FEHB Program Carrier Letter
All FEHB Carriers

U.S. Office of Personnel Management
Healthcare and Insurance

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Fee-for-service [14] Experience-rated HMO [14] Community-rated HMO [16]

Subject: Contraception

This Carrier Letter provides guidance to Carriers about FEHB Program coverage for contraception. OPM is directing Carriers to follow applicable provisions of the Frequently Asked Questions (FAQs) Part 54 that were issued on July 28, 2022 by the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the "Departments"). The FAQs are discussed below, and OPM is making certain adaptations for purposes of the FEHB Program. This Carrier Letter updates OPM's previous guidance on contraceptive services, and it supersedes any guidance that was previously issued to the extent it is inconsistent with this guidance.

Background

As noted in previous OPM guidance, including Carrier Letter 2022-03 and Carrier Letter 2022-05, FEHB Carriers are responsible for covering, without cost sharing, contraceptive services that are specified in the Women's Preventive Services Guidelines supported by the Health Resources and Services Administration (HRSA). OPM's appropriations law also requires FEHB contracts to include "a provision for contraceptive coverage."[1]

The currently applicable HRSA-supported Guidelines (2019 HRSA-Supported Guidelines), as updated on December 17, 2019, recommend that adolescent and adult women have access to the full range of female-controlled Food and Drug Administration (FDA)-approved contraceptive methods,[2] effective family planning practices, and sterilization procedures to prevent unintended pregnancy and improve birth outcomes.

[1] The most recent OPM appropriations law is found in the Consolidated Appropriations Act, 2022 at section 726 of Division E—Financial Services and General Government Appropriations Act, 2022.
[2] The HRSA-supported Guidelines use the term "methods" instead of "products." But, as noted by the Departments, the FDA approves, clears, and grants contraceptive products and not methods.

The range of identified categories of contraception in the currently applicable 2019 HRSA-Supported Guidelines include: (1) sterilization surgery for women, (2) surgical sterilization via implant for women, (3) implantable rods, (4) copper intrauterine devices, (5) intrauterine devices with progestin (all durations and doses), (6) the shot or injection, (7) oral contraceptives (combined pill), (8) oral contraceptives (progestin only), (9) oral contraceptives (extended or continuous use), (10) the contraceptive patch, (11) vaginal contraceptive rings, (12) diaphragms, (13) contraceptive sponges, (14) cervical caps, (15) female condoms, (16) spermicides, (17) emergency contraception (levonorgestrel), and (18) emergency contraception (ulipristal acetate); and any additional contraceptives approved, granted, or cleared by the FDA.[3] As noted in Carrier Letter 2022-05, Carriers in the FEHB Program must cover without cost sharing at least one contraceptive from each of the aforementioned categories.

The 2019 HRSA-Supported Guidelines also provide that contraceptive care should include contraceptive counseling, initiation of contraceptive use, and follow-up care (for example, management and evaluation, as well as changes to, and removal or discontinuation of, the contraceptive method), and that instruction in fertility awareness-based methods, including the lactation amenorrhea method, should be provided for women desiring an alternative method. OPM is clarifying that FEHB Carriers must also provide coverage without cost sharing for these forms of contraceptive care.

On December 30, 2021, HRSA accepted updates to the existing 2019 HRSA-Supported Guidelines, including updates for contraceptives and contraceptive counseling (2021 HRSA-Supported Guidelines).[4] The updated 2021 HRSA-Supported Guidelines are effective beginning with the first plan year that begins on or after December 30, 2022. Accordingly, beginning with plan year 2023, Carriers must provide coverage consistent with the 2021 HRSA-Supported Guidelines. As noted in Carrier Letter 2022-03, for plan year 2023 and beyond, any future updates to HRSA-Supported Guidelines must be applied as they occur throughout the plan year by all FEHB Carriers.

The guidance provided in this Carrier Letter is equally applicable to both the 2019 HRSA-Supported Guidelines and the 2021 HRSA-Supported Guidelines,

[3] OPM is adopting the phrase "any additional contraceptives approved, granted, or cleared by the FDA" from the 2021 HRSA-Supported Guidelines (see footnote 4) instead of using the phrase "additional methods as identified by the FDA" from the 2019 HRSA-Supported Guidelines.

