



MEMORANDUM

To: Interested Parties
From: The Henry J. Kaiser Family Foundation
Date: 8/7/2002
Re: Latest Findings on Employer-Based Coverage of Contraception

Insurance coverage of oral contraceptives has received greater attention in recent years. Nearly 59 million women in the U.S. are of "reproductive age," between 16 and 44 years old¹. The majority of these women are at risk for unintended pregnancy and use some form of contraception. Employer-based coverage is the primary form of health insurance for 64% of women of reproductive age², but a sizable minority of women lack coverage for contraceptives. This memo provides background on the issue of contraceptive coverage and presents new findings from the soon to be released Kaiser Family Foundation/Health Research and Educational Trust (Kaiser/HRET) 2002 Annual Survey of Employer-Sponsored Health Benefits.

BACKGROUND

Over the past decade, coverage for contraception has been a part of national and state level policy debates. At the federal level, the Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC) was introduced in 1997 and has been re-introduced in the U.S. Senate in the 107th Congress. The bill would require private insurance plans to cover FDA-approved prescription contraceptives at the same level of coverage for other prescription drugs. While Congress debates a national mandate, several states have taken leadership on this issue. Currently, 20 states have laws that require parity for insurance coverage of contraceptives³. However, state laws do not guarantee coverage to employees in self-funded plans, which are regulated solely by the federal government; approximately 50% of all workers are covered by self-funded plans⁴.

In 2000, the debate gained additional momentum when the U.S. Equal Employment Opportunity Commission (EEOC) issued a decision stating that employers that exclude coverage for contraceptive drugs while covering other prescriptions are in violation of Title VII of the Civil Rights Act of 1964. This Act prohibits discrimination against women "affected by pregnancy, childbirth, or related medical conditions" in all aspects of employment, including receipt of fringe benefits. The EEOC stated that employers should "cover the expenses of prescription contraceptives to the same extent, and on the same terms, that they cover the expenses" of other drugs, devices, and preventive care⁵.

¹ Henry J. Kaiser Family Foundation estimates based on Urban Institute analyses of the March 2000 Current Population Survey, U.S. Bureau of the Census.

² Ibid.

³ National Family Planning and Reproductive Health Association *Report*. July 19, 2002. p. 9.

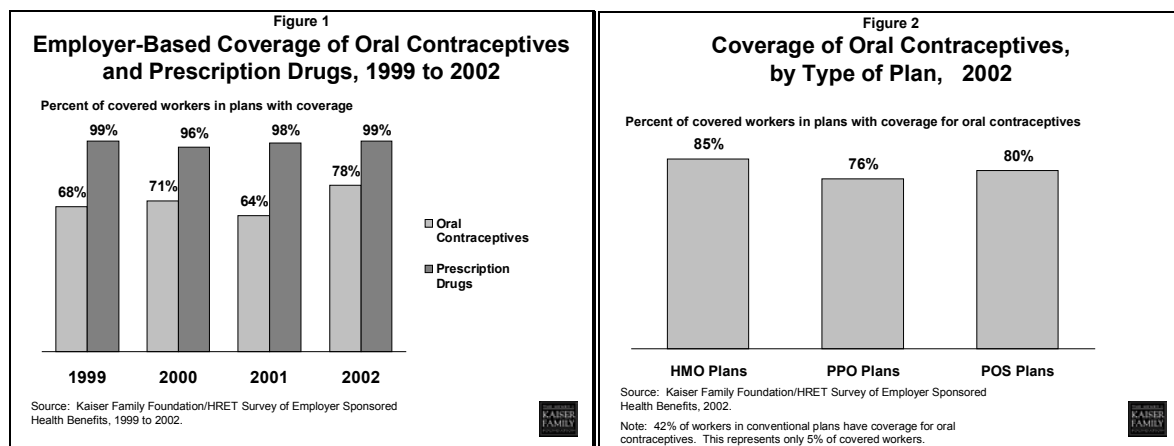
⁴ 2002 Annual Employer Health Benefits Survey (Kaiser/HRET). Kaiser Family Foundation, Menlo Park 2002 – Forthcoming.

⁵ Matuszewitch, E. "Exclusion of Prescription Contraceptives from Employer Health Plans May Violate Federal and State Laws." *Employment Litigation Reporter*. May 28, 2002.

Equity in contraceptive coverage has been the subject of two important federal judicial decisions as well. In the April 2001 case, *EEOC v. United Parcel Service Inc.*, a Minnesota federal judge ruled with the EEOC in its lawsuit against United Parcel Service (UPS), which charged that UPS' denial of coverage for oral contraceptives was in violation of Title VII. UPS claimed that the exclusion for oral contraceptives was gender-neutral; however, since oral contraceptives are only available to women, the EEOC argued this created a disparate burden on women and the court agreed. Similarly in the June 2001 suit, *Erickson v. Bartell Drug Co.*, a federal judge in Washington state cited the EEOC decision when he ruled that Bartell Drug Company had violated Title VII by excluding coverage for oral contraceptives while covering other prescription drugs. The judge went on to state that an insurance plan must provide the same level of coverage to male and female employees, even if the employer incurs additional expenses as a result.

Kaiser/HRET SURVEY FINDINGS

The Kaiser Family Foundation and Health Research and Educational Trust conduct an annual Survey of Employer Health Benefits, a nationally representative survey of over 3,200 public and private employers.⁶ This survey collects a broad range of information on employer costs, scope of coverage, and health benefits. The 2002 Kaiser/HRET survey finds that an increasing share of insured workers have coverage for oral contraceptives (Figure 1). In 2002, 78% of covered workers have coverage for oral contraceptives, up significantly from 64% of covered workers in 2001. The gap between coverage of oral contraceptives and other prescription drugs persists, but has narrowed in the past year.



Coverage for oral contraceptives also varies between different types of insurance plans (Figure 2). Employees in HMO plans are the most likely to have coverage for oral contraceptives, but a sizable share of those in PPO and POS plans also get assistance with contraceptive costs.

CONCLUSIONS

The share of workers with coverage for oral contraceptives has risen significantly in the past year. Nevertheless, across firm size and different types of insurance plans, employees are less likely to have coverage for oral contraceptives than for other prescription drugs. Recent legislative action, court rulings, and grassroots efforts suggest that this subject will remain visible in national and state debates.

⁶ The Kaiser Family Foundation/Health Research and Educational Trust 2002 Annual Employer Health Benefits Survey (Kaiser/HRET) reports findings from a survey of 3,262 randomly selected public and private employers, including 2,014 who responded to the full survey and 1,248 who indicated whether or not they provide health coverage. Firms range in size from small enterprises with as few as 3 workers to corporations with more than 300,000 employees. The Kaiser/HRET Employer Benefits Survey is based on previous surveys sponsored by the Health Insurance Association of America from 1987–1991 and KPMG from 1991–1998. Researchers at the Kaiser Family Foundation and the Health Research and Educational Trust designed and analyzed the survey and National Research LLC conducted the field work between January and May 2002.