans to **provide no-cost coverage of all OTC contraceptives**, including an FDA-approved OTC oral contraceptive, **even when purchased without a prescription**. This coverage must, at a minimum, be available through the same channels as coverage for prescription drugs, including at pharmacy counters and via mail-order services.

To enhance federal employees' contraceptive access, OPM should also:

2. Work with the tri-departments, carriers, pharmacy benefit managers, and drug retailers to **make coverage of OTC contraceptives as seamless for enrollees as possible**. In doing so, the agencies should leverage their recent experience with coverage of OTC COVID-19 tests.
3. **Provide special notice to FEHB beneficiaries and providers** about these improvements to contraceptive coverage and about how to access coverage for OTC contraceptives without a prescription. Among other steps, OPM should echo what it did for OTC COVID-19 tests and require plans to “provide education and information resources” to help beneficiaries understand how to obtain OTC contraceptives from retail and mail-order pharmacies and directly from their FEHB plan (if that is an option).