

## California and Oregon Pharmacists May Furnish Contraceptives without a Prescription

California and Oregon are the first states to allow pharmacists to dispense birth control directly to patients without a prescription from a physician. The California legislature passed Senate Bill 493 in October 2013, and the law became effective on October 1, 2015. Similarly, Oregon passed House Bill 2879 in July 2015, which will be effective on January 1, 2016.

### Background

In the past, pharmacists in California and Oregon required a prescription from a physician before dispensing birth control, unless it was a form of emergency contraception. California is one of nine states allowing pharmacists to dispense emergency contraception drug therapy without a prescription, as long as the pharmacist is under the supervision of a physician or has completed a required training program. Additionally, California and Oregon are two of 18 states that already require emergency rooms to provide emergency contraception information or to furnish emergency contraception upon request from the patient.

Recent legislation in California and Oregon will facilitate the most expansive contraception provisions yet, allowing certain pharmacists to dispense non-emergency contraception to patients without a prescription from a doctor.

#### No Rx Needed in ER

Pharmacists may dispense emergency contraception without a physician prescription in: Alaska, California, Hawaii, Maine, Massachusetts, New Hampshire, New Mexico, Vermont, and Washington

### California

California [SB 493](#), effective October 1, 2015, amends section 4052.3 of the California Business and Professions Code to permit certain pharmacists to furnish “self-administered hormonal contraceptives.” The new law is intended to expand significantly the ability of pharmacists to work with other members of a patient’s healthcare team and to provide greater medical care access. It allows the California State Board of Pharmacy to create a license category for “advanced practice pharmacists.” These pharmacists are permitted to perform patient assessments, order and interpret drug therapy related tests, refer patients to other healthcare providers, participate in evaluation and management of diseases and health conditions, and initiate, adjust or discontinue drug therapy, including self-administered hormonal contraception. To become an advanced practice pharmacist who can provide these services, a pharmacist must complete a training program consisting of at least one hour of board-approved

continuing education specific to self-administered hormonal contraception, or must have completed an equivalent curriculum-based training program after 2014 in an accredited California school of pharmacy.

The California State Board of Pharmacy released a [proposed regulation](#) providing the protocol for pharmacists furnishing self-administered hormonal contraception, which includes contraception products that may be administered orally, transdermally (via patch or gel), vaginally, or by injection. Pharmacists are required to administer a patient health screening prior to dispensing the contraception and determine that the patient is a good candidate for the desired contraception. The pharmacist must refer the patient to her primary care physician upon furnishing self-administered hormonal contraception or if the pharmacist determines such contraception is not advisable. If a patient does not have a primary care physician, the pharmacist must refer the patient to a nearby clinic.

**Comment.** Neither SB 493 nor the California Board of Pharmacy proposed regulation includes a patient age restriction on receiving self-administered hormonal contraception.

Pharmacists must notify a patient's primary care provider of any drugs or devices furnished by entering the information into a patient record system shared with that provider. If the patient does not have a primary care provider, the pharmacist must furnish the patient with a written record of the drugs or devices provided.

**Comment.** The law and accompanying regulations do not address payment for contraception when furnished by a pharmacist. For emergency contraception drug therapy services, under California law, pharmacists may not directly charge a patient a separate consultation fee. They may, however, charge an administrative fee of no more than \$10 above the retail cost of the drug. Patients who are insured and receive a pharmacy benefit that covers the cost of emergency contraception cannot be made to pay the administrative fee, but may have to make co-payments per the terms of their coverage. It is unclear at this time whether payment for self-administered hormonal contraception will be handled similarly.

## Oregon

In Oregon, [HB 2879](#), which allows pharmacists to prescribe and dispense hormonal contraceptive patches and self-administered oral hormonal contraceptives, was passed in July 2015 (effective January 1, 2016). The law directs the State Board of Pharmacy to adopt rules on the prescription and dispensing of contraceptives by pharmacists. Those rules, however, have not yet been issued. For women at least 18 years old, pharmacists may prescribe such contraception without a prior prescription, but for women younger than 18, a pharmacist may prescribe the contraception only with evidence of a previous prescription from a healthcare practitioner.



To prescribe contraceptives under this bill, pharmacists in Oregon must complete a training program approved by the State Board of Pharmacy that is related to prescribing hormonal contraceptive patches and self-administered oral hormonal contraceptives.

Similar to California, pharmacists in Oregon must administer a patient screening tool prior to prescribing the contraceptive. Additionally, pharmacists must refer the patient to a primary care physician or women's healthcare practitioner, and provide the patient with a written record of the medication.

Under Oregon law, a pharmacist may not require appointments for prescribing or dispensing contraceptives and are prohibited from prescribing contraceptives to a patient who does not have evidence of a clinical visit for women's health within the three years following the initial prescription and dispensation of the contraception.

## Reimbursement under Health FSAs, HRAs and HSAs

Only "qualified medical expenses" may be reimbursed under health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs) and health savings accounts (HSAs) and, under the Affordable Care Act, amounts paid for medicines and drugs (other than insulin) are qualified medical expenses only if the medicines or drugs are "prescribed" (regardless of whether they may be legally purchased without a prescription). A prescription is a written or electronic order that satisfies the legal requirements for a prescription in that state — including that it be issued by someone authorized to do so in that state. Neither the California nor the Oregon laws address payment issues, and federal law does not directly address this particular issue, but it would seem that as long as the furnishing of contraceptives satisfies the state prescription requirements, the contraceptives will be reimbursable under a health FSA, HRA or HSA.

## In Closing

Before these laws, pharmacists could only provide emergency contraception such as the "morning-after pill" without a prescription. Although some uncertainty exists with payment issues, in general, and reimbursement under health FSAs, HRAs and HSAs, in particular, these changes to California and Oregon law will make contraception more accessible to women.

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