[4] HRSA Updates the Affordable Care Act Preventive Health Care Guidelines to Improve Care for Women and Children (Jan. 11, 2022). The 2021 HRSA-Supported Guidelines encompass contraceptives that are not female-controlled, such as male condoms (which must be covered with a prescription). The 2021 HRSA-Supported Guidelines do not include male sterilization.

unless otherwise specified. References in this document to the HRSA-Supported Guidelines should be understood to include both the 2019 HRSA-Supported Guidelines and the 2021 HRSA-Supported Guidelines, unless otherwise specified.

OPM Guidance Based on FAQs Part 54

OPM directs FEHB Carriers to follow all applicable provisions of FAQs Part 54 with certain adaptations for the FEHB Program. Specifically:

Coverage Requirements

1. As previously noted in Carrier Letter 2019-01, FEHB plans must cover, without cost sharing, items and services that are integral to the furnishing of a recommended preventive service. Consistent with Question 1 of FAQs Part 54, OPM notes this requirement also applies to coverage of items and services that are integral to the furnishing of a recommended contraceptive service under the HRSA-Supported Guidelines, including, but not limited to, coverage for anesthesia for a tubal ligation procedure or pregnancy tests needed before provision of certain forms of contraceptives, such as an intrauterine device (also known as an IUD), regardless of whether the items and services are billed separately.

2. Consistent with Carrier Letter 2022-05 and Question 2 of FAQs Part 54, FEHB plans must cover, without cost sharing, contraceptive products and services that are not included in a category of contraception described in the HRSA-Supported Guidelines. Specifically, FEHB plans must cover without cost sharing any contraceptive services and FDA-approved, cleared, or granted contraceptive products that an individual and their attending provider have determined to be medically appropriate for the individual, whether or not those services or products are specifically identified in the categories listed in the HRSA-Supported Guidelines, including contraceptive products more recently approved, cleared, or granted by FDA. This coverage must also include the clinical services, including patient education and counseling, needed for provision of the contraceptive product or service.

3. Consistent with Question 3 of FAQs Part 54, FEHB plans may use reasonable medical management techniques for contraceptive products or services *not included* in the categories described in the HRSA-Supported Guidelines only if multiple, substantially similar services or products that are not included in a category described in

the HRSA-Supported Guidelines are available and are medically appropriate for the individual. However, if an individual's attending provider recommends a particular service or FDA-approved, cleared, or granted product based on a determination of medical necessity with respect to that individual, the FEHB plan **must**[5] cover that service or product without cost sharing. The FEHB plan **must** defer to the determination of the attending provider, and make available an easily accessible, transparent, and sufficiently expeditious exceptions process that is not unduly burdensome so the individual or their provider (or other individual acting as the individual's authorized representative) can obtain coverage for the medically necessary service or product without cost sharing.

4. Consistent with Question 4 of FAQs Part 54, OPM notes that under the 2021 HRSA-Supported Guidelines, FEHB plans must continue to provide coverage for instruction in fertility awareness-based methods without cost sharing. The 2021 HRSA-Supported Guidelines include "screening, education, counseling, and provision of contraceptives (including in the immediate postpartum period)."[6] Counseling and education under the 2021 HRSA-Supported Guidelines includes instruction in fertility awareness-based methods, including lactation amenorrhea.

5. Consistent with Question 5 of FAQs Part 54, FEHB plans must cover without cost sharing (1) emergency contraception (levonorgestrel), and (2) emergency contraception (ulipristal acetate), including over-the-counter (OTC) products, when the product is prescribed for an individual by their attending provider. FEHB plans are required to cover these products without cost sharing including when they are prescribed for advanced provision. FEHB plans are also encouraged to cover OTC emergency contraceptive products with no cost sharing when they are purchased without a prescription.

6. A health savings account (HSA), health care flexible spending account (HCFSA), or health reimbursement arrangement (HRA) can be used to purchase OTC contraceptives. Consistent with Question 6 of FAQs Part 54, FEHB plans that will cover costs of OTC contraceptives purchased without a prescription are encouraged to advise individuals not to seek reimbursement from an HSA, HCFSA, or HRA for the cost (or the

[5] Previously in Carrier Letter 2020-05, OPM indicated that a provider's determination of medical necessity "should" receive deference. To resolve any ambiguity, OPM is now making it clear that the provider's determination "must" receive deference.
[6] See Women's Preventive Service Guidelines.

portion of the cost) of contraception paid or reimbursed by the FEHB plan. Likewise, FEHB plans are encouraged to advise these individuals that they may not use an HSA, health FSA, or HRA (including any related debit card) to purchase contraception for which the individual intends to seek reimbursement from their FEHB plan.

7. Consistent with Question 7 of the FAQs Part 54, OPM strongly encourages FEHB plans to cover the dispensing of a 12-month supply of contraception, such as oral contraceptives, without cost sharing. Literature on contraception use shows that dispensing a 12-month supply at one time can increase the rate at which use of contraceptives continues, decrease the likelihood of unintended pregnancy, and result in cost savings.[7]

Medical Management

8. Consistent with Question 8 of FAQs Part 54, FEHB plans may utilize reasonable medical management techniques only *within* a specified category of contraception and only to the extent the HRSA-Supported Guidelines do not specify the frequency, method, treatment, or setting for the provision of a recommended preventive service that is a contraceptive service or FDA-approved, cleared, or granted product. With respect to the HRSA-Supported Guidelines as they pertain to contraception, FEHB plans must cover, without cost sharing, at least one form of contraception in each category that is described in the HRSA-Supported Guidelines (or, with respect to contraceptive categories not described in the HRSA-Supported Guidelines, at least one form of contraception in a group of substantially similar services or products).

[7] See, e.g., CDC Select Practice Recommendations for Contraception Use, 2016 (noting that "The more pill packs given up to 13 cycles, the higher the continuation rates. Restricting the number of pill packs distributed or prescribed can result in unwanted discontinuation of the method and increased risk for pregnancy."); Foster, D. G., Hulett, D., Bradsberry, M., Darney, P., & Policar, M. (2011). Number of oral contraceptive pill packages dispensed and subsequent unintended pregnancies. *Obstetrics and gynecology*, 117(3), 566–572, (stating that individuals receiving a one-year supply of contraceptives have been found to have 30 percent lower likelihood of having an unplanned pregnancy and 46 percent lower likelihood of having an abortion compared to similar individuals who only received one or three month supplies of contraceptives); Judge-Golden CP, Smith KJ, Mor MK, Borrero S. Financial Implications of 12-Month Dispensing of Oral Contraceptive Pills in the Veterans Affairs Health Care System. *JAMA Intern Med.* 2019;179(9):1201–1208 (finding that 12-month dispensing of oral contraceptives for women in the Veterans Affairs Health Care System was associated with a reduction of 24 unintended pregnancies per 1,000 women per year and an annual cost saving to the health system of $87.12 per woman compared to 3-month dispensing).

If an FEHB plan utilizes medical management techniques within a specified category of contraception (or, with respect to contraceptive categories not described in the HRSA-Supported Guidelines, a group of substantially similar services or products), the use of those techniques will not be considered reasonable unless the FEHB plan has an easily accessible, transparent, and sufficiently expeditious exceptions process that is not unduly burdensome on the individual or their provider (or other individual acting as the individual's authorized representative) and covers a service or FDA-approved, cleared, or granted product determined to be medically necessary with respect to an individual, as determined by the individual's attending provider.

Examples of unreasonable medical management techniques may include the following situations:

- Denying coverage for all or particular brand name contraceptives, even after the individual's attending provider determines and communicates to the FEHB plan that a particular service or FDA-approved, cleared, or granted contraceptive product is medically necessary with respect to that individual;
- Requiring individuals to fail first using numerous other services or FDA-approved, cleared, or granted contraceptive products *within the same category* of contraception before the FEHB plan will approve coverage for the service or FDA-approved, cleared, or granted contraceptive product that is medically necessary for the individual, as determined by the individual's attending health care provider;
- Requiring individuals to fail first using other services or FDA-approved, cleared, or granted contraceptive products *in other contraceptive categories* before the FEHB plan will approve coverage for a service or FDA-approved, cleared, or granted contraceptive product in a particular contraceptive category; and
- Imposing an age limit on contraceptive coverage instead of providing these benefits to all individuals with reproductive capacity.[8]

OPM expects FEHB plans to remove impermissible barriers and ensure that covered individuals have access to the contraceptive coverage they need, as required under the law.

[8] The Departments' FAQs Part XXVI, Q5 make clear that a plan or issuer cannot limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity, or recorded gender. OPM expects FEHB plans to follow the Departments' guidance.

