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## United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR,  
AND PENSIONS

WASHINGTON, DC 20510-6300

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June 17, 2024

The Honorable Gene Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Dodaro:

The Affordable Care Act (ACA), signed into law by President Obama in 2010, aimed to expand access to health care coverage and reduce spending, with a particular focus on preventive care. While this important legislation prohibited cost-sharing, co-payments, and deductibles for contraception, the law can only help patients if it is both followed and enforced.<sup>1</sup> This is critical given the evidence that any cost-sharing can be a barrier to patient access.<sup>2</sup>

Millions of Americans rely on private insurance coverage to access and afford contraceptive services and supplies.<sup>3</sup> The ACA and guidance issued by the Department of Health and Human Services, Department of Labor, and Department of the Treasury requires most private health insurance plans to cover a designated list of preventive services without out-of-pocket costs to the consumer, including the full range of birth control methods approved by the U.S. Food and Drug Administration.<sup>4</sup> These three departments are responsible for implementing and enforcing this requirement.

A recent investigation by the State of Vermont Department of Financial Regulation found that three health insurers in the state—Blue Cross Blue Shield Vermont, MVP Health Care, and Cigna Healthcare—violated state and federal law by neglecting to provide no-cost contraceptive services to consumers. The investigation found that between 2017 and 2021, these three companies inappropriately charged patients \$1.5 million for contraceptives that should have been provided free of any out-of-pocket costs. As a result, 9,000 people received restitution for cost-sharing that was incorrectly applied for contraceptive services.<sup>5</sup>

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<sup>1</sup> Tschann M and Soon R. *Contraceptive Coverage and the Affordable Care Act*, [Obstet Gynecol Clin North Am.](https://doi.org/10.1093/obg/kbq111) 2015 Dec; 42(4): 605–617, 2015.

<sup>2</sup> Pace LE, Dusetzina SB, Fendrick AM, et al. The impact of out-of-pocket costs on the use of intrauterine contraception among women with employer-sponsored insurance. *Med Care.* 2013;51:959–63.

<sup>3</sup> Health Resources and Services Administration, U.S. Department of Health and Human Services, Women's preventive services guidelines, 2016, <https://www.hrsa.gov/womens-guidelines-2016>.

<sup>4</sup> Department of Health and Human Services, Department of Labor, and Department of the Treasury, *FAQs About Affordable Care Act Implementation Part 51, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation* (Jan. 10, 2022) (online at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>).

<sup>5</sup> State of Vermont Department of Financial Regulation, Contraceptive Services Claims Restitution Information (online at <https://dfr.vermont.gov/contraceptive-services-claims-restitution-information>) (November 13, 2023).

Furthermore, 12 years after the ACA was federal law, an October 2022 investigation by the House Oversight Committee found that insurers nationally are not complying with ACA mandated requirements for contraceptive coverage.<sup>6</sup> According to the Committee's report, although the contraceptive coverage requirements in the ACA have successfully expanded access to contraceptive products and services for millions of Americans, people still experience barriers to accessing their preferred method of contraception without cost-sharing. The Committee found that health plans and pharmacy benefit managers defy ACA requirements and exclude or impose cost-sharing on at least 34 contraceptive products.<sup>7</sup> According to the Committee's report, between 2015 and 2021, a majority of the insurance companies surveyed denied an average of 40 percent or more of exception requests for contraceptive products, with one company denying more than 80 percent of requests each year.<sup>8</sup> This is unacceptable and we must, and can, do better to ensure access to affordable contraception for people across this country.

The ACA has been federal law for 14 years and we continue to see plans deny coverage and ignore the federal mandate. It is completely unacceptable that plans consistently defy mandated coverage and that there is little enforcement or accountability. This is costing Americans millions in unnecessary health care fees. Therefore, I request that the Government Accountability Office address the following questions:

1. How do states and federal agencies oversee group and individual health plans for compliance with ACA's mandate that contraceptives be covered without patient cost-sharing?
2. How do the Department of Health and Human Services, Department of Labor, and Department of the Treasury oversee compliance with the ACA mandate, and what, if any, barriers do the agencies face in carrying out their enforcement and oversight responsibilities?
3. What is known about the extent to which group and individual health plans comply with the ACA contraceptive coverage mandate?

Thank you for your consideration of this request. Please contact Naomi Plasky at 202-224-6732 with any questions.

Sincerely,



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Bernard Sanders  
Chair  
Senate HELP Committee

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<sup>6</sup> House Committee on Oversight and Reform, Barriers to Birth Control: An Analysis of Contraceptive Coverage and Cost for Patients with Private Insurance (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2022-10-25.COR%20PBMInsurer%20Report.pdf>) (October 25, 2022).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.