



December 20, 2024

Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration, Room N-5653  
Department of Labor  
Washington, DC 20210  
Attention: 1210-AC25

**Subject:** Enhancing Coverage of Preventive Services Under the Affordable Care Act

To Whom It May Concern,

On behalf of Covered California and the California Public Employees' Retirement System (CalPERS), we are writing in response to your request for comment on Enhancing Coverage of Preventive Services Under the Affordable Care Act (CMS-9887-P). As California's health insurance marketplace under the ACA, Covered California serves nearly 1.8 million Californians, facilitating enrollment in 15 health plans across 12 issuers. CalPERS, the second-largest commercial purchaser of health benefits in the nation after the federal government, secures health benefits for approximately 1.5 million active and retired state, local government, and school employees and their families. Both organizations are committed to ensuring access to equitable, high-quality care, and expanding preventive and contraceptive services directly aligns with our shared mission to achieve the Quadruple Aim—improve the patient care experience, improve the health of the population, reduce per capita healthcare costs, and improve health equity.

### **California's Experience Implementing OTC Contraceptive Coverage**

California law requires that health plans provide coverage for FDA-approved over the counter (OTC) contraceptive drugs, devices, and products without imposing cost-sharing or medical management restrictions on enrollees at in-network pharmacies. Additionally, California law requires that, when no therapeutic equivalent generic substitute exists for a brand-name contraceptive, health plans must cover the brand-name product without cost sharing. In cases where FDA-approved therapeutic equivalents exist, health plans are required to cover at least one therapeutic equivalent without cost sharing. We believe these provisions have improved access to essential

contraceptive services and support our commitment to health equity, and we applaud efforts to impose similar requirements at the federal level.

### **Coverage of OTC Contraceptives**

While the proposal to cover OTC contraceptives without cost sharing is an important step forward, we recommend that the rule include measures to ensure equitable access to these services, particularly for low-income communities, communities of color, and rural areas. Access to OTC products should be facilitated through in-network pharmacies, ensuring that these products are stocked and available at accessible locations such as community chain pharmacies, and by mail-order. This is especially critical for individuals who already face barriers to accessing healthcare, such as transportation or financial limitations. Additionally, coverage for OTC products should be seamless, with no cost sharing or barriers at the point of care to accessing these items, and pharmacies should be reimbursed promptly for dispensing covered OTC products to ensure no disruption in care.

### **Provider Education**

We also recommend that the proposed rule require health plans to share information with providers on the new preventive services requirements through easily accessible digital platforms. This information should include updates to the coverage of preventive services, and any changes to the authorization requirements. Ensuring that providers have quick and clear access to this information will help facilitate compliance and ensure that patients benefit from improved access to preventive services efficiently and equitably. Additionally, these resource materials should emphasize culturally and linguistically appropriate care to address the diverse needs of all populations.

### **Comprehensive Coverage for All Contraceptive Methods**

While the proposed rule's coverage of OTC contraceptives is a positive step in increasing access to necessary healthcare, we recommend that the rule ensure comprehensive access to all forms of contraceptive products, including those that may not be available over the counter for individuals with specific healthcare needs. These items should be readily available at in-network pharmacies, including those in rural and underserved communities. Additionally, clear communication about the availability of OTC products should be provided to members to ensure they are fully informed and able to access the care they need. This will ensure that all populations, including those with chronic health conditions or complex needs, have access to the contraceptive care they require.

## **Data Collection and Reporting**

We recommend that the final rule include a requirement for health plans to collect and report data on the utilization of OTC products. This data will allow for continuous monitoring of the rule's impact on access to care and help identify disparities in access. Collecting and reporting this data is crucial for improving quality of care and ensuring equitable access for all populations, especially for medically underserved communities who often face barriers to care.

Covered California and CalPERS believe that the proposed rule, with the modifications outlined above, has the potential to significantly and uniformly improve access to preventive services, including OTC contraception, and to reduce health disparities. We are committed to working with EBSA, IRS, and CMS to ensure that the final rule is implemented in a way that is effective, equitable, and aligns with both federal and state goals for improving healthcare access and quality.

Thank you for considering our comments. Should you require any further information or wish to discuss our feedback in more detail, please do not hesitate to contact us.

Sincerely,

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Executive Director  
Covered California

Marcie Frost  
Chief Executive Officer  
CalPERS