NATIONAL WOMEN'S LAW CENTER

EXPANDING THE POSSIBILITIES

toolkit

New Benefits for Breastfeeding Moms: Facts and Tools to Understand Your Coverage under the Health Care Law

ABOUT THE CENTER

The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's equality and opportunity. The Center focuses on major policy areas of importance to women and their families, including economic security, education, employment and health, with special attention given to the concerns of low-income women.

For more information about the Center or to make a tax-deductible contribution to support the Center's work, please visit: www.nwlc.org or call the Development office at 202-588-5180.

AUTHORS

This Toolkit was a collaborative endeavor that relied upon the work of many individuals. The primary authors—Anna Benyo and Stephanie Glover—were greatly assisted by Marcia Greenberger, Judy Waxman, and Karen Davenport. Beth Stover designed the Toolkit with layout/design assistance provided by Nancy Magill.

DISCLAIMER

While text and citations are, to the best of the authors' knowledge, current as this report was prepared, there may well be subsequent developments, including new administrative guidance, that could alter the information provided herein. This report does not constitute legal advice; individuals and organizations considering legal action should consult with their own legal counsel before deciding on a course of action. In addition, this report does not constitute medical advice. Individuals with health problems should consult an appropriate health care provider.

Introduction

The health care law requires new health plans to cover certain preventive services without any cost-sharing. This means that, as Americans enroll in new coverage options made possible by the Affordable Care Act (ACA), and an increasing number of existing health plans come under the law's reach, more and more people will have access to a wide range of preventive services without co-payments, deductibles, or co-insurance. This is especially important to women, who are more likely than men to avoid needed health care, including preventive care, because of cost.

As part of women's preventive services, new plans are required to cover breastfeeding support, supplies, and counseling. This is a significant step forward in making breastfeeding more accessible and affordable for millions of Americans.

This toolkit is designed for women, advocates, community-based organizations and health care providers to provide information on the coverage of breastfeeding support, supplies, and counseling in the health care law and offer tools to women who encounter problems with this coverage. We have also provided detailed instructions on how to call insurance companies and how to file an appeal if the plan denies coverage. The toolkit includes draft appeal letters tailored to commonly encountered scenarios.

If you have any questions or need further guidance, contact the National Women's Law Center at 1-866-745-5487 or prevention@nwlc.org. We are interested in hearing from you. Please let us know if you use this toolkit to obtain coverage successfully.

Factsheet:
New Benefits for Breastfeeding Moms

The Affordable Care Act (ACA) makes breastfeeding more accessible and affordable for millions of American women. The law requires that all new health plans must provide certain preventive services without any cost-sharing, including coverage for breastfeeding support and supplies. Breastfeeding benefits the mother and the child, but too often there is a gap between women's desire to breastfeed their babies and the support they need to successfully breastfeed. Although a majority of women plan to breastfeed, a much lower proportion actually do when they are discharged from the hospital after delivery.[1] In order to support women's efforts to breastfeed, and reduce cost as a barrier, the health care law requires new plans to cover breastfeeding supplies, and support and counseling without co-payments, deductibles, or co-insurance.

HEALTH INSURANCE PLANS MUST COVER WOMEN'S PREVENTIVE SERVICES

The health care law requires most insurance plans to offer a range of preventive services and took special steps to ensure coverage of new preventive services that are important to women. These services were developed by the Institute of Medicine and endorsed by the Health Resources Services Administration (HRSA). They include: (1) Breastfeeding support, supplies, and counseling; (2) Screening and counseling for interpersonal and domestic violence; (3) Screening for gestational diabetes; (4) DNA testing for high-risk strains of HPV; (5) Counseling regarding sexually transmitted infections, including HIV; (6) Screening for HIV; (7) Contraceptive methods and counseling; and (8) Well woman visits.

BREASTFEEDING EQUIPMENT AND SUPPLIES

All new health plans must cover breastfeeding equipment and supplies "for the duration of breastfeeding" without cost-sharing, which means plans may not apply any co-payment, co-insurance, or deductible to these benefits. Breastfeeding equipment and supplies most commonly refers to a breast pump, which is a device that extracts milk from a lactating woman, and related accessories. The FDA, which regulates breast pumps, states that they can be "used to maintain or increase a woman's milk supply, relieve engorged breasts and plugged milk ducts, or pull out flat or inverted nipples so a nursing baby can latch-on to its mother's breast more easily."[2] Many women use breast pumps to express and store their milk after they have returned to work, are traveling, or have to be away from their breastfeeding child. (Also, employers are required to provide a clean, private place for women to pump while on the job.)

