

Coverage of Over-the-Counter Oral Contraceptives: Overview of Federal Programs

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. However, for an OTC oral contraceptive to meet its potential, federal agencies must ensure that it is fully covered by health insurance plans, and that all OTC contraceptives (emergency contraception, condoms, FDA-approved oral contraceptive pills, etc.) are covered without cost-sharing and without the need for a prescription.

Recommendations for OTC Contraceptive Coverage

Because health coverage in the United States falls under a wide array of regulatory regimes, multiple federal agencies will need to exercise their respective authorities to ensure that people under various plans have coverage for OTC contraceptives. Doing so would be in line with President Biden’s [June 2023 executive order](#) that directed the Secretaries of Labor, Health and Human Services, and the Treasury to consider actions “to promote increased access to affordable over-the-counter contraception.” Specifically, agencies may need to take one or more discrete steps to:

- Cover a newly approved OTC oral contraceptive (for example, adding it to a coverage requirement and/or a formulary);
- Eliminate any otherwise-required cost-sharing for OTC contraceptives, including an OTC oral contraceptive;
- Eliminate any prescription requirement for OTC contraceptive coverage, including an OTC oral contraceptive;
- Work with stakeholders such as providers, pharmacy chains, and health plans to make OTC coverage work as smoothly as possible at pharmacies and via mail order; and
- Provide notice to beneficiaries, providers, and other stakeholders about any changes to coverage, as well as information about how to navigate and facilitate coverage of OTC contraceptives without prescription.

The table below summarizes the wide range of federally regulated health plans and the regulatory authorities that federal agencies will need to exercise to require or expand OTC contraceptive coverage. The table also includes links to resources from the [Contraceptive Access Initiative \(CAI\)](#) with additional details on specific programs and recommended federal actions. These resources include a white paper detailing necessary updates to the Affordable Care Act’s contraceptive coverage requirements and a series of short papers addressing six additional federal health coverage programs that are not subject to the ACA requirement. In a couple of cases, federal agencies may not have the authority to actually require coverage of OTC contraceptives, but federal agencies can still encourage and facilitate it.

Federal Authority Beyond Health Coverage

This summary and the resources attached focus on health coverage. However, two of the programs described (run by the Department of Defense and the Department of Veterans Affairs) also include a direct services component, under which federal facilities provide health care, including contraception, to eligible recipients. For these programs, the papers also include recommendations about stocking and dispensing OTC contraceptives at these facilities.

The CAI resources do not address federal programs that are primarily or exclusively about the direct provision of health services (such as the Indian Health Service or health facilities run by federal prisons and detention centers), or federal programs that support non-federal facilities (such as the Title X family planning program or the Section 330 Health Centers program). These types of direct services programs are important for ensuring access to OTC contraceptives and other critical services, especially for people without health coverage or with limited coverage.

The Administration should also consider establishing a new program to ensure coverage or access for uninsured and underinsured people. For example, the proposed Individual Contraceptive Arrangement (a part of proposed rules from [February 2023](#) on the ACA's contraceptive coverage requirement) could be expanded to include anyone without comprehensive contraceptive coverage ([as suggested by numerous expert organizations, including CAI](#)).

Type of Health Coverage	Federal Authority	Resources	Necessary Agency Action
<p>Employer-sponsored health plans (insured or self-insured), with some exclusions*</p> <p>Individual health insurance (including ACA marketplace plans), with some exclusions*</p>	<p>ACA preventive services requirement</p>	<p>CAI ACA paper</p>	<ul style="list-style-type: none"> Issue tri-department frequently asked questions (FAQ) guidance explicitly requiring plans to cover OTC contraceptive products without a prescription and without out-of-pocket costs. State in the FAQs that OTC 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.
<p>Medicaid coverage, including traditional Medicaid, ACA Medicaid Expansion coverage, Medicaid family planning expansions, and Medicaid expansion Children's Health Insurance Programs (M-CHIP)</p>	<p>Medicaid statute and regulations</p> <p>ACA preventive services requirement (for ACA Medicaid Expansion coverage only)</p>	<p>CAI Medicaid paper; CAI ACA paper</p>	<ul style="list-style-type: none"> Issue a State Health Official letter notifying states of new tri-department ACA guidance and reminding states that these requirements apply to ACA Medicaid Expansion beneficiaries. Clarify that a prescription requirement for a covered OTC contraceptive would violate the Medicaid family planning benefit's anti-coercion protection. Encourage states, as a matter of equity, to set coverage for contraception for all Medicaid beneficiaries to be at least as comprehensive as it is for ACA Medicaid Expansion beneficiaries. Issue a federal standing order for OTC contraceptives applying to all Medicaid beneficiaries nationwide.
<p>Separate Children's Health Insurance Programs (S-CHIP)</p>	<p>CHIP statute and regulations</p>	<p>CAI CHIP paper</p>	<ul style="list-style-type: none"> Issue a State Health Official letter that provides information about relevant changes in federal coverage requirements that may affect S-CHIP plan benchmarks.
<p>Medicare</p>	<p>Medicare statute and regulations</p>	<p>CAI Medicare paper</p>	<ul style="list-style-type: none"> Explore what authorities CMS may have to require Medicare Part D and Medicare Advantage plans to cover OTC contraception with no cost-sharing; barring this authority, encourage and facilitate coverage of OTC contraception.
<p>Federal Employees Health Benefits (FEHB) program</p>	<p>Office of Personnel Management statute and regulations</p>	<p>CAI FEHB paper</p>	<ul style="list-style-type: none"> Issue a Carrier Letter that aligns coverage for OTC contraceptives with anticipated tri-department guidance for ACA plans.

Type of Health Coverage	Federal Authority	Resources	Necessary Agency Action
Military Health System, including TRICARE	Department of Defense statute and regulations	CALMHS paper	<ul style="list-style-type: none"> • Add FDA-approved OTC oral contraception to the TRICARE Basic Core Formulary. • Eliminate cost-sharing for all covered OTC contraceptives. • Issue a directive to make it clear that TRICARE will pay for any covered OTC contraceptive even when purchased without a prescription.
VA Health Care and CHAMPVA	VA statute and regulations	CALVA paper	<ul style="list-style-type: none"> • Add any FDA-approved OTC oral contraceptive to the VA National Formulary. • Make OTC oral contraceptives available at VA Health Care facilities and by mail order. • Explore all options to eliminate cost-sharing in VA Health Care for contraceptive services and supplies. • Issue a final rule for CHAMPVA that eliminates cost-sharing for all contraceptive services and supplies and adds coverage for all OTC contraceptives even when purchased without a prescription.
General recommendations for federally regulated coverage			<ul style="list-style-type: none"> • Work with stakeholders and provide technical assistance to make coverage of OTC contraceptives as seamless for enrollees as possible (e.g., establish a uniform method of submitting OTC claims). • Provide or require notice to enrollees, providers, and other stakeholders about changes to contraceptive coverage and the information needed to navigate and facilitate coverage of OTC contraceptives without prescription.