

# EXPANDING MEDICAID COVERAGE FOR EC ON THE STATE LEVEL



NATIONAL  
INSTITUTE FOR  
REPRODUCTIVE  
HEALTH

## BACKGROUND:

Emergency contraception (EC), also known as the “morning-after pill,” is a hormonal method of birth control that is taken to prevent pregnancy after unprotected intercourse. Essentially an increased dose of the common birth control pill, EC can be taken up to five days after intercourse, but is considered most effective if taken within 72 hours after sex. Plan B, a dedicated product of EC, was first approved by the US Food and Drug Administration (FDA) in July 1999 as a prescription-only medication. From 1999 to 2006, advocates and experts pushed for the FDA to approve Plan B as an over-the-counter medication due to its time limit on effectiveness.

## THE BATTLE CONTINUES:

After years of advocacy by women’s reproductive health advocates, the FDA finally granted over-the-counter (OTC) access for Plan B on August 24, 2006 for women 18 and over. However, the FDA decision did not make OTC EC available and accessible for all women. Three groups of women have been excluded from the benefits of timely access: young women under age 18; women, particularly immigrant women, who do not have a government-issued ID to prove their age; and low-income women who cannot afford the drug and whose Medicaid plan does not cover OTC EC. Reproductive health advocates must continue to work to expand EC coverage for all women. In this report, we focus on how to expand access for low-income women on Medicaid.

Low-income women on Medicaid are excluded from access to OTC EC because most state Medicaid programs still require them to have a prescription. This is needed because most states’ Medicaid billing procedures require a pharmacist to submit a prescription in order to be reimbursed. Women on Medicaid are therefore forced to either pay out-of-pocket or obtain a prescription from their doctor in order to obtain coverage. For women who wait to obtain a prescription, those few extra hours or even days can decrease the effectiveness of EC. For those that are forced to pay out-of-pocket, the average cost of \$40 can be prohibitive.

States must expand Medicaid coverage for EC so that low-income women do not have to pay more or wait longer than others to obtain EC. This memo outlines how eight states have already addressed this problem by changing their Medicaid policies to cover OTC EC. Many of these states have decided to pay for this new coverage with their own state dollars, while several have established policies that allow them to still receive federal reimbursement. At the end of this memo, a set of recommendations have been provided for advocates to help ensure low-income women have access to this important method of birth control in their own states.

## OVERVIEW OF STATES THAT COVER OTC EC THROUGH MEDICAID

State	Administrative Change (AC) or Legislative Change (LC)	State Dollars (SD) or State and Federal Dollars (SD/FD)	Refills	Co-payment
HI	LC then AC	SD	2/year	No
IL	AC	*	*	No
MD	AC	SD/FD	One/90 days	No
NJ	AC	SD/FD	12/year	No
NY	AC	SD	6/year	No
OK	AC	SD/FD	No limit	No
OR	AC	SD	No limit	No
WA	AC	SD/FD	No limit	No

- *To be determined*

## STATE PROFILES

### HAWAII

#### ***How was coverage initiated?***

In Hawaii, the need for Medicaid coverage for OTC EC gained attention due largely to the efforts of advocacy groups such as the Healthy Mothers, Healthy Babies Coalition of Hawaii. Advocates initially pushed to establish Medicaid coverage for OTC EC through state legislation (HB 456 and SB 1114) [See Appendix for legislation]. However, during a legislative hearing for SB 1114 in early 2007, the Director of the Hawaii Department of Human Services (DHS) testified before the State Senate and stated that the DHS planned to make Medicaid coverage for OTC EC available by July 1, 2007. Her testimony challenged the need for state legislation on this issue, and so the bills died in committee.

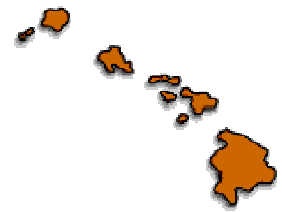
#### ***How does reimbursement work for pharmacists?***

Under the new policy, pharmacists will be required to send in a formal claim to be reimbursed for the cost of the drug. There is no reimbursement for dispensing.

#### ***How does coverage work for Medicaid recipients?***

A woman who needs Plan B can go to any pharmacy or clinic that accepts Medicaid, but a pharmacist must be present when she requests the drug. She will not be charged a co-payment for Plan B, but Medicaid will only cover Plan B over-the-counter twice a year.

Hawaii also has a collaborative practice agreement, which allows women of all ages to obtain EC directly from a trained pharmacist without needing to visit their doctor. After July 1, 2007, all women 18 and older will be able to receive Plan B OTC from any pharmacy in the state that stocks EC.



### ILLINOIS

#### ***How was coverage initiated?***

In Illinois, the local Planned Parenthood originally sent in a request for the state to allow Medicaid coverage for OTC EC. Illinois Governor Blagojevich and the State Department of Healthcare and Family Services have always been very supportive of family planning, and the response to the situation around EC was no exception. The decision to provide Medicaid coverage for OTC EC was made administratively. Moreover, Illinois already covers other OTC family planning products, such as condoms, thus the coverage of OTC EC reflected the previous policy.

#### ***How does reimbursement work for pharmacists?***

The Department of Healthcare and Family Services sent out a memo to providers and pharmacists describing the new OTC coverage for EC. Pharmacists and providers were instructed to use a specific number to be reimbursed.

#### ***How does coverage work for Medicaid recipients?***

A woman who needs Plan B can go to a pharmacy or clinic that accepts Medicaid. She will not be charged a co-payment for Plan B.



### MARYLAND

#### ***How was coverage initiated?***

In Maryland, the decision to provide Medicaid coverage for OTC EC was made administratively. According to the Chief of the Clinical Pharmacy Services Division, the State already covered OTC contraception, such as condoms, so when EC was made OTC, it was automatically covered.

#### ***How does reimbursement work for pharmacists?***

On May 9, 2007, notification was sent out to pharmacists in the state to let them know that EC would be covered OTC. Pharmacists were instructed to submit a claim in much the same manner that they do for other OTC contraception. According to the advisory, pharmacists were instructed that “in place of using a physician’s DEA number, [they should] fill in the prescriber’s DEA number field with the DEA number of the pharmacy.” The advisory explains that “this is the one exception to the rule that a physician’s DEA number must be used for the claim to be acceptable.”

#### ***How does coverage work for Medicaid recipients?***

A woman who needs Plan B can go to a pharmacy or clinic that accepts Medicaid. She will not be charged a co-payment for Plan B, but Medicaid will only cover the full course of Plan B once every 90 days.



## NEW JERSEY

### ***How was coverage initiated?***

In New Jersey, the decision to provide Medicaid coverage for OTC EC was an administrative decision that was announced in January 2007 and went into effect immediately.



### ***How does reimbursement work for pharmacists?***

In January 2007, the State Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), sent a newsletter to all pharmacists and HMO's notifying them of the decision by DMAHS to provide New Jersey FamilyCare/Medicaid drug coverage for OTC Plan B. The newsletter explained that Plan B can be dispensed as a prescription or OTC medication based on the woman's age. The memo also explains how pharmacists can request payment for Plan B through the state's "point-of-sale claims processing center." When billing Plan B as an OTC medication, pharmacists are instructed to report a service reference number. The pharmacist can decide on their own number, up to 7 digits, that they will use to keep track of the OTC medication.

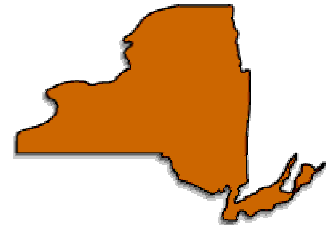
### ***How does coverage work for Medicaid recipients?***

A woman who needs Plan B can go to a pharmacy or clinic that accepts Medicaid. She will not be charged a co-payment for Plan B, but Medicaid will only cover Plan B twelve times per year.

## NEW YORK

### ***How was coverage initiated?***

In New York, the need for Medicaid coverage for OTC EC gained attention due largely to the efforts of advocacy groups such as Family Planning Advocates of New York State and NARAL Pro-Choice New York. The decision to provide this coverage was made administratively by the State Department of Health and was announced in January 2007, shortly after Governor Spitzer took office. It went into effect on February 1, 2007.



The state agreed to cover the full cost of this coverage. The rules in the *NYS Register* explain that the expenditure will be offset by the savings estimate of \$3.2 million for the costs of prenatal care, delivery and other health care costs associated with the delivery of unintended pregnancies.

### ***How does reimbursement work for pharmacists?***

The Medicaid Director and Deputy Commissioner of the Office of Health Insurance Programs at the New York State Department of Health sent a procedural letter to pharmacists across the state on January 23, 2007, informing them that a "fiscal order" was no longer needed to obtain EC. (A "fiscal order" is similar to a prescription for items that are available over-the-counter). The letter also told pharmacists the necessary steps they should undertake in order to get Medicaid reimbursement for the drug. First, the pharmacist is required to verify the age of the Medicaid recipient. Then, the pharmacist is instructed to use the prescriber ID number 02833383 for Plan B. The pharmacist then submits a claim to Medicaid and the State Medicaid Program will reimburse them.

### ***How does coverage work for Medicaid recipients?***

A woman who needs Plan B can go to a pharmacy or clinic that accepts Medicaid. She will not be charged a co-payment for Plan B, but Medicaid will only cover Plan B six times within a 12 month period.

## OKLAHOMA

### ***How was coverage initiated?***

In Oklahoma, the decision to provide Medicaid coverage for OTC EC was an administrative decision made by the Pharmacy Director of the Oklahoma Health Care Authority and the Director of Waiver Services after informal internal discussions. The state already covered other OTC family planning products, such as condoms and sponges, therefore it was seen as an extension of the previous policy and was a smooth and easy internal change. As a result, it did not require any funding changes or special permission.



### ***How does reimbursement work for pharmacists?***

In November 2006, the Oklahoma Health Care Authority sent out a *Pharmacy Update* that detailed how pharmacists should submit the new OTC Plan B. According to the *Update*, the pharmacist should use the prescriber ID number 1000001 and use the prescriber name "OTC." If pharmacists have questions or problems with the claim, there is a help desk line that they can call for more information.

## OKLAHOMA (CON'T)

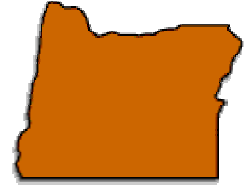
### *How does coverage work for Medicaid recipients?*

A woman who needs Plan B can go to a pharmacy or clinic that accepts Medicaid. She will not be charged a co-payment for Plan B, and there is currently no limit on refills.

## OREGON

### *How was coverage initiated?*

In Oregon, the need for Medicaid coverage for OTC EC gained attention due largely to the efforts of advocacy groups such as NARAL Pro-Choice Oregon, Planned Parenthood, ACLU, and the National Women's Law Center. In April 2007, the Oregon Department of Human Services made the decision to provide Medicaid coverage for OTC EC through an administrative change. The new regulation took effect on May 10, 2007.



### *How does reimbursement work for pharmacists?*

To announce the coverage, the Division of Medical Assistance Programs (DMAP), at the Oregon Department of Health Services, sent out a letter to all pharmacists describing the new coverage. The pharmacists were instructed to verify the age of the Medicaid recipient and then to use the prescriber ID number "BBBBBB" for Plan B distributed without a prescription, with an additional qualifier number of "05" to denote Medicaid coverage. The pharmacist is instructed to use their pharmacy software program to bill DMAP.

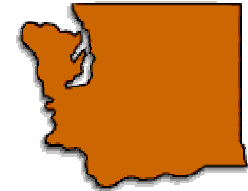
### *How does coverage work for Medicaid recipients?*

A woman who needs Plan B can go to a pharmacy or clinic that accepts Medicaid. She will not be charged a co-payment for Plan B, and there is currently no limit on refills.

## WASHINGTON

### *How was coverage initiated?*

In Washington, the decision to provide Medicaid coverage for OTC EC was made administratively based on the state's previous policy of covering other OTC family planning products. The state has always been very supportive of EC, and in fact was the first state in the nation to directly distribute EC through pharmacies with its collaborative practice agreement. This policy allows women of all ages to obtain EC from a participating pharmacy counter.



### *How does reimbursement work for pharmacists?*

As the state Medicaid program already covers other contraception products over-the-counter, including condoms and lubricant, the system is already set up to cover OTC EC. Pharmacists use the same billing number for OTC EC that they use for other contraception bought over-the-counter. The pharmacist applies for reimbursement through the Medicaid Point of Sale system.

### *How does coverage work for Medicaid recipients?*

A woman who needs Plan B can go to a pharmacy or clinic that accepts Medicaid. She will not be charged a co-payment for Plan B, and there is currently no limit on refills.

