



# Illinois Department of Insurance

## Fact Sheet

### Birth Control

Updated - June 2017

**Note:** This information was developed to provide consumers with general information and guidance about insurance coverage and laws. It is not intended to provide a formal, definitive description or interpretation of Department policy. For specific Department policy on any issue, regulated entities (insurance industry) and interested parties should contact the Department.

### Illinois Law

Effective January 1, 2017, amended Illinois law 215 ILCS 5/356z.4 requires all individual and group insurance, including health maintenance organization (HMO) policies, issued **AFTER** 01/01/2017, to provide coverage for all contraceptive drugs, devices, and other products approved by the U.S. Food and Drug Administration. This includes all over-the-counter contraceptive drugs, devices, and products approved by the U.S. Food and Drug Administration, excluding male condoms. Except as otherwise noted, a policy subject to this law shall not impose a deductible, coinsurance, copayment, or any other cost-sharing requirement. Insurance companies may voluntarily expand this coverage to policies issued on or before 01/01/2017.

If the FDA has approved therapeutic equivalent versions of a contraceptive drug or device, a policy is **not** required to include all therapeutic equivalent versions in its formulary. However, a policy must include at least one version and cover without cost-sharing.

If your health care provider recommends a particular service or item (approved by the FDA) based on medical necessity, the plan or issuer must cover that service or item without cost sharing. The plan must defer to the determination of the health care provider.

Plans must also provide (generally at no cost to you):

- The dispensing of 12 months' worth of contraception at one time.
- Voluntary sterilization procedures.
- Contraceptive services, patient education, and counseling on contraception.
- Follow-up services related to the drugs, devices, products, and procedures covered under this Section, including, but not limited to, management of side effects, counseling for continued adherence, and device insertion and removal.

Illinois law 215 ILCS 5/356z.4 does **not** require an insurer to cover services related to an abortion.

If your plan utilizes a network of health care providers, your insurance company may impose cost-sharing for items or services described in this Section that are provided or delivered by an out-of-network health care provider, unless the insurance company does not have a network health care provider who is able to or is willing to provide the applicable items or services.

Pursuant to 215 ILCS 5/356z.16, the state law does not apply to:

- Short-term travel insurance;
- Disability income insurance;
- Long-term care insurance;
- Accident-only insurance;
- Limited or specified disease insurance;

Please contact your insurance company with questions regarding specific services, drugs or devices and the associated benefits under your policy. If you feel that your insurance company is not complying with this statute, please contact our office at the toll-free number listed below.

### **Federal Law – Affordable Care Act (ACA)**

The Federal ACA does not apply to Excepted Benefits as defined by 42 U.S.C. 300gg-91.

Excepted Benefits include but are not limited to:

- Short-term limited duration insurance;
- Accident or disability income insurance;
- Liability insurance, including general liability and auto liability and auto medical payment;
- Worker’s compensation or similar insurance;
- Credit only insurance;
- Coverage for on-site medical clinics;
- Long-term care, nursing home care, home health care and community based care;
- Medicare supplements;
- Specified disease or illness;
- Limited dental and vision;
- Hospital indemnity or other fixed indemnity insurance

**Note:** *Student health plans are impacted by the ACA and must comply with the ACA requirements noted in this Fact Sheet.*

Section 2713 of the Federal Affordable Care Act (ACA) requires all group plans (including self-insured plans) and individual health insurance plans and policies to provide coverage of preventive health services without cost-sharing (subject to reasonable medical management technique) when they are delivered by a network provider. These preventive health services include all FDA approved contraceptive methods and patient education and counseling, as prescribed by a health care provider, for all women with reproductive capacity.

This provision of the ACA does not apply to “grandfathered” plans or “transitional” plans. A “grandfathered” plan is a plan that existed on March 23, 2010. A “transitional” plan is a plan that was in effect on October 1, 2013 and has been renewed and which Illinois will allow to be renewed through policy years beginning on or before October 1, 2018.

### **Access to FDA Approved Contraceptive Methods**

Women have access to all FDA approved contraceptive “methods” including but not limited to Barrier Methods, Hormonal Methods and implanted devices, as well as patient education and counseling, as prescribed by a health care provider. A “method” may be different than a specific product or brand. Additional information on the methods can be found [here](#)<sup>1</sup>.

Each method contains different types of drugs and/or biologics. For example, within the “Hormonal Method” the FDA lists the following drugs/biologics: (1) oral contraceptives; (2) patch; (3) vaginal contraceptive ring and (4) shot/injection. The Health Resources Services Administration (HRSA) guidelines require coverage for a variety of contraceptives within each method.

