



**ISSUE ADVISORY- Privacy and Contraceptive Access: 50 Years after  
*Griswold v. Connecticut*  
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One of the most important developments for women's rights and women's health of the last half century is the recognition of a constitutional right to privacy. In 1965, the U.S. Supreme Court in *Griswold v. Connecticut* ruled that the Constitution protected the right to privacy for married couples using contraceptives. This decision was a watershed event that set a precedent for later Supreme Court decisions including *Eisenstadt v. Baird* (1972) ruling that the state could not ban the use of contraceptives by *anyone* and in *Roe v. Wade* (1972) which included the right to legal abortions expanding the "zone of privacy" for women's health. In *Griswold v. Connecticut*, the Supreme Court ruled that the law violated fundamental rights to privacy.

Unfortunately, 50 years after this historic ruling, the battles for privacy and contraception are still being waged in the health care debate.

**"Reasonable Medical Management" for Unlawful Non-Compliance:** In April, the Kaiser Family Foundation and the National Women's Law Center (NWLC) issued separate reports revealing how insurance companies are failing to comply with the Affordable Care Act's (ACA) mandate to provide preventive care and cover *all* approved methods of birth control for women without imposing out-of-pocket costs on them. This shocking discovery by the NWLC and the Kaiser Family Foundation demonstrates that women must maintain constant vigilance to protect rights already recognized. If you have purchased health insurance from the ACA's insurance marketplace, make sure that your plan covers your methods of preferred birth control.

According to the NWLC, the ACA's requirement that insurance companies cover birth control positively affects the lives of millions of women and families. Still, and unfairly, some women are paying out-of-pocket for birth control because their insurance companies do not comply with ACA guidelines. The NWLC identified three major trends of how insurers are not complying with the birth control benefit:

1. Some plans are not providing coverage for all FDA-approved methods of birth control or they impose out-of-pocket costs on them.
2. Some plans only cover generic birth control.
3. Some plans impose costs on the services associated with birth control methods.

The Food and Drug Administration (FDA) has categorized five different types of birth control: barrier methods, hormonal methods, emergency contraception, implanted devices, and permanent methods. Within these categories are 18 FDA- approved methods of contraception, which should all be covered by insurance companies according to the law. Insurance companies have undermined the law by using "reasonable medical management techniques" to determine how a preventive service will be available without cost sharing requirements.

One major insurance company imposes out-of-pocket costs on some methods of birth control, which violates ACA guidelines. The company considers the vaginal contraceptive ring and the contraceptive patch as “hormonal methods” and therefore refused to cover them because they cover other “hormonal methods” like oral contraceptives. So, if a woman was prescribed the vaginal contraceptive ring or the contraceptive patch, the company would tell them that they have the option of having the pill without out-of-pocket costs or paying to get the ring. However, by only covering the pill (a “hormonal method”), the company was able to justify not covering the contraceptive ring and the contraceptive patch under other ACA guidelines. In 2015, the company began covering the ring by creating a sixth “method” but it continues to fail to cover the patch.

**More Than One Way to Non-Comply:** Other ways that insurance companies are skirting their responsibilities to their members are by covering costs for only generic birth control. This has some major effects on women who have been prescribed certain forms of birth control because not all birth control methods have a generic equivalent. For example, the IUD with copper and the vaginal ring, which could be the best option for some women, does not have a generic equivalent and neither do certain brands of oral birth control.

Besides forcing women to pay out-of-pocket fees for drugs that should be covered under the law, insurance companies are failing to cover services associated with birth control like counseling, provider-administered birth control, and services associated with sterilization. Furthermore, some plans impose age limits on birth control coverage, fail to have a process that will waive out-of-pocket costs, and have policies that alter, delay, or deny coverage of birth control.

**Thanks, Obama:** Thankfully, the Obama administration quickly responded to the reports by reiterating which contraception methods are covered under the ACA law. The Department of Health and Human Services (HHS), Department of Labor (DOL), and the Treasury issued guidance in the form of FAQ’s to insurers clarifying the rules and details of the ACA birth control benefit. The new guidance to insurers states that “plans and issuers must cover without cost sharing at least one form of contraception in each of the methods (currently 18) that the FDA has identified for women in its current Birth Control Guide” (HHS, DOL, Treasury, 5/11). However, this same guideline allows companies to charge out-of-pocket costs for the patch. The clarification also states that insurance companies must cover (at no cost to the woman) all medical services associated with contraceptives and must be covered with no co-pays.

**Costs Equal Lost Opportunities:** Birth control without out-of-pocket costs matter to women for four basic reasons: helping them to expand their birth control options, grants them more financial autonomy, assists them in advancing their education and career, and helps to benefit their whole family. The ACA’s birth control coverage benefit is part of the law’s preventative health services coverage provision, which is designed to avoid preventable conditions and improve health overall.

The health and economic benefits of contraceptive use are well documented. Certain contraceptive methods help treat health issues that exclusively impact women, which can help reduce illness, disease, and unplanned pregnancies while increasing personal wellness and

autonomy. Therefore, denying coverage has very real economic and health impacts on women. Violations by insurance companies mean that some women will have to pay more for coverage and, therefore, have to make decisions that may adversely affect other parts of their lives.

On this 50<sup>th</sup> anniversary of *Griswold v. Connecticut*, it is time to take a closer look at what is entitled to women and their health as guaranteed by the ACA and affirmed by the Obama Administration. *Griswold v. Connecticut* ruled that privacy is a fundamental right for every individual, which cannot be violated because it would undermine our basic principles of liberty and justice. These violations by insurance companies confirm our need to re-assert our basic rights to privacy and the use of contraceptives granted by *Griswold v. Connecticut* and the law.

### **More Information:**

*If your insurance company is not complying with the ACA's guidelines, refer to the HHS, DOL, and Treasury FAQ's to learn about guaranteed coverage and preventive services.*

*If you would like to appeal a health insurance companies' decision deny payment for a claim or to terminate your health coverage, you can visit the HealthCare.gov website. There are two types of appeals processes: internal and external. You must first file an internal claim which is when you ask the insurance company do perform a full review of its decision. For more information on the steps to perform an internal claim, please visit: <https://www.healthcare.gov/appeal-insurance-company-decision/internal-appeals/>*

*If your insurance company **still** denies payment or coverage, you can file an external review, which includes having a third party review your appeal. For more information on the steps to perform an external review visit: <https://www.healthcare.gov/appeal-insurance-company-decision/external-review/>*

### **More Resources:**

New Report Analyzes Health Insurance Coverage of Contraceptives, <http://kff.org/private-insurance/press-release/new-report-analyzes-health-insurance-coverage-of-contraceptives/>

State of Birth Control Coverage: Health Plan Violations of the Affordable Care Act – Key Findings, [http://www.nwlc.org/sites/default/files/pdfs/state\\_of\\_womens\\_coverage\\_key\\_findings\\_4.29.153.pdf](http://www.nwlc.org/sites/default/files/pdfs/state_of_womens_coverage_key_findings_4.29.153.pdf)

FAQ's about Affordable Care Act Implementation (Part XXVI): Department of Health and Human Services (HHS), Department of Labor (DOL), and the Treasury, [http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca\\_implementation\\_faqs26.pdf](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf)