

Coverage of Over-the-Counter Oral Contraceptives: Medicaid

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 for people with low incomes. However, for an OTC oral contraceptive to meet its potential, federal programs, including Medicaid, 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

Note: This analysis and most of the recommendations that follow come from the Medicaid Family Planning Working Group, a coalition composed of consumer advocacy, provider, legal, and research organizations with significant expertise in Medicaid and sexual and reproductive health. The working group provided its recommendations to federal officials in June 2023.

Medicaid coverage of contraceptive drugs and devices falls under three different parts of federal Medicaid law: (1) the family planning benefit, (2) the prescription drug benefit, and (3) the Essential Health Benefits (EHB) preventive services benefit. Each benefit differs in its requirements.

1. **Family Planning Benefit:** Every Medicaid program is required to cover family planning services and supplies for almost all Medicaid beneficiaries, including those in traditional Medicaid, the Affordable Care Act (ACA) Medicaid Expansion, state Medicaid family planning expansions, and Medicaid expansion Children’s Health Insurance Programs (M-CHIP). (The requirements for separate Children’s Health Insurance Programs, S-CHIP, are different and are addressed in another paper by CAI.)

The [law and regulations governing the family planning benefit](#) do not specify which contraceptives states must cover. However, the Medicaid statute prohibits any form of cost-sharing for contraception. And [Medicaid regulations](#) require that each beneficiary be “free from coercion or mental pressure and free to choose the method of family planning to be used.” The Centers for Medicare and Medicaid Services (CMS) has issued [guidance to states](#) explaining how these provisions limit the use of utilization management for family planning care.

2. **Prescription Drug Benefit:** Every state and the District of Columbia has opted to cover [prescription drugs for Medicaid](#) beneficiaries. The statutory provisions that govern this part of Medicaid require states to cover any FDA-approved prescription drug product (including a prescription contraceptive drug or device), if the manufacturer has entered into an agreement to provide a rebate to Medicaid.

3. EHB Preventive Services Benefit: Finally, the ACA Medicaid Expansion is subject to the same EHB requirements as ACA Marketplace plans. That has been defined through regulations to include everything specified in the ACA's preventive services requirement, including cost-sharing-free coverage of contraceptive services and supplies. That means that ACA Medicaid Expansion beneficiaries are required to have the same level of contraceptive coverage as private insurance enrollees, with all of the protections specified by the federal government, including coverage for the [full range of contraceptives](#) and [restrictions on practices](#) such as prior authorization.
4. [CMS has recommended](#) that states align their contraceptive coverage for other Medicaid beneficiaries with the coverage required under the EHB benefit for ACA Medicaid Expansion beneficiaries. [Kaiser Family Foundation research](#) has confirmed that “most states have aligned coverage of family planning benefits for all pathways, despite the differing requirements,” including, with a few exceptions, for OTC contraceptives.

Because contraceptives are covered under three different benefits, the rules about coverage of OTC contraceptives are complex and give states multiple options. For ACA Medicaid Expansion beneficiaries, [current ACA guidance](#) says their coverage must include a list of specific OTC contraceptives, but a prescription may be required by the Medicaid plan. For all other Medicaid beneficiaries, [current federal law and regulations](#) allow but do not require states to cover OTC contraceptives. States can cover OTC contraceptive drugs (but are prohibited from covering condoms) under the prescription drug benefit, which would allow the state to receive drug rebates from the manufacturer but would require the beneficiary to have a prescription. Alternatively, states can cover OTC contraceptive drugs and devices under the family planning benefit without a prescription, but any OTC product covered without a prescription (under either the family planning benefit or the EHB preventive services benefit) would be ineligible for a rebate (making it more expensive for Medicaid).

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](#).

CMS should take steps to require and facilitate coverage of an FDA-approved OTC oral contraceptive under Medicaid and to require and facilitate coverage of all OTC contraceptives without cost-sharing and without a prescription. Specifically, CMS should:

1. **Issue a State Health Official (SHO) letter notifying states of new tri-department ACA guidance and reminding states that these requirements apply to ACA Medicaid Expansion beneficiaries.** That would ensure that these Medicaid beneficiaries have coverage for an FDA-approved OTC oral contraceptive specifically and coverage for all OTC contraceptives even when purchased without a prescription. It would also serve as a prompt for states to extend that same coverage to all Medicaid beneficiaries.

2. In the same SHO or a separate one, address two items related to OTC contraceptive coverage under the Medicaid family planning benefit:
 - a. The SHO should **clarify that a prescription requirement for a covered OTC contraceptive would violate the family planning benefit's anti-coercion protection**. This would build on additional years of experience since the last SHO (issued in 2016) with emergency contraception and other OTC contraceptives demonstrating that requiring an unnecessary prescription is an inappropriate and harmful form of utilization management.
 - b. The SHO should **encourage states, as a matter of equity, to set coverage for contraception under the Medicaid family planning benefit to be at least as comprehensive as coverage for contraception under the EHB preventive services benefit**. This would help ensure that traditional Medicaid beneficiaries (including those with extremely low or no income) have the same protections as ACA Medicaid Expansion beneficiaries (who often have higher incomes).
3. **Issue a federal standing order for OTC contraceptives applying to all Medicaid beneficiaries nationwide**. That would allow states to cover OTC contraceptives under the prescription drug benefit and therefore receive drug rebates from manufacturers, while eliminating the need for beneficiaries to obtain an individual prescription.

To enhance Medicaid enrollees' contraceptive access, CMS should also:

4. Provide technical assistance to state agencies to help them **make coverage of OTC contraceptives as seamless for beneficiaries as possible**. In doing so, CMS should leverage its experience under Medicaid and CHIP with coverage of OTC emergency contraception, OTC overdose reversal medication (naloxone), and OTC COVID-19 tests.
5. Direct states to provide **special notice to Medicaid beneficiaries and providers** about any improvements the state makes to contraceptive coverage and about how to access coverage for OTC contraceptives without a prescription.

Together, these recommendations would guarantee OTC contraceptive coverage without a prescription for many Medicaid beneficiaries and help states extend that coverage for many others.