The law does **not** require coverage of every FDA-approved contraceptive with no cost-sharing. For instance, plans and issuers may cover a generic drug without cost-sharing and impose cost-sharing for equivalent branded drugs. A policy must accommodate any individual for whom the generic drug (or a brand name drug) would be medically inappropriate as determined by the individual’s health care provider by having a mechanism for waiving the otherwise applicable cost-sharing for the branded or non-preferred brand version.

### **Religious Exemptions**

Some religions or religious organizations and closely held for-profit entity object to contraceptives or to certain contraceptives in particular based on religious beliefs. Such entities may be exempt under federal law from the ACA's requirements to pay for contraceptives.

### **Religious Employers**

Religious employers are exempted from having to provide coverage for contraceptive services. A religious employer is defined as an employer that is organized and operates as a non-profit entity and is referred to in section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code. "Religious Employers" primarily include churches and houses of worship.

### **Eligible Organizations**

Federal regulations also provide an "accommodation" for some organizations whereby they do not have to contract for, pay for, or refer contraceptive coverage to which they object on religious grounds. A nonprofit entity, organized and operating as such, that holds itself out as a religious organization or a closely held for-profit entity may be eligible for the accommodation. Both types of eligible organizations must oppose providing coverage for some or all of the required contraceptive services on account of religious objections.

Additionally, an eligible closely held for-profit entity must not have publicly traded ownership interests and fifty percent of its ownership interest value must be directly or indirectly owned by five or fewer members. To be eligible for the accommodation, the entity’s highest governing body must have also adopted a resolution or similar action, consistent with its applicable rules of governance and applicable state law, establishing that it objects to covering some or all contraceptive services on account of the owners’ sincerely held religious beliefs. Entities with a substantially similar ownership structure may also be eligible for an exemption.

Both types of organizations must self-certify that they are eligible for the accommodation. Eligible organizations must **either** a) provide their self-certification to the health insurance issuer for group plans or to the third-party administrator for self-insured plans, **or** b) provide notice of their religious objection to the Secretary of Health and Human Services. Either action will trigger an obligation on the part of the insurer or third-party administrator to provide or arrange for separate payments for the objectionable products and procedures (i.e., the insurer or third-party administrator is financially responsible for providing enrollees contraceptive coverage in compliance with the ACA, not the objecting employer).

The self-certification form must be maintained on file with the eligible organization and must be made available for examination upon request. The self-certification form is available [here](#)<sup>2</sup>.

Plan participants and beneficiaries will be notified at the time of enrollment or re-enrollment of the availability of separate payments for contraceptive services if their employer has certified that their plan qualifies for an accommodation.

### **Self-Funded and ERISA Plans**

ERISA is a federal law and regulated by the United States Department of Labor. The Illinois Department of Insurance does not have jurisdiction over these plans.

### **Related Information**

[215 ILCS 5/356z.4](#)<sup>3</sup>

[42 U.S.C. § 300gg-13](#)<sup>4</sup>

[45 C.F.R. § 147.130](#)<sup>5</sup>

[45 C.F.R. § 147.131](#)<sup>6</sup>

[Centers for Medicare & Medicaid Services](#)<sup>7</sup>

[U.S. Department of Labor](#)<sup>8</sup>

For more information, please call our Office of Consumer Health Insurance toll free at (877) 527-9431 or visit our [website](#)<sup>9</sup>.

### **Website Addresses**

1. <https://www.fda.gov/ForConsumers/ByAudience/ForWomen/FreePublications/ucm313215.htm>
2. <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/preventiveserviceseligibleorganizationcertificationform.pdf>
3. <http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=021500050HArt%2E+XX&ActID=1249&ChapterID=22&SeqStart=96900000&SeqEnd=110800000>
4. <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap6A-subchapXXV-partA-subpartii-sec300gg-13.pdf>
5. [https://www.govregs.com/regulations/title45\\_chapterA\\_part147\\_section147.130](https://www.govregs.com/regulations/title45_chapterA_part147_section147.130)
6. [https://www.govregs.com/regulations/title45\\_chapterA\\_part147\\_section147.131](https://www.govregs.com/regulations/title45_chapterA_part147_section147.131)
7. <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Prevention.html>
8. <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-of-preventive-services>
9. <http://insurance.illinois.gov/>