

United States Senate

WASHINGTON, DC 20510

May 2, 2022

Ms. Amy Bricker
President, Express Scripts
1 Express Way
St. Louis, MO 63121

Dear Ms. Bricker:

We continue to hear from patients who are experiencing delays and denials for insurance coverage of birth control products they and their health care providers determine are most appropriate for them. The Affordable Care Act (ACA) requires all group health plans and all issuers of group or individual health insurance coverage to cover women's preventive services, including the full range of FDA approved, cleared, and granted female-controlled contraceptives, without cost-sharing. Thanks to this requirement, over 64 million women have insurance coverage that includes contraception without cost-sharing.¹ However, over the past nine years, thousands of women have reported challenges obtaining covered contraceptive products as guaranteed by the ACA.² As one of the largest pharmacy benefits managers (PBMs) in the country, Express Scripts' policies regarding claims for birth control products directly affect patients' ability to get the birth control they need. Patients should not have to jump through burdensome hoops or pay extra just to get the birth control they need to stay healthy and plan a family on their own terms. We therefore ask you ensure your policies are compliant with the law and provide the requested information so we may better understand the scope, evolution, and impact of your policies.

Following reports that insurers were unlawfully denying access to birth control, the U.S. Department of Labor, Department of Health and Human Services, and Department of the Treasury (the Departments) recently released guidance clarifying that insurers must cover all FDA approved, cleared, or granted contraceptive products that are determined by an individual's provider to be medically appropriate.³ Additionally, the Health Resources and Services Administration (HRSA) updated the Women's Preventive Services Guidelines for plan years starting in 2023, to reinforce the importance of covering the full range of FDA approved, cleared, or granted contraceptives as a part of contraceptive care.⁴

Federal law clearly requires group health plans and health insurance coverage to cover the full range of FDA approved, cleared, or granted contraception. As PBMs typically manage the drug benefit for group health plans and health insurance coverage, policies and practices put in place by PBMs on behalf of those plans or coverage determine coverage decisions for patients. We have heard numerous accounts of PBMs requiring prior authorization, denying claims, or asking patients to try multiple forms of contraceptives before approving them for the product recommended by their health care provider.⁵ These opaque and burdensome practices run counter to the goals of the ACA - ensuring access to prescription birth control that is free at the point-of-sale.

¹ <https://nwlc.org/wp-content/uploads/2020/11/preventiveservices2020.pdf>

² Id.

³ https://www.help.senate.gov/imo/media/doc/20211209_Birth%20Control%20Coverage%20Letter_Final.pdf;
<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>

⁴ <https://www.hrsa.gov/womens-guidelines/index.html>

⁵ <https://jezebel.com/insurance-companies-are-giving-ridiculous-reasons-for-n-1848520648>

We write to seek more information on Express Scripts' practices around contraceptive coverage and ensure you are compliant with the law.

Please respond to the following questions and requests for information no later than May 16, 2022:

1. How have Express Scripts' coverage and medical management policies around contraceptive products changed since the issuance of the Departments' guidance on January 10, 2022?
 - a. Please provide copies of the current coverage and medical management policies for contraceptives.
 - b. Please provide past iterations of such policies dating back to March 23, 2010.
2. What percentage of claims for contraceptive products have had prior authorization requirements imposed on them?
3. What percentage of claims for contraceptive products are approved without cost-sharing?
4. What percentage of claims for contraceptive products are approved with cost-sharing?
5. What percentage of claims for contraceptive products are denied?
6. How many requests for coverage of a contraceptive product on the basis of medical necessity has Express Scripts received over the last five annual claim periods? How many of those were approved?
7. Please provide any documentation explaining the circumstances in which providers are required to use an exceptions process to request coverage for a contraceptive product on the basis of medical necessity. Please also provide an explanation of the materials providers must provide in order to demonstrate that a contraceptive product is medically necessary.
8. Does Express Scripts use medical management techniques within a specified method of contraception? If so:
 - a. Please describe the techniques used and provide any standard exception forms and instructions that are used.
 - b. What review does Express Scripts conduct to determine whether the exceptions process is burdensome for patients and their providers?

Please contact Elizabeth Letter (Elizabeth_Letter@help.senate.gov) with Senator Murray's staff if you have any contacts about this request. Thank you in advance for your prompt response.

Sincerely,



Senator Patty Murray



Senator Ron Wyden



Senator Robert P. Casey, Jr.



Senator Margaret Wood Hassan