

Legal Update

Brought to you by: Evolution of Benefits

Proposed Rule Would Expand ACA's Contraceptive Coverage Mandate

On Oct. 21, 2024, the Departments of Labor, Health and Human Services, and the Treasury released a [proposed rule](#) that, if finalized, would **expand access to contraceptive coverage without cost sharing** under the Affordable Care Act's (ACA) preventive care mandate. Notably, the proposed rule would require most health plans and health insurance issuers to cover over-the-counter (OTC) contraceptives without imposing cost sharing (e.g., deductibles, copayments or coinsurance) or requiring a prescription.

Contraceptive Coverage Mandate: Proposed Changes

The ACA requires non-grandfathered health plans and issuers to cover certain preventive care services without cost sharing; this includes contraceptives, as outlined in specific guidelines. Exemptions are available to religious employers and eligible employers that object to providing contraceptive coverage based on their sincerely held religious beliefs or moral convictions.

Currently, health plans and issuers are only required to cover OTC preventive products without cost sharing when they are prescribed by a health care provider. In July 2023, the U.S. Food and Drug Administration (FDA) approved the first OTC daily oral contraceptive, which is now widely available across the country.

The proposed rule would require health plans and issuers to do the following:

- Cover recommended **OTC contraceptive items** without requiring a prescription and without imposing cost sharing;
- Cover **every FDA-approved contraceptive drug or drug-led combination product without cost sharing**, unless the plan also covers a therapeutic equivalent of the drug or drug-led combination product without cost sharing; and
- **Disclose to plan participants that OTC contraception is covered without a prescription and without cost sharing.** This disclosure would be required as part of any Transparency in Coverage [self-service tool](#) search for covered contraceptives and would need to include a phone number and internet link to where a participant could learn more about the coverage.

These changes are proposed to be applicable for plan years beginning on or after Jan. 1, 2026, if they are finalized.

HSAs, Health FSAs and HRAs: Current Options

Individuals can pay for OTC medicines, including contraceptives, using their health savings accounts (HSAs). In addition, health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs) can be designed to reimburse all OTC drugs. Thus, although health plans and issuers are not currently required to cover OTC contraceptives without cost sharing, consumers may be able to use their HSAs, health FSAs or HRAs to pay for this medication.



HIGHLIGHTS

- Federal agencies released a proposed rule that would expand health plan coverage of contraceptives without cost sharing.
- If finalized, the proposed rule would require health plans and issuers to cover OTC contraceptives without cost sharing.
- The proposed rule would also require coverage of a broader array of contraceptive drugs and drug-led combination products.
- In addition, the proposed rule would require health plans and issuers to disclose that OTC contraceptives are covered without cost sharing.

Provided by Evolution of Benefits

This Legal Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. © 2024 Zywave, Inc. All rights reserved.