

A light purple map of Washington state serves as the background for the title text.

**CONTRACEPTIVE COVERAGE
IN WASHINGTON STATE'S QUALIFIED HEALTH PLANS:
A "SECRET SHOPPER" SURVEY & REVIEW OF CARRIER
FILINGS AND FORMULARIES**

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Northwest Health Law Advocates



NARAL
Pro-Choice Washington

EXECUTIVE SUMMARY

Northwest Health Law Advocates and NARAL Pro-Choice Washington conducted a study to determine the extent to which Washington State health insurance carriers are complying with the Affordable Care Act (ACA) requirement that carriers cover *all* FDA-approved contraceptive methods without cost-sharing for all women with reproductive capacity.¹ The study focused on the eight carriers who sold Qualified Health Plans (QHPs) on Washington Healthplanfinder (wahealthplanfinder.org) in 2014. Our study included three components: (1) a review of carriers' filings with the Office of the Insurance Commissioner (OIC), (2) "secret shopper" calls to each carrier, and (3) a review of carrier formularies.

Each carrier's filings with OIC for the plan year 2014 state that all FDA-approved methods of contraception are covered as prescribed and do not require cost-sharing. These documents provide comprehensive information about contraceptive benefits. While carriers use different language, many describe the contraceptive methods they cover as "FDA-approved methods." Other carriers specify that particular methods are included in the contraceptive benefit. Some carriers require women to use the generic form of prescriptions, which the ACA allows as "reasonable medical management."² However, some carriers' coverage of contraceptive methods appears more limited (but likely is not) because of supplemental descriptions or idiosyncratic language.³

We gathered the "secret shopper" survey data from telephone contacts with representatives from each of the eight carriers surveyed. Callers asked carrier representatives several questions (see Appendix A for the complete script), including:

- which contraceptive methods the carriers covered;
- whether the methods were offered without cost-sharing (and if there was cost-sharing, how much it was); and

¹ U.S. Dep't of Health and Human Serv., Health Resources Serv Admin., Women's Preventive Services Guidelines (July 2011), available at <http://www.hrsa.gov/womensguidelines/>. The list of methods is available on the FDA Birth Control Guide, available at <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM356451.pdf>. The Supreme Court recognized that the ACA requires coverage of these 20 unique FDA-approved birth control methods in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014). See *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2766 and 2799-80, Nos. 13-354, 13-356, 2014 WL 2921709 (June 30, 2014). 42 U.S.C. § 300gg-13(a)(4) (2011); WAC 284-43-878(6)(a)(iii), WAC 284-43-882(4).

² Reasonable medical management allows carriers to require women to use generic forms of medication so long as a waiver process exists whereby a woman can get name brand medication without cost-sharing if the covered generic is medically inappropriate as determined by her health care provider. Federal guidance makes it clear that the waiver process does not require the woman or her health care provider to submit any medical evidence regarding the woman, the contraceptive drug or device prescribed, or the prescription. See question 14, U.S. Dep't of Labor, Health & Human Serv. & Treasury, Frequently Asked Questions about Affordable Care Act Implementation Part XII (February 20, 2013), available at <http://www.dol.gov/ebsa/faqs/faq-aca12.html#5> ["For example, plans may cover a generic drug without cost-sharing and impose cost-sharing for equivalent branded drugs. However, in these instances, a plan or issuer must accommodate any individual for whom the generic drug (or a brand name drug) would be medically inappropriate, as determined by the individual's health care provider, by having a mechanism for waiving the otherwise applicable cost-sharing for the branded or non-preferred brand version. This generic substitution approach is permissible for other pharmacy products, as long as the accommodation described above exists."]

³ See, e.g., BridgeSpan's OIC filing, which explains "specific strengths or quantities of women's contraceptives that are specifically designated as preventive medications" are covered.

- whether the carriers' QHPs included any restrictions on use of certain contraception methods. Callers completed the script five times per carrier.

The ACA requires the provision of all FDA-approved contraception without cost-sharing when a woman has a prescription from her provider.⁴ However, sales and customer service representatives from the eight insurance carriers rarely answered questions about the ACA requirement or specific contraceptive methods accurately. Representatives routinely said that select methods were available without cost-sharing while additional methods were available with cost-sharing, although the ACA requires the provision of all FDA-approved methods without cost-sharing. No single carrier's representatives consistently said that the carrier covered all FDA-approved methods without cost-sharing. Frequently, callers received information that contradicted other representatives from the same carrier, and that carrier's OIC filing or formulary. Finally, callers experienced a number of issues obtaining answers to their questions. These issues included carrier representatives who:

- Did not seem aware of the ACA requirement;
- Struggled to answer or could not answer specific inquiries about women's contraceptive services and QHP benefits; and
- Resisted checking for specific methods and/or brands of birth control when asked.

Responses from carrier representatives were cross-checked with QHP formularies to the extent possible.⁵ Frequently, we found discrepancies between the information carrier representatives provided to callers and the benefits listed in carrier formularies. Additionally, our review of plan formularies revealed that medical methods of contraception (subdermal implants and IUDs) are frequently not listed in carrier formularies while some FDA-approved methods are listed on higher tiers that require cost-sharing.⁶

On March 18, 2015, the authors met with representatives of each of the eight carriers included in this report and Insurance Commissioner Mike Kreidler. We discussed the report and asked each carrier to respond in writing to the findings and recommendations. Section V includes each carrier's response.

This study highlights the need for carriers to provide training to their sales and customer service representatives so they can clearly and accurately respond to questions regarding QHP contraceptive benefits available. Additionally, this information should be available to consumers via the carriers' websites and printed materials. Greater transparency and clarity around carrier formularies would aid consumers deciding between QHPs or attempting to ascertain which brands or types of contraceptives are available through their QHP.

⁴ Carriers are only required to cover over-the-counter contraceptive methods if they are both FDA-approved and prescribed for a woman by her health care provider. See question 15, U.S. Dep'ts of Labor, Health & Human Serv. & Treasury, Frequently Asked Questions about Affordable Care Act Implementation Part XII (February 20, 2013), available at <http://www.dol.gov/ebsa/faqs/fag-aca12.html#5>.

⁵ Carrier formularies do not always include information on all FDA-approved methods of contraception and are not always available online via a direct link.

⁶ Carrier formularies generally include prescription drugs organized into tiers based on cost-sharing requirements, usually copayments or coinsurance. Some carriers surveyed list specific FDA-approved methods on higher tiers. See *infra* Part IV(B).