While a health insurer must cover breastfeeding equipment and supplies, it can impose some requirements on this coverage, such as requiring a purchase, rather than rental, of a breast pump.

COMPREHENSIVE LACTATION SUPPORT AND COUNSELING

The health care law requires all new health plans to cover "comprehensive prenatal and postnatal lactation support [and] counseling." This means that breastfeeding mothers have health insurance coverage for lactation counseling without cost-sharing for as long as they are breastfeeding. Lactation consultants are trained specialists who work with women to help them begin and continue to breastfeed. Health insurers must cover such consultations without cost-sharing, but can require consumers to see only the providers on their list, called "in-network providers," or impose other requirements on coverage.

1 Institute of Medicine, "Clinical Preventive Services for Women: Closing the Gaps," (2011), the National Academies Press.

2 U.S. Food and Drug Administration, "Breast Pumps," available at http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/BreastPumps/default.htm.

DIFFERENCES IN COVERAGE

The requirement to cover breastfeeding support and supplies applies to all new plans. Because some health plans existed before the health care law was passed, some differences in coverage still remain (also see the flow chart entitled "Does my insurance plan have to cover breastfeeding supplies and support without cost sharing?").

Medicaid and Medicaid Expansion

The requirement to provide breastfeeding support and supplies will vary by state and by type of Medicaid coverage. Traditional Medicaid programs already cover a wide range of preventive services for Medicaid enrollees with nominal or no co-payments. They are not, however, required to provide this new benefit under the ACA. This means that traditional Medicaid programs, including pregnancy-related coverage, are not required to provide breastfeeding support and supplies but many states choose to provide these benefits. Based on a 2012 survey with 44 states responding, 25 states covered breastfeeding education services, 15 states covered individual lactation consultations, and 31 states covered equipment rentals.[3]

The ACA allows states to expand eligibility for Medicaid to cover more low income people up to 138 percent of the federal poverty level (approximately $16,000 for an individual or $33,000 for a family of four). However, each state decides whether or not to expand eligibility. About half the states have expanded coverage through Medicaid. States that have expanded coverage are required to provide coverage of breastfeeding support and supplies for individuals newly eligible for Medicaid under this expansion.

In short, depending on where they live, traditional Medicaid enrollees may not have coverage for breastfeeding support and supplies. However, Medicaid enrollees who are newly eligible and covered as part of the "Medicaid expansion" will have coverage for these services.

Employer Sponsored Coverage

Most employees and their dependents who have health insurance through an employer are enrolled in plans that must provide coverage for breastfeeding support and supplies. Plans that existed before March 23, 2010, and have not made significant changes, are considered "grandfathered," and do not need to cover preventive services, including breastfeeding benefits. If the plan makes significant changes (like increasing employee costs or cutting benefits), it will become "ungrandfathered." All un-grandfathered private health plans have to follow the preventive health services coverage and offer breastfeeding support and supplies at no cost-sharing.

In 2013, only 36 percent of workers with employer sponsored coverage were in grandfathered plans, and more plans will become ungrandfathered in 2014.[4] Eventually all plans will lose their grandfathered status and distinctions between the two types of plans will disappear. At that point, all plans will cover these important preventive services without cost-sharing.