Contraception Exceptions Process

9. OPM expects FEHB plans to immediately establish a contraceptive exceptions process that meets the standards described in FAQs Part 54 and confirm steps taken to achieve compliance within 30 days of the publication of this carrier letter.

   Consistent with Question 9 of FAQs Part 54, OPM will determine whether an FEHB plan's exceptions process is easily accessible, transparent, sufficiently expeditious, and not unduly burdensome based on all relevant facts and circumstances, including whether and how the FEHB plan notifies providers or covered individuals of the exceptions process, and the steps the individual or their provider (or other individual acting as a patient's authorized representative) must take to utilize the exceptions process.

   OPM will consider an exceptions process to be easily accessible if an FEHB plan's documentation includes relevant information regarding the exceptions process under the plan, including how to access the exceptions process without initiating an appeal pursuant to the disputed claims process, the types of information the FEHB plan requires as part of a request for an exception, and contact information for a representative of the plan who can answer questions related to the exceptions process.

   OPM will consider an exceptions process to be transparent if, at a minimum, the information relevant to the exceptions process (including, if used, a standard exception form with instructions) is included and prominently displayed in plan documents, and in any other plan materials that describe the terms of the plan's coverage of contraceptive items and services (such as a prescription drug formulary). OPM expects FEHB plans to make this information available in a format and manner that is readily accessible, such as electronically (on a website, for example) and on paper.

   OPM will consider an exceptions process to be sufficiently expeditious if a covered individual receives a response within 24 hours after the individual (or their provider or other individual acting as a patient's authorized representative) contacts the plan with sufficient information to make a determination. Carriers are strongly encouraged to adopt technologies that streamline the contraceptive exception process and enhance the member experience. See Carrier Letter 2022-02, which encourages the adoption of enhanced provider tools such as electronic prior authorizations.

OPM strongly encourages FEHB plans to develop and utilize a standard form and instructions, similar to the Medicare Part D Coverage Determination Request Form, for the exceptions process. FEHB plans must make the form and instructions available through electronic means and paper.

10. Consistent with Question 10 of FAQs Part 54, an FEHB plan must not require a covered individual to use the disputed claims process for an individual to obtain an exception. FEHB plans are only permitted to utilize reasonable medical management techniques, and requiring individuals to go through the disputed claims process to obtain an exception would be unduly burdensome on the individual or provider (or other individual acting as the individual's authorized representative). Therefore, an FEHB plan does not have an easily accessible, transparent, and sufficiently expeditious exceptions process that is not unduly burdensome on the individual (or provider or other individual acting as a patient's authorized representative) if the FEHB plan requires covered individuals to go through the disputed claims process to obtain an exception. Even, if a contraception exceptions request is routed through the disputed claims process or another channel, an FEHB plan must process it through the transparent and expeditious contraception exceptions process noted above.

Preemption and Contract Oversight

11. Under 5 U.S.C. §8902(m)(1), the terms of any FEHB contract that "relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law . . . which relates to health insurance or plans." Pursuant to this provision, FEHB contract terms preempt any state law prohibiting Carriers from covering an FDA-approved, cleared, or granted contraceptive product or service, or any state law that prohibits Carriers from otherwise complying with OPM's contraceptive coverage requirements.

12. OPM will require Carriers to make the necessary changes to any noncompliant plan provision and re-adjudicate any improperly denied benefit claims when OPM identifies violations in a particular FEHB plan. OPM may also require the plan to provide notice to potentially affected covered individuals. In addition to seeking such retrospective relief, OPM also will work to ensure that the plan corrects the violation prospectively, or in other words, for the remainder of the contract year and for future plan years so that individuals receive the benefits that they are entitled. An FEHB plan's non-compliance may also affect their

score for Contract Oversight performance area of the Plan Performance Assessment.

FEHB Member Inquiries

13. FEHB plans should inform covered individuals about the steps they can take to contact OPM if they have difficulty accessing contraceptive coverage or other reproductive health. Specifically, if individuals have concerns about a plan's compliance with the requirements mentioned in this Carrier Letter or other OPM guidance, then the plan should direct them to contact contraception@opm.gov. FEHB plans should also link to OPM's web page about contraception. Further, we encourage you to keep enrollees informed of their reproductive rights by sharing this HHS link on your websites and other enrollee focused communications.

If you have any questions, please contact your Health Insurance Specialist.

Sincerely,

Laurie Bodenheimer
Associate Director
Healthcare and Insurance