

BIRTH CONTROL AND THE ACA:

Introduction

Background of the “Contraceptive Mandate”

On August 1, 2012, 30 million women who formerly had to pay for birth control were suddenly eligible to receive it free of charge. On this date the Affordable Care Act (ACA)’s ‘birth-control mandate’ went into effect, which required that all FDA-approved methods of birth control, along with other preventive services, be provided without cost sharing, i.e. without cost to the consumer.ⁱ The reasoning for including this mandate in the ACA is well established. For public health professionals as well as insurance companies, the reasoning is simple: **contraception, no matter the type, saves more money than it costs to provide.**ⁱⁱ

These savings come in the form of birth control’s power to help women avoid unintended pregnancies and their consequences. Half of U.S. births each year are paid for through publicly funded insurance programs and half of these births

are unplanned (based on 2010 data).ⁱⁱⁱ When women avoid unintended pregnancies, it not only benefits them economically, but there are public health and social welfare benefits for the whole society. Unintended pregnancies have been shown to negatively impact prenatal care and childhood nutrition.^{iv} Additionally, for women, being able to control when and if they give birth allows them to participate in education and in the workforce in a comparable way to that of men.^v An economy in which both genders can participate fully is surely stronger than one in which one gender is severely limited.

While the ACA’s contraceptive mandate has clearly relieved the cost burden of birth control for the majority of women, the fact is that **a great many women, including some of those who are insured, are still paying for their birth control.**^{vi} In some cases, select insurance plans are exempt from the contraceptive mandate because of religious or other reasons. In other cases, insurance plans and individual pharmacies are

acting in direct violation of the mandate either by neglecting to cover all forms of birth control or by imposing cost sharing in situations where it is not appropriate.^{vii} In all of these cases, which will be discussed in this brief, women are not receiving the intended benefits of the ACA’s contraceptive mandate.

In This Brief

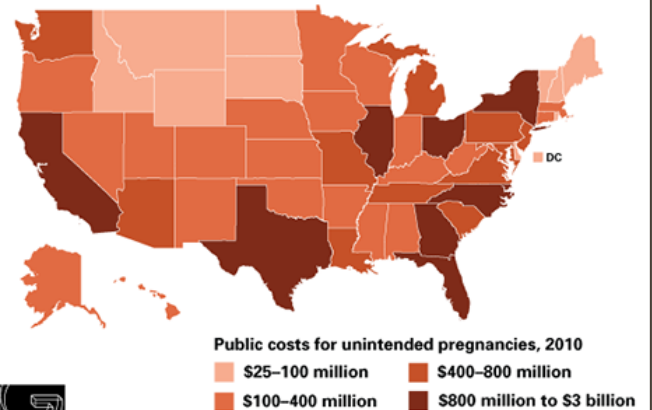
ACA Rules Concerning Birth Control

How Insurers are Violating These Rules

Exemptions from the Contraceptive Mandate

Economic Impact of the Contraceptive Mandate

Government expenditures on unintended pregnancies totaled \$21 billion in 2010, and surpassed \$400 million in 19 states



guttmacher.org

The Heart of the Issue:

The Rules for Birth Control Coverage and How They're Being Violated

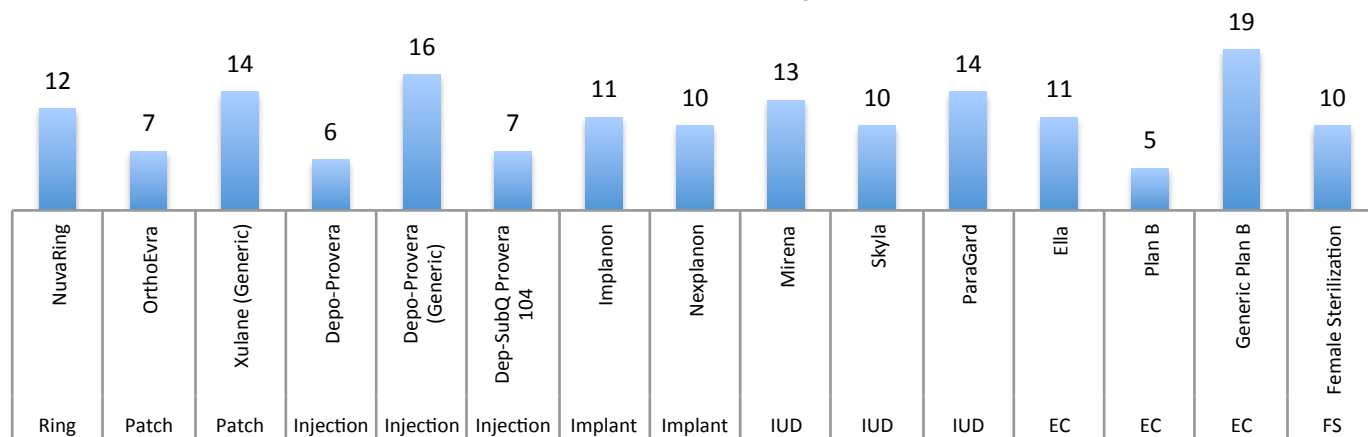
What Non-Exempt Providers Must Cover

- All health plans must offer each of the twenty unique birth control methods approved by the FDA without cost sharing, meaning no deductibles and no co-payments.^{viii} And in the case of Medicaid and CHIP (Children's Medicaid), cost sharing includes premiums.^{ix}
- Insurers *may* use cost sharing to influence consumers toward lower-costs methods within each category of birth control (i.e. the generic version). This is called "reasonable medical management" and is allowed under HHS guidelines.^x However, if a woman's health care provider determines that the generic or lower-cost version of a particular method is inappropriate for her or is unavailable for any reason, that higher cost method must be provided without cost sharing.^{xi}
- Insurers must also cover all doctor's visits and medical services related to the insertion or maintenance of the birth control method.^{xii}

Violations by Insurers

- Some non-exempt plans do not offer all contraceptive methods, or they impose a charge on them.^{xiii}
- Some non-exempt plans cover only generic birth control, and do not offer an appeal process for when the generic is either not medically advised by the doctor or not available.^{xiv}
- Some plans impose costs on services and medical visits associated with birth control.^{xv}
- In a 2015 Kaiser Family Foundation study, Nuva Ring was found to be the method the least likely to be covered. Insurers told researchers that they did not cover this method because it has the same chemical formulation as the oral contraceptive pill.^{xvi} However, Health and Human Services (HHS), which oversees the rules for the ACA contraceptive mandate, sees this as a different category of contraception.^{xvii}

20 Insurers were studied. These were the number of insurers that covered each method without RMM or cost-sharing.



Exemptions: Who Gets Accommodated?

Grandfathered plans

In order to facilitate a smoother transition to healthcare under the ACA, certain plans were exempt from some ACA requirements. These plans, called “grandfathered” plans, had to be already in existence on March 23, 2010 and were not allowed to make any major changes in coverage.^{xviii} These plans did not have to immediately comply with certain of the new healthcare rules, but eventually they had to comply with most. Currently, the only significant rule from which grandfathered plans are exempt is that requiring coverage of preventive services, including the birth-control mandate.^{xix} In 2014, one quarter of workers were covered with a grandfathered plan.^{xx} To the right is a chart showing how grandfathered plans are distributed by firm size and region.^{xxi}

Exhibit 13.1
Percentage of Firms with At Least One Plan Grandfathered under the Affordable Care Act (ACA), by Size, Region and Industry, 2014

	Percentage of Firms with At Least One Grandfathered Plan
FIRM SIZE	
3-24 Workers	37%
25-49 Workers	41
50-199 Workers	36
200-999 Workers	36
1,000-4,999 Workers	27
5,000 or More Workers	25*
All Small Firms (3-199 Workers)	37%
All Large Firms (200 or More Workers)	34%
REGION	
Northeast	29%
Midwest	49
South	32
West	39

Religious Exemptions

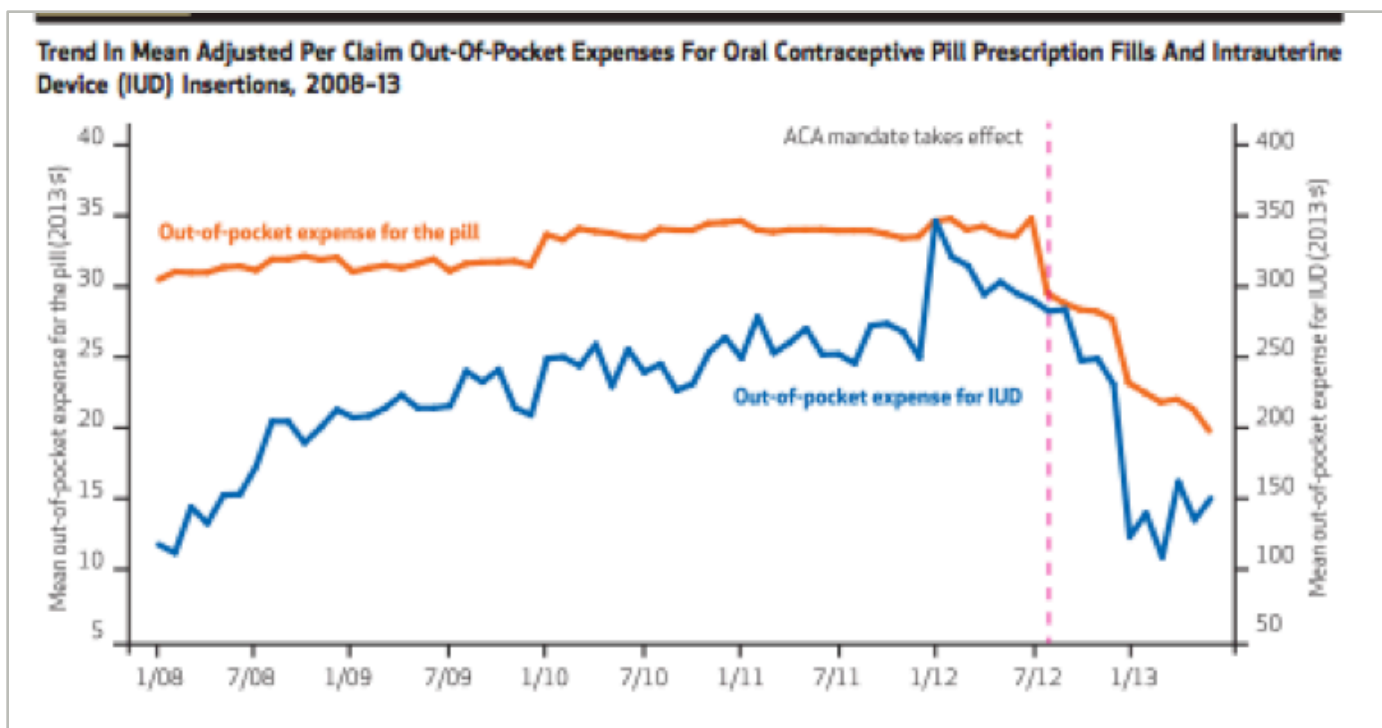
Another way that insurance plans may be exempt from the birth-control mandate is if they are a religious non-profit or for-profit corporation. From the time the ACA’s birth control mandate was enacted into law, religious non-profits were exempt. In 2013, however, an ‘accommodation’ became available for these organizations, so that their employees could still have access to birth control without cost sharing.^{xxii} Through this accommodation, organizations can notify either their insurer or Health and Human Services (HHS) that they object to contraceptive coverage. The insurer then provides contraceptive services for the women in the organization who desire it at no cost to the organization or to the women.^{xxiii} Women who work at these organizations therefore, should not have to pay for birth control. They are eligible to get it paid for, but they must advocate for the right.

In June of 2014, in a contentious ruling by the Supreme Court, “closely held religious for-profit” corporations also became exempt from the birth control mandate.^{xxiv} According to the National Women’s Law Center, this decision has had far reaching consequences, many of them negative.^{xxv} Not only are some women being denied birth control coverage through their employer’s insurance, but there have also been cases of pharmacies using this ruling to deny women birth control based on the pharmacy owner’s religious beliefs.^{xxvi} There are a number of specific criteria that govern this exemption, however, and it doesn’t apply to every for-profit with a religious CEO. The “closely-held corporations” limitation means that companies with publicly-traded stock wouldn’t be eligible for this accommodation, because their stockholders would not have a uniform opinion regarding birth control and religious. Last year, however, the same ‘accommodation’ became available to these women too. They can ask for birth control directly from their insurer, even if the insurance plan does not cover it.^{xxvii} **Religious exemptions should not, therefore, be a reason that women are denied free birth control coverage, but they may not know this right exists.**

Conclusion:

The Birth-Control Mandate So Far

In spite of the many insurance plans that are exempt from it, the contraceptive mandate in the ACA has overall been an economic boon for women who use birth control. This population undoubtedly constitutes a significant portion of women, given that 99% of sexually active women have used some form of birth control in their lives.^{xxviii} A report in *Health Affairs* magazine, which used a large administrative claims data set from a national insurer, estimated that, on average, users of intrauterine devices (IUDs) saved \$248 annually and oral contraceptive pill users saved \$255 annually after the ACA mandate removed cost sharing for birth control. This is a significant proportion of these women's annual health care costs.^{xxix} Not only does lowering birth control costs put more money directly into women's pockets, but cheaper birth control means easier access. The more women can access a consistent supply of birth control, the less likely they are to get an unplanned pregnancy, which can be economically detrimental to them.^{xxx} Women should know their rights so they can speak up when their insurers don't follow the rules. The birth-control mandate has accomplished a lot so far, but there is more to do for those who want to make sure every woman is covered.



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Birth control spending has dipped considerably since 2012, but it hasn't yet dropped to zero.^{xxxi}

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