NATIONAL WOMEN'S LAW CENTER
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Sen. Heather Sanborn, Chair
Rep. Denise Tepler, Chair
Committee on Health Coverage, Insurance and Financial Services
100 State House Station
Augusta, Maine 04333

Dear Sen. Sanborn and Rep. Tepler,

The National Women's Law Center write to you in strong support of LD 1954, An Act to Ensure Access to Prescription Contraceptives. LD 1954 would make certain that people can access the specific contraceptive they choose in consultation with their health care provider without unnecessary delays or burdens. While Maine law currently requires insurers to defer to health care providers' determinations in covering contraceptives, LD 1954 simplifies the process to obtain that coverage and will improve coverage of the latest contraceptive technologies. The Law Center has documented nationwide trends in health plan non-compliance with existing contraceptive coverage laws, like Maine's. LD 1954 can help rectify some of these non-compliance issues.

The National Women's Law Center, based in Washington, D.C., is a nonpartisan, non-profit legal and advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities. At the Law Center, we use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society, and to break down the barriers that harm all of us – especially those who face multiple forms of discrimination. We know that access to reproductive health care – including birth control – is vital to one's liberty, equality, and economic security.

Maine law and the Affordable Care Act's (ACA) contraceptive coverage requirement guarantee no-cost coverage of the full range of birth control methods. These consumer protections have significantly expanded access to birth control. As of fall 2021 more than 260,000 women[1] in Maine had insurance coverage that includes contraception without cost-sharing.[2] This coverage has translated into significant benefits to people's economic security, health, and well-being. Without out-of-pocket costs as a barrier to preventive services, people are better able to access

[1] The ACA contraceptive coverage requirement reaches cisgender women, transgender men, nonbinary people, and others with a need to prevent pregnancy. This testimony uses the term "woman" or "women" in circumstances where the data cited is not inclusive of everyone, regardless of gender, who has a need to prevent pregnancy.
[2] Nat'l Women's L. Ctr., New Data Estimates 62.1 Million Women Have Coverage of Birth Control and Other Preventive Services Without Out-of-Pocket Costs (Dec. 2021), https://nwlc.org/wp-content/uploads/2022/01/NWLC_FactSheet_Preventative-Services-Estimates-1.5.22.pdf.

the care they need. Research has shown that the contraceptive coverage requirement has allowed some women to use prescription birth control for the first time and others to use more effective, longer acting—but more expensive— methods of birth control.[3] And the coverage has had an outsized impact on individuals shouldering the heaviest burden of our nation's health inequities, especially during an economic crisis that has taken a disproportionate toll on women, and particularly on women of color and low-income women.[4]

Despite the enormous gains resulting from contraceptive coverage requirements like Maine's, not everyone is receiving the coverage they are guaranteed by law. The Law Center operates a nationwide hotline, CoverHer, which people can contact when they face problems accessing birth control coverage. Through this hotline, the Law Center continues to receive reports from people whose insurance plans are not complying with the law. Specifically, the Law Center has identified three trends over the last several years: plans are denying coverage for the specific contraceptive product needed, and do not have the required cost-sharing exceptions process; plans are failing to provide coverage of newly approved methods; and, plans are still failing to cover the services associated with birth control without out-of-pocket costs. LD 1954 would explicitly address the first two of these trends.

*Plans fail to have a cost-sharing exceptions process.*

Maine law and federal guidance on the ACA make clear that when someone needs a specific contraceptive product, insurance companies must have a process in place to waive cost-sharing if that contraceptive is not typically covered cost-free.[5] Access to the specific product a person and their provider determine is right for them is incredibly important for contraception. Without access to the chosen product, contraindications or intolerable side effects to other products can force someone to use an entirely different contraceptive method, which is often less effective than their chosen method, or can lead to foregoing contraception entirely. Despite the requirement that plans have a process in place to enable people to get cost-free coverage of the particular product they need, people who contact CoverHer report that this is not happening. People were denied coverage without cost-sharing for the product they need, were provided little to no information about a cost-sharing exceptions process, or were pushed into processes that do not comply with federal guidance or Maine law. Where doctors provided certification that the

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[3] See, IMS Inst. for Healthcare Informatics, Medicine Use and Shifting Costs of Healthcare: A Review of the Use of Medicines in the United States in 2013, (2014), available at http://www. plannedparenthoodadvocate.org/2014/IIHI_US_Use_of_Meds_ for_2013.pdf, The Express Scripts Lab, Express Scripts 2015 Drug Trend Report Health Insurance Exchange (March 2016), available at http://lab. express-scripts.com/lab/~/media/ bed6ee9784474511a8534c397e346d56.ashx, and Jonathan M. Bearak et al., Changes in out-of-pocket costs for hormonal IUDs after implementation of the Affordable Care Act: an analysis of insurance benefit inquiries, 93 Contraception 139 (2016) available at http://www.contraceptionjournal.org/article/S0010-7824(15)00575-2/abstract.

[4] Nat'l Women's L. Ctr., Access to Contraceptives During The Covid-19 Pandemic And Recession (July 2020), https://nwlc.org/wp-content/ uploads/2020/08/NWLCIssueBrief_BCandCOVID-19.pdf.

[5] P.L. 2017 c.190, and U.S. Department of Health & Human Services, U.S. Department of Labor, & U.S. Treasury, (May 11, 2015) FAQs on Affordable Care Act Implementation (part 26), retrieved from https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/ Downloads/aca_implementation_faqs26.pdf.

particular product was medically necessary and appropriate, plans overrode those determinations in violation of the law.

By requiring plans to cover at least one of each therapeutically equivalent birth control product approved by the Food and Drug Administration (FDA), LD 1954 will improve upon current Maine law. People will have direct coverage of each product category, rather than having to navigate the cost-sharing exceptions process to access coverage of the specific birth control they need. Avoiding the cost-sharing exceptions process may also reduce administrative burden on health care providers who often must complete the cost-sharing exceptions paperwork, as well as plans that must process the cost-sharing exceptions.

*Plans fail to cover new contraceptives.*

Maine law and the ACA require coverage of all FDA-approved methods of contraception. Current federal guidance specifically requires coverage of 18 methods of contraception "and additional methods identified by the FDA." Over the last six years, the contraceptive marketplace has experienced a burst of innovation, with at least five new contraceptives approved by the FDA in that time. New technologies offer options for those who cannot use hormonal birth control or who seek lower hormone levels and those who seek different methods of administration and side effect profiles, among other advancements. However, based on reports to the Law Center's CoverHer hotline, insurance companies' coverage of new methods has not kept pace with technological developments. Plans are forcing patients to pay out of pocket for newly approved methods. This leaves newly approved methods only truly available to those who can afford to pay out of pocket, eliminating new methods as an option for those without resources.

LD 1954 will require plans to cover, without cost-sharing, any contraceptive that the FDA defines as therapeutically distinct from other existing contraceptives. Thus, new contraceptives that the FDA defines as therapeutically distinct must be covered. This will ensure that everyone with coverage that LD 1954 applies to will have access to new contraceptives. Access will no longer depend on someone's income.

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LD 1954 provides an opportunity for the state to protect and improve Mainers' access to contraception, which is critical to their health, well-being and economic security. The Law Center strongly urges passage of LD 1954. Should you wish to speak with us further about this issue, please contact me at mgandal-powers@nwlc.org or (202) 588-5180.

Sincerely,
Mara Gandal-Powers
Director of Birth Control Access & Senior Counsel
National Women's Law Center