

State ‘Workarounds’ To Expand Birth Control Access Leave Work for OTC Sales To Complete

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July 12th, 2022

In pharmacy-access for contraceptives states began allowing in 2016, “there is still a gatekeeper. A male doesn’t have to get have a gatekeeper when he wants to buy contraception, but a female does,” says Arizona surgeon Jeffrey Singer, an advocate for making more drugs available OTC.

“Workarounds” implemented in in 16 states and Washington, DC, through pharmacy-access laws allowing pharmacists’ distribution expands access oral contraceptives but not to the extent that OTC sales would provide.

“A number of states have come up with workarounds since the state legislatures have the ability to determine the scope of practice of the various health care professions that they license,” said Jeffrey Singer, president emeritus and founder of Valley Surgical Clinics Ltd. in Arizona and a senior fellow at the Cato Institute’s Health Policy Studies with more than 35 years in private practice as a general surgeon.

According to reproductive health research and policy group Guttmacher Institute in 2016 states began introducing pharmacy-access laws for distributing contraceptives (*see map below*).

The details for the policies vary among the states. In Colorado, Minnesota, New Mexico, Oregon, Utah, Virginia and West Virginia, patients can start receiving oral contraceptives without prescription but must consult a doctor at some point, depending on the state, to continue pharmacy-access.

In Colorado, Minnesota, Oregon, Utah, Virginia and West Virginia along with North Carolina and Tennessee, patients must be 18 or older to receive birth control without prescriptions; pharmacists in Minnesota and Oregon can provide oral contraceptives to patients under 18 with proof of a previous prescription; and in North Carolina, pharmacists can provide the products to patients under 18 with parental consent.

Pharmacists in Colorado, Utah, West Virginia and Illinois are allowed to refuse to distribute contraceptives even though those states have granted them the authority.

In May, Virginia lawmakers passed a law allowing pharmacist-distribution but stipulating that consumers must have a “bona fide” relationship with a pharmacist before receiving the contraceptives. The law also expands permissions for pharmacists and supervised pharmacy technicians to use telehealth practices to provide birth control.

‘Gatekeeper’ Remains In Pharmacy-Access

Singer said by passing the laws, state lawmakers are voting that pharmacists, and in some cases pharmacy technicians, meet the definition of health care professional authorized to prescribe Rx drugs.

While those laws improve access, they don’t provide the convenience of OTC sales, Singer said. That’s because a woman still has to ask to receive the product.

States have “tried to do work around and it saves the woman money because she doesn't have to go to a doctor's office and take time off from work and pay \$100 plus to get a prescription,” he said.

“But there this is still a gatekeeper. A male doesn't have to get have a gatekeeper when he wants to buy contraception, but a female does, even though the doctors don't think things that he should need to.”

An American College of Obstetricians and Gynecologists report supports the argument that actual OTC access would work best for women.

The ACOG in 2019 reported that in a national survey of 2,725 pharmacists, 85% were interested in providing hormonal contraception services, although some cited potential obstacles including lack of time, reimbursement issues, and possible resistance from physicians.

Online access, the ACOG noted, is permitted in some states and allows a woman to bypass OB/GYN office visits and obtain a prescription for some types of hormonal contraception by answering a series of online questions or by talking to a clinician via telemedicine.

“Although pharmacy access and online access may eliminate some barriers, full over-the-counter access to hormonal contraception could provide a more comprehensive solution to contraceptive access and is a reasonable goal from a larger public health viewpoint,” the ACOG stated.