Individual Coverage

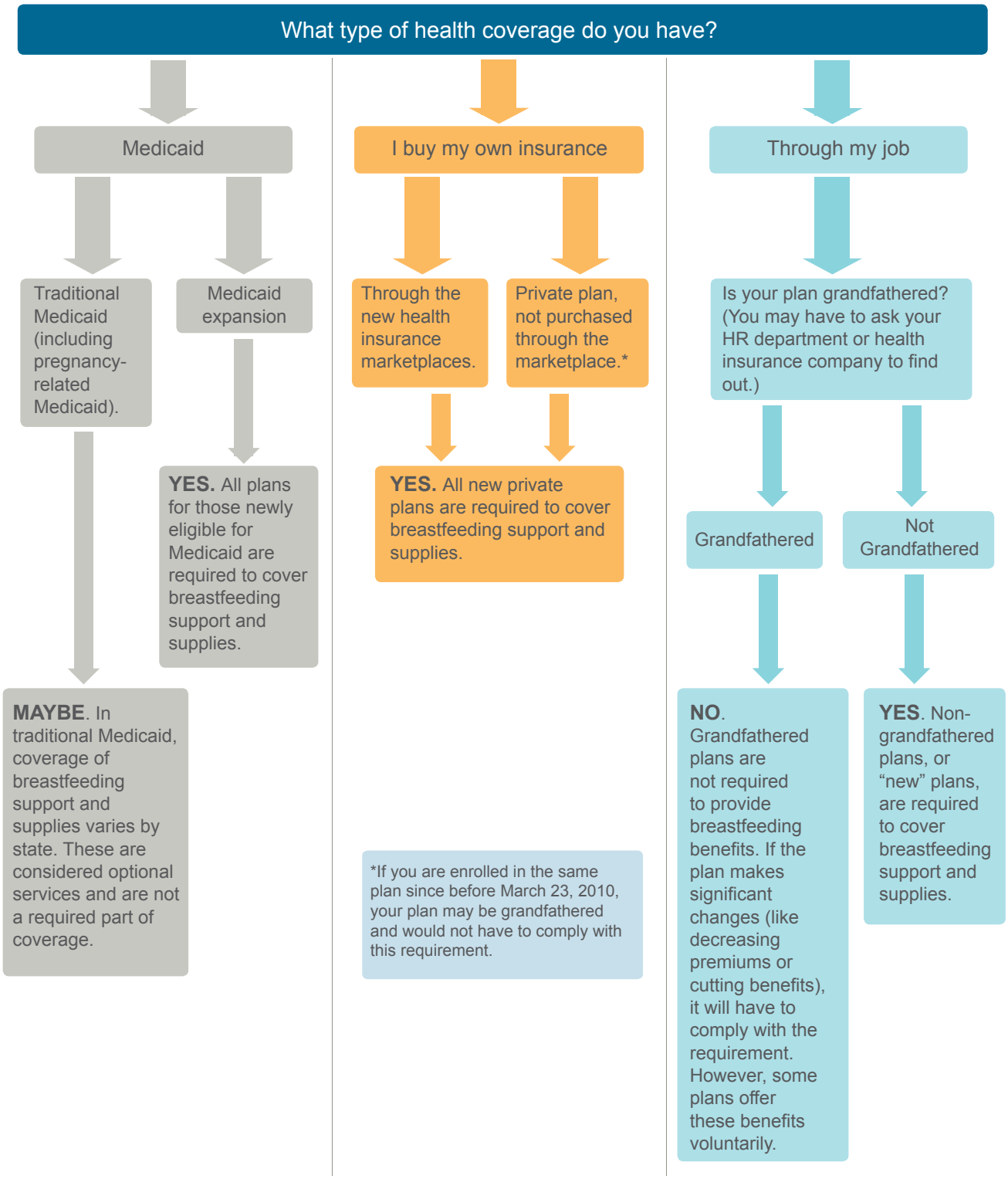
All plans purchased on the Health Insurance Marketplaces are considered "new" plans and are required to cover breastfeeding support and supplies.

Individual plans purchased outside of the Marketplace generally have to provide coverage of breastfeeding benefits as well. However, there is a small portion of individually purchased private plans that are not required to provide this coverage. If an individual has been enrolled in the same plan since before March 23, 2010, then the plan is considered "grandfathered," meaning that it doesn't have to comply with the health care law.

3 Centers for Medicare and Medicare Services, "Medicaid Coverage of Lactation Services," (January 10, 2012) available at http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Quality-of-Care/Downloads/Lactation_Services_IssueBrief_01102012.pdf.

4 Kaiser Family Foundation, "Employer Health Benefits, 2013 Survey," (August 2013) available at http://kff.org/private-insurance/report/2013-employer-health-benefits/.

Does my health insurance have to cover breastfeeding supplies and support without cost-sharing?



Questions & Answers:
Breastfeeding Support and Supplies

Q: How does coverage of breastfeeding support and supplies fit into the health care law?

A: Under the new health care law, all new health insurance plans must cover certain preventive health services and screenings without cost-sharing. Breastfeeding support and supplies are one of the preventive services that plans must cover without any cost-sharing.

Q: Does this mean I won't have to pay anything for my breastfeeding pump or lactation consultant?

A: The law requires insurance companies to cover breastfeeding supports and supplies without a copayment or other cost-sharing. While some plans previously covered these services, many only paid a portion of the cost, while the woman would have to pay a co-payment or co-insurance. Now, breastfeeding support and supplies will be fully covered by insurance plans and you will not need to make a separate payment to your healthcare provider or pharmacy. However, we know that in practice, many women face obstacles in getting their pump or lactation counseling covered at all, or covered without cost-sharing. If you're having problems, there are additional resources in this toolkit to help you.

Q: How do I know if my plan is new and if these requirements apply to my plan?

A: Health plans that existed before the health care law are considered "grandfathered" into the new system. Grandfathered plans don't have to follow the preventive services coverage rules, including providing breastfeeding support and supplies without cost-sharing. This means that the plan can continue to operate just as it has until it makes significant changes. These changes include: cutting benefits significantly; increasing co-insurance, co-payments, or deductibles or out-of-pocket limits by certain amounts; decreasing employer premium contributions by more than 5 percent; or, adding or lowering annual limits.

Un-grandfathered plans are group health plans created after March 23, 2010, group health plans that have implemented significant changes, or individual plans purchased after that date, which is when the health care law was signed by the President. All un-grandfathered private health plans have to follow the new preventive health services coverage and cost-sharing rules. When you hear that "all new health plans" have to cover these services, it means that all "un-grandfathered" plans must cover them.

Q: What does "in-network" and "out-of-network" mean?

A: Insurance companies contract with certain providers and facilities that are then considered "in-network" for your health plan. "Out-of-network" providers are typically not fully covered by your health plan so when you visit an out-of-network provider you are often responsible for much greater cost sharing or even the whole cost of the visit. It is important to call your insurance company to verify that the provider you want to see is "in-network." In general, in order to obtain your breast pump and counseling at no cost-sharing, you have to go to an in-network provider or company.

Q: What if my insurance company doesn't have any lactation consultants or breast pump supplier in-network?

A: If your insurance company doesn't have any lactation consultants or breast pump providers in-network, the insurance company must cover services from an out-of-network provider without cost-sharing. Federal guidance makes clear that "if a plan or issuer does not have in its network a provider who can provide the particular service, then the plan or issuer must cover the item or service when performed by an out-of-network provider and not impose cost-sharing with respect to the item or service."[1] If your insurance company does not have providers in its network to provide breastfeeding equipment or lactation counseling, you must be able to go out-of-network, the item or service must be covered; and covered at no cost-sharing.

Q: Can my insurance company place any limits on my breast pump or lactation counseling?

A: It depends. Federal regulations make clear that coverage of comprehensive lactation support and counseling and costs of renting or purchasing breastfeeding equipment extends for the duration of breastfeeding. An insurance company cannot impose an unallowable waiting period or limit, such as requiring you to obtain the pump within six months of delivery or limiting the benefit to one pump per year. Your insurance company is also not allowed to refuse to provide lactation counseling or limit this benefit to a hospital setting. However, an insurer can use some limits such as requiring you to rent a pump instead of purchasing one, or requiring you to see an in-network lactation consultant.

1 Centers for Medicare and Medicaid Services, "Affordable Care Act Implementation FAQs - Set 12," available at http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs12.html.

Calling Your Health Plan: How to Find Out What Your Health Plan Covers

If you have private insurance, either through a plan you bought on your own or through your employer, you must first determine if your plan is grandfathered or un-grandfathered. (If you have coverage through Medicaid, skip to the last question.) The best way to find out if your plan is not grandfathered and if you are entitled to this coverage is to call your insurance company.

WHO SHOULD I CALL?

We recommend you call the phone number on your insurance card. That number should connect you to customer service for your insurance company or plan and should have the most up to date information about your health plan. If you get your insurance through your job, and have an employer-sponsored plan, you may have a benefits administrator you can also ask.

Remember, the person answering the phone is not the person making the decisions. If the person with whom you are speaking is unable to answer a question you have, you might want to ask to speak with a supervisor. If you do not believe you are being told correct information and you have insurance through your employer, you may also want to let your benefits administrator know of the issues.

WHAT SHOULD I SAY?

The phone script provided on the next page includes suggested questions you can ask to find out if your plan is providing breastfeeding support and supplies, and follow up questions about the details of the coverage. You do not have to follow the script perfectly. You can use it as a guide.

WHAT IF I HAVE MEDICAID?

Medicaid coverage of breastfeeding support and supplies varies by state. You will probably have to call your state Medicaid office to find out about coverage. If your annual income is less than 185 percent of the federal poverty level (about $29,000 for a family of two or $44,000 for a family of four), you can also contact your local Women, Infant, and Children (WIC) office. WIC provides a range of breastfeeding services, including breast pumps, lactation counseling, and educational materials.

