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Testimony Neither For Nor Against LD 163  
An Act to Require Health Insurance Coverage for Federally Approved Nonprescription Oral  
Hormonal Contraceptives and Nonprescription Emergency Contraceptives  
February 5, 2025

Senator Bailey, Representative Mathieson, and Members of the Health Coverage, Insurance and  
Financial Services Committee

My name is Dan Demeritt, the Executive Director of the Maine Association of Health Plans. Insurance coverages offered or administered by our member plans provide access to care and better outcomes for many of the Mainers who receive coverage through an employer plan or the individual market. Our mission as an association is to improve the health of Maine people by promoting affordable, safe, and coordinated health care.

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More than ten years ago the Affordable Care Act established access to prescription drug contraceptives as preventive health service. Private health plans already cover a wide variety of prescribed contraceptives at no cost share as required by state law.

### **Equity and Access for Mainers**

This Committee took an innovative and equitable approach to improving access to these medications through the passage of LD 351 in the 131<sup>st</sup> Legislature. This legislation authorized licensed pharmacists to prescribe, dispense, and administer certain injectable and self-administered hormonal contraceptives.

The Board of Pharmacy's new rule went into effect on January 1, opening a new and faster pathway for all insured Maine women to have first-dollar access to FDA-approved contraceptives while still benefiting from the insights of a trained medical professional.<sup>1</sup>

LD 163 takes a much narrower, complex, and costly approach that is likely to lead to confusion and frustration among consumers.

For starters only about 1-in-5 Mainers have fully insured health insurance coverage that is impacted by mandate bills like LD 163. If this bill becomes law, women covered through MaineCare or a self-insured employer will likely be turned away at the pharmacy or have their claim denied

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<sup>1</sup> [https://www.maine.gov/pfr/professionallicensing/sites/maine.gov/pfr/professionallicensing/files/inline-files/Ch\\_44\\_Contraception\\_WEB\\_POSTING.pdf](https://www.maine.gov/pfr/professionallicensing/sites/maine.gov/pfr/professionallicensing/files/inline-files/Ch_44_Contraception_WEB_POSTING.pdf)

despite hearing the news that Maine insurance now provides coverage of Opill or nonprescription emergency contraceptives without any out-of-pocket costs.

### **Impact on Premiums**

A mandate study was not done on a similar proposal offered in the Second Regular Session of the 131<sup>st</sup> Legislature (LD 2203) so the costs and any associated defrayal costs should be understood before this legislation moves forward. The bill did generate a fiscal note, however, because of the anticipated \$95,000 per year impact on the State Employee Health Plan.<sup>2</sup>

If a majority of the Committee is interested in pursuing this legislation, we urge it to take the time available to us with the start of a new Legislature to conduct a mandate study as outlined in Title 24-A, §2752.<sup>3</sup>

### **Retail vs. Net Carrier Cost**

Carriers and their pharmacy benefit managers will not be able to negotiate preferential pricing with pharmaceutical manufacturers for contraceptives obtained without a prescription, forcing reimbursement for services at the point-of-sale retail price.

### **Operational Concerns and Compliance**

This legislation is inconsistent with the Affordable Care Act, which provides first dollar coverage for over-the-counter oral contraceptives when obtained with a prescription.

On January 15, the Departments of Labor, the Treasury, and Health and Human Services withdrew a proposed rule requiring coverage of over-the-counter contraceptives as preventative care. The withdrawn rule would have required plans to implement procedures for point-of-service coverage without cost-sharing that are comparable to procedures in place for other ACA preventative services.

The Departments noted that cost and operational issues were among a range of issues addressed in the comments they reviewed on the proposed rule.<sup>4</sup> LD 163 presents the same challenges.

The National Council for Prescription Drug Programs (NCPDP) is a national standard setter in our extremely complex and highly regulated health care system. My testimony shares the NCPDP's comments to the Departments outlining the challenges, collaboration, and timelines needed to establish a new transaction standard to support billing and payment between HIPAA covered entities for purchases solely based on the consumer's decision.<sup>5</sup>

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<sup>2</sup> [https://legislature.maine.gov/legis/bills/bills\\_131st/fiscalpdfs/FN220302.pdf](https://legislature.maine.gov/legis/bills/bills_131st/fiscalpdfs/FN220302.pdf)

<sup>3</sup> <https://www.mainelegislature.org/legis/statutes/24-A/title24-Asec2752.html>

<sup>4</sup> <https://www.govinfo.gov/content/pkg/FR-2025-01-15/pdf/2025-00774.pdf>

<sup>5</sup> <https://standards.ncdp.org/Standards/media/pdf/Correspondence/2024/NCPDP to CMS Re OTC No RX CMS 9887.pdf>

## **Standing Order Mechanism**

As printed, LD 163 would create compliance challenges for carriers and providers and lead to frustration for consumers. We are concerned that the sponsor's amendment creates even more uncertainty through the elimination of the standing order mechanism.