## GRASSROOTS ADVOCACY STRATEGIES FOR STATES

Based on the experiences gathered from these eight states, following are a set of strategies that advocates can use to change their own states' Medicaid rules to allow coverage for OTC EC.

### **ACTION 1: DETERMINE THE STATUS OF MEDICAID COVERAGE OF OTC EC IN YOUR STATE**

Analyze Medicaid coverage of EC in your state to determine if it is covering OTC EC. As state policies are continually evolving on this issue, some states may be covering OTC EC that are not listed in this report. To research this information, most Medicaid programs have a website that contains information on covered services and benefits, as well as phone numbers for hotlines and Medicaid personnel. The National Health Law Program recently released a report, entitled *Over the Counter or Out of Reach? A Report on Evolving State Medicaid Policies for Covering Emergency Contraception*, that will be a useful tool in researching state policies [See below for more details]. You can also investigate the status of EC in your state by requesting meetings with officials at your state health department and pharmacy association. We also recommend that you call your Medicaid hotlines to find out what information they are providing to Medicaid recipients who inquire about coverage for EC and if it is consistent with what you found out from the department staff.

If a state does not already cover OTC EC, find out if the state covers other OTC drugs, particularly contraceptive items. If a state covers other OTC items already, it may make it easier to obtain coverage for OTC EC.

Also, keep an eye out for additional barriers that Medicaid recipients may be facing in accessing EC, such as co-payments or managed care plans that exclude EC. You also may want to look beyond the state Medicaid program's coverage, and inquire about all of the public health insurance programs and family planning programs to determine if they are covering OTC EC.

## **ACTION 2: WORK IN COALITION**

Once you have done initial research and determined that the State Medicaid office is not already planning to expand coverage, you may need to build a strong and diverse EC coalition or join an existing coalition already working on these issues. This is a great opportunity to strengthen collaboration between reproductive health organizations, Medicaid advocates, welfare rights groups, and broader health care organizations. In advocacy efforts, you are much more likely to succeed if you are working with a broad-based coalition.

## **ACTION 3: CHOOSE YOUR STRATEGY**

Once you have established or joined an existing coalition, the next step is figuring out what strategy would be the best approach for improving the state policy. As these eight states demonstrate, an administrative approach is likely the most feasible. However, if this course of action fails or is not possible, the legislative approach should also be considered.

### ***Administrative Approach***

Administrative approaches seem to be the most effective, even for states that do not have friendly state administrations and positive EC policies already in place. This option may be easier and less likely to arouse public opposition. The first step is to find out who the key contacts are in your State Medicaid office and to contact them to find out where the policy currently stands. They may already be thinking about doing this, and an inquiry and gentle push may be just the thing that is needed to get this policy put in place. The eight examples in this report provide numerous ideas for how state administrations could make the change, including folding it into state coverage for other OTC contraception or creating a new fiscal reimbursement code. Most states then followed the policy change with a letter to pharmacists and providers promoting the new procedure. If the state officials need a bit of gentle prodding, it might be helpful to show how covering OTC EC will save the state money on care for an unintended pregnancy.

### ***Legislative Approach***

If an administrative approach fails or is not possible, another alternative is to make a policy change legislatively. Hawaii initially began with a legislative approach, and their bill language is an excellent model for other states [See *Appendix*]. If you decide to move forward with a legislative approach, you will need to identify supportive legislators and a potential sponsor to introduce the legislation to establish Medicaid coverage for OTC EC. Working in collaboration with a strong coalition will be particularly helpful to help push this legislation forward.

You will need to be very strategic with this approach and only move forward if you know you have support in the legislature. Otherwise, your efforts could trigger backlash and a bill could be introduced to specifically prohibit this coverage.

