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Trump Wants to Unravel ACA Birth Control Mandate

New rule would broaden contraceptive mandate exemption to more employers

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As rumors swirl on Capitol Hill that the Trump administration is preparing to roll back an Obama-era rule that employer health insurance include coverage for birth control, policy scholars and stakeholders say women and the country as a whole will feel the impact.

In May, [*Vox*](#) reported on a leaked version of the draft rule, which is now posted on the [Office of Management and Budget's website](#). The exact timetable for the final rule's issuance is not known.

Earlier this year, the American Congress of Obstetricians and Gynecologists (ACOG) slammed the administration for proposing to limit access to no-copay contraceptive coverage.

"Since the Affordable Care Act increased access to contraceptives, our nation has achieved a 30-year low in its unintended pregnancy rate, including among teens. Any move to decrease access to these vital services would have damaging effects on public health," Haywood Brown, MD, president of ACOG, said in a [press statement](#).

"Unintended pregnancies can have serious health consequences for women and lead to poor neonatal outcomes," he said. "This move, coupled with Congressional efforts to eliminate maternity care coverage and protections for individuals with preexisting conditions, shows a deep disregard for women's health."

Dawn Laguens, executive vice president of the Planned Parenthood Federation of America, also noted the nation's historically low rates of unintended pregnancy and pregnancy among teenagers.

"Thanks to this birth control benefit, more than 55 million women now have access to birth control without co-payments, and women have saved \$1.4 billion on birth control pills in the first year alone," she said in a statement.

Potential Changes

Currently, under the Affordable Care Act, employers must provide coverage for a variety of birth control options, explained Lydia Mitts, associate director of affordability initiatives at Families USA.

Exemptions already exist for churches, other houses of worship, and "closely held" business and nonprofits (following the *Hobby Lobby Supreme Court decision*) that she argued "strike a balance" between providing access to birth control and allowing employers to exercise their religious freedoms. In such cases, even though the employer does not have to fund the provision of no-cost birth control for employees, the insurer is still responsible for covering these options for employees, she explained.

The Trump administration wants to expand that exemption so that any employer, even large publicly traded corporations and universities, can exempt themselves from providing birth control coverage through a religious or "vague" moral exemption, she said.

Families USA's concern is that this change would "drastically undermine" contraceptive protections for women, Mitts said.

"This is not just about birth control, this is about people being able to make healthcare decisions and not having those be interfered with by their employer based on their employers' personal beliefs," she said.

Litigation Expected

Mara Gandal-Powers, JD, senior counsel for the National Women's Law Center and a former law clerk for Sen. Al Franken (D-Minn.), said her organization has been preparing its response to the administration's actions since the rule was first leaked: "this isn't an 'if,' it's a 'when,'" she said.

It's important to look at the rule as part of the "broader war on women's health" that began when President Trump took office, Gandal-Powers said.

Not only has the new administration attempted to roll back coverage of birth control, it has also tried to limit women's access to healthcare providers, such as Planned Parenthood, and it has undone other Obama-era rules -- for example, allowing states to once again block the flow of Title X funding to family planning clinics using the Congressional Review Act.

Because the current draft is considered an "interim final rule," it could go into effect immediately and if it does, the NWLC "would be considering our litigation options," she said.

Since contraceptive coverage is the one issue out of more than a dozen free preventive care services that the Trump administration is targeting, that raises constitutional issues, particularly sex discrimination, Brigitte Amiri, a staff attorney with the American Civil Liberties Union, told *Talking Points Memo*.

"They are not targeting other kinds of preventive care, and they're taking away a benefit that's otherwise guaranteed by law. Additionally, they're targeting something, contraception, that allows women to achieve equality in society," Amiri said.

Full Speed Ahead

Critics of the coverage mandate are eager to see it unraveled.

"I think it would be welcome news to many people to get the government out of the business of forcing employers to provide contraception," Mat Staver, JD, founder and chairman of Liberty Counsel, a self-described "international litigation, education, and policy ministry," said in a phone interview.

Staver said the original statute noted that essential health coverage was a requirement, but did not give the specifics of what was to be covered.

"The Department of Health and Human Services issued a regulation that listed the essential elements of the health coverage. This is where the contraception and abortion inducing drugs and devices originated," he said.

Gandal-Powers said it was always Congress's intent to include birth control among the ACA's preventive services.

"To the extent that [critics] are saying that it's not specifically named in the legislation. I don't think that holds up," she argued. Anyone who reviews the legislative history of the law can find statements from members of Congress noting that birth control is an important part of preventives services, she said.

Jeffrey Singer, MD, senior fellow at the Cato Institute, a conservative think tank, also supports weakening the contraceptive mandate for a number of reasons. Most importantly, he said insurers should not cover birth control; instead, making it over-the-counter would enable consumer-driven competition that would lower its price.

By forcing employers to provide birth control to women, the Obama administration enabled drug manufacturers to jack up the cost of these drugs and devices, said Singer, a general surgeon in metropolitan Phoenix.

When the sale is direct to the consumer, without a third party, prices fall, he noted, citing the example of contact lenses, which most insurance plans don't cover: "They have become remarkably inexpensive over time and are even available over the internet due to consumer-driven competition. Not so when a third party is picking up the tab," Singer said in an interview.

"I think it is demeaning and also economically harmful to force a woman to take time off from work to pay for and get what amounts to a permission slip from a healthcare provider to obtain birth control pills when men don't have to get a prescription for condoms -- and where the medical profession itself believes the prescription should not be required," Singer said.

He emphasized that ACOG has been advocating for over-the-counter access for decades.

For those who still can't afford the cost of birth control without insurance, Planned Parenthood can provide birth control for free, he added.

Access Denied?

A spokesperson for ACOG noted that the group does favor over-the-counter access to oral contraceptives, adding that "making that step will need to include a thorough analysis of how to maintain affordability."

But the argument that women will still be able to afford birth control without the mandate isn't accurate, Mitts said.

She cited a 2017 survey from Perry Udem, a research communications group, which found that one-third of women voters 18-44 said they couldn't afford to pay more than \$10 for birth control, if they had to pay for it on their own.

Also, one of the most effective types of birth control -- long-term intrauterine devices -- can't be provided over-the-counter, she said.

The devices, which cost more up front, have become a popular choice for women in recent years -- suggesting that before the ACA's enactment, many women might have preferred this option, Mitts said.