A standing order may not have been a solution but it does have the benefit of being known by carriers and providers because of its use during COVID-19 and serves as a proxy for a prescription. We hope to learn more about why the mechanism was struck from the bill.

## **A New Consumer Choice Precedent**

Medical providers and their expertise are at the center of a U.S. healthcare system that grew to \$4.9 trillion in expenditures in 2023.<sup>6</sup> We count on providers to diagnose, counsel, prescribe, and authorize medically necessary items and services for payment from private and public insurers.

LD 163 replaces our "doctor's orders" standard for payment with a consumer choice pathway for health insurance reimbursement that could end up being very costly.

We appreciate the intent of this bill but urge the Committee to consider the costs and complexity of the proposed legislation and vote ought not to pass.

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<sup>6</sup> <https://www.cms.gov/data-research/statistics-trends-and-reports/national-health-expenditure-data/nhe-fact-sheet>



December 27, 2024

Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
U.S. Department of Labor  
Washington, DC 20210  
Submitted to regulations.gov

Attention: 1210-AC25

Re: [CMS 9887-P] RIN 0938-AV57 Enhancing Coverage of Preventive Services Under the Affordable Care Act

To Whom It May Concern:

The National Council for Prescription Drug Programs (NCPDP) is a not-for-profit American National Standards Institute (ANSI) Accredited Standards Developer (ASD) consisting of more than 1,300 members representing entities including, but not limited to, claims processors, data management and analysis vendors, federal and state government agencies, insurers, intermediaries, pharmaceutical manufacturers, pharmacies, pharmacy benefit managers, professional services organizations, software and system vendors and other parties interested in electronic standardization within the pharmacy services sector of the healthcare industry. NCPDP is a problem-solving forum that brings together healthcare stakeholders to improve the exchange of information for patients and caregivers. NCPDP's work results in consensus-based, ANSI-accredited standards and guidance that streamline the healthcare system and safeguard patients.

NCPDP appreciates the opportunity to submit comments regarding CMS 9887-P, specifically the provision under the Affordable Care Act that would require plans and issuers to cover certain recommended over-the-counter (OTC) contraceptive items without requiring a prescription and without imposing cost-sharing requirements. The NCPDP Telecommunication Standard, named under the Health Insurance Portability and Accountability Act (HIPAA) supports real-time claim billing for prescription claims, inclusive of specific data elements to support sharing of clinical information (e.g., diagnosis codes, patient/prescriber treatment and utilization validations) that are associated to prescription documentation, patient safety and prescriber outreach process. **This new use case for consumer selected OTC contraceptive products without an associated prescription, requires impacted stakeholders and the applicable standard's development organization (SDO) to evaluate the most appropriate real-time transaction to support the transfer of financials and any plan coverage determinations, without triggering a clinical review request.** The transfer of financials and plan coverage determinations may require specific details within the transaction that are impacted by privacy/security regulations. Additionally, the claim billing transaction for OTC contraceptives without a prescription will require impacted systems to have access to the necessary product identifiers to determine coverage. **NCPDP as an SDO has a task group that identified gaps with current OTC billing processes if applied to OTCs without a prescription (e.g., prescription claims, HSA/FSA transactions, member submitted receipts)** and is evaluating the business case to determine if existing standards could be used or if new standards or transaction sets may be necessary. **NCPDP requests the Departments consider these efforts and the associated timelines for an ANSI Accredited Standards Developer to develop, approve and publish a standard and for stakeholders to implement.**



NCPDP looks forward to continuing to serve as a trusted partner and resource as the Departments continue to evaluate plan/issuer coverage of OTC contraceptives without a prescription and the claim billing transactions needed to support this use case. NCPDP invites the Departments to participate with industry stakeholders as NCPDP WG 19 continues evaluating the scope of a new transaction to support billing and payment between HIPAA covered entities for purchases solely based on the consumer's decision (e.g., OTC contraceptives not associated with a prescription).

**For direct inquiries or questions related to this letter, please contact:**

Alaina Clark  
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[standards@ncdpd.org](mailto:standards@ncdpd.org)

Respectfully,

A handwritten signature in black ink, which appears to read "Lee Ann C. Stember". The signature is written in a cursive, flowing style.

Lee Ann C. Stember  
President & CEO  
National Council for Prescription Drug Programs (NCPDP)