## **ACTION 4: UTILIZE NATIONAL ORGANIZATIONS AS RESOURCES**

Many national organizations are working to expand Medicaid coverage for EC and would be glad to provide technical assistance, research, and resources to advocates working on this issue. Some of these groups include:

### **ACLU Reproductive Freedom Project**

125 Broad Street, 18th Floor  
New York, New York 10004  
Tel: 212-549-2600  
<http://www.aclu.org/reproductiverights>

### **Guttmacher Institute**

120 Wall Street, 21st Floor  
New York, N.Y. 10005  
Tel: 212-248-1111  
<http://www.guttmacher.org>

### **Center for Reproductive Rights**

120 Wall Street  
New York, NY 10005  
Tel: 917-637-3600  
<http://www.reproductiverights.org>

### **MergerWatch Project**

475 Riverside Drive, Suite 1604  
New York, NY 10115  
Tel: 212-870-2010  
<http://www.mergerwatch.org>

**NARAL Pro-Choice America**  
1156 15th Street, NW Suite 700  
Washington, DC 20005  
Tel: 202-973-3000  
<http://www.prochoiceamerica.org>

**National Health Law Program (NHELP)**  
1101 14th Street, NW Suite 405  
Washington, DC 20005  
Tel: 202-289-7661  
<http://www.healthlaw.org>

**National Institute for Reproductive Health/  
NARAL Pro-Choice New York**  
470 Park Avenue South, 7th Floor  
New York, New York 10016  
Tel: 212-343-2031  
<http://www.prochoiceny.org>

**National Latina Institute for Reproductive Health  
(NLIRH)**  
50 Broad Street, Suite 1825  
New York, NY 10004  
Tel: 212-422-2553  
<http://www.latinainstitute.org>

**National Network of Abortion Funds (NNAF)**  
42 Seaverns Ave.  
Boston, MA 02130-2865  
Tel: 617-524-6040  
<http://www.nnaf.org>

**National Women's Law Center**  
11 Dupont Circle, NW, #800  
Washington, DC 20036  
Tel: (202) 588-5180  
<http://www.nwlc.org>

**Planned Parenthood Federation of America (PPFA)**  
434 West 33rd St.  
New York, NY 10001  
Tel: 212-541-7800  
<http://www.plannedparenthood.org>

**Pharmacy Access Partnership**  
614 Grand Avenue, Suite 324  
Oakland, CA 94610-3523  
Tel: 510-272-0150  
<http://www.pharmacyaccess.org>  
<http://www.go2ec.org>

The **National Institute of Reproductive Health** would be happy to assist in any way we can. If you would like assistance, or have any questions please contact:

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Director, Low-Income Access Program  
National Institute for Reproductive Health  
212-343-2031, ext.3512  
[mbatchelder@nirhealth.org](mailto:mbatchelder@nirhealth.org)

*This memo is a working draft based on results from a survey to State Medicaid officials and conversations with advocates and Medicaid officials in the eight states highlighted. If you have any additional information or if you see any inaccuracies that should be fixed, please contact Myra Batchelder.*

# APPENDIX: HAWAII LEGISLATION

**Report Title:**

*OTC Emergency Contraception; Pay for Women Medicaid Recipients*

**Description:**

*Requires department of human services to directly reimburse sellers of over-the-counter Plan B emergency contraception to women who are recipients of medicaid, without charge to recipients, who purchase such medication. Makes an appropriation. (SD1)*

THE SENATE  
TWENTY-FOURTH LEGISLATURE, 2007  
STATE OF HAWAII

**S.B. NO.** 1114  
S.D. 1

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## A BILL FOR AN ACT

*RELATING TO MEDICAID.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that, with the approval by the federal Food and Drug Administration of the emergency contraception tablet, Plan B, for over-the-counter sales without a prescription, women who are recipients of medicaid will now have to pay for the medication if they need it. This development is extremely counterproductive because the female medicaid population is at high risk for unplanned pregnancies and it is precisely this group that may need to choose between paying for emergency contraception to prevent unplanned pregnancies and paying for necessities of life such as food and rent. A single Plan B dose actually consists of two tablets that can be taken in a single dose, which costs up to \$45 or more per dose.

The purpose of this Act is to provide female medicaid recipients with access to emergency contraception. This Act requires the department of human services to directly reimburse sellers of over-the-counter Plan B emergency contraception to women who are recipients of medicaid, without requiring out-of-pocket expenses for recipients, who purchase such medication.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ , or so much thereof as may be necessary for fiscal year 2007-2008, and the same sum, or so much thereof as may be necessary for fiscal year 2008-2009, for the department of human services to directly reimburse the sellers of over-the-counter Plan B emergency contraception to women who are recipients of medicaid, without requiring out-of-pocket expenses for recipients, who purchase the medication. The department of human services shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement the reimbursement procedure.

The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2007.



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