Sample Script:
Calling Your Health Plan

Hi, I understand that under the health care law, all plans are required to cover breastfeeding support and supplies without cost-sharing. I'm calling to confirm that my plan is covering these services. Can you tell me if it is?

YES, as a new plan, breastfeeding supplies and support are covered without any cost-sharing.

GREAT! Can you provide me a list of in-network lactation consultants?

YES, our list can be found here…

THANKS. And, what is the process for getting my breast pump?

YES, let me walk you through that process…

CONGRATULATIONS!
Thanks to the Affordable Care Act, your plan is covering your breastfeeding supplies and support.

NO, we don't have a list of providers. You can get breastfeeding counseling through your pediatrician or OB/GYN.

[Most pediatricians or OB/GYNs will not have a list of providers.] I don't think my pediatrician or OB/GYN will have a list, if you can't provide a list then I would like to speak to your supervisor about this policy.

NO, we don't cover breast pumps or lactation consultants.

Is my plan grandfathered?

YES, you're enrolled in a plan that began before March 23, 2010 so it doesn't have to comply with this requirement.

Unfortunately, you won't be able to get coverage for your breastfeeding support or supplies from your current plan. The plan will have to comply when it makes changes such as decreasing premiums or cutting benefits.

NO, your plan is not grandfathered, but we don't provide this benefit.

The healthcare law requires that you provide this benefit. Can I speak with a supervisor to make sure this is the correct information about this policy?

Repeat these questions to the supervisor.

If you are still not getting the correct answer, you have several options:

1. File an internal appeal (see letters at the end of the toolkit).
2. Contact us at Prevention@nwlc.org
3. If you purchase your plan on your own or through the marketplace, contact your state insurance commissioner.

Sending an Appeal Letter: Breastfeeding Support and Supplies

PREPARING THE LETTER

- Contact your insurer to find out to whom you should send your appeal.
- If you are given an appeal form, it will include the address for the person to whom you should send your appeal.
- In addition, if you are in an employer-based plan, you can send a copy of the appeal letter and form to your insurance plan's Plan Administrator.
  - The contact information for your Plan Administrator can be found in the Summary Plan Description.
  - If you are in an employer-sponsored plan and you are comfortable doing so, you should give a copy to the person who manages employee benefits in your HR department.
- Be sure to attach a copy of the "Frequently Asked Questions" to the letter – you can print a copy here: http://www.dol.gov/ebsa/faqs/faq-aca12.html
- Make a copy of the letter and keep it in your files.
- You can also find word versions of sample appeal letters here: www.nwlc.org/breastfeeding

AFTER YOU SEND YOUR LETTER

- Continue to keep copies of receipts or other documents that show when you have had to pay out-of-pocket for your breast pump or related services.
- Please let us know if you receive a reply from your insurance company. We are keeping track of how insurers respond.

IF YOU HAVE ANY QUESTIONS, CONTACT THE NATIONAL WOMEN'S LAW CENTER AT 1-866-745-5487 or prevention@nwlc.org.

Sample Letter:
No Coverage Policy for Breast Pump

To Whom It May Concern:

I am enrolled in a [INSURANCE COMPANY NAME] plan, policy number [POLICY NUMBER]. I recently tried to purchase a breast pump through my health insurance. The Patient Protection and Affordable Care Act requires that my insurance coverage of this preventive service be with no cost-sharing. However, when I contacted [INSURANCE COMPANY NAME] about the coverage, I was told I could not get coverage of [BREAST PUMP REQUESTED].

Under § 1001 of the Patient Protection and Affordable Care Act (ACA), which amends § 2713 of the Public Health Services Act, all non-grandfathered group health plans and health insurance issuers offering group or individual coverage shall provide coverage of certain preventive services for women with no cost-sharing. The list of women's preventive services which must be covered in plan years starting after Aug. 1, 2012 includes "comprehensive lactation support and counseling and costs of renting or purchasing breastfeeding equipment [] for the duration of breastfeeding" (see attachment).

My health insurance plan is non-grandfathered. Thus, the plan must comply with the women's preventive services.

[INCLUDE THIS PARAGRAPH IF YOUR PLAN DOES NOT HAVE A CLEAR PROCESS TO GET A PUMP]
My health care provider has prescribed that I use [BREAST PUMP REQUESTED]. The insurance plan has not established a process for me to obtain a pump, such as through a durable medical equipment supplier, and thus it remains an over-the-counter product for the purposes of my plan. As the FAQs on the preventive services (dated February 20, 2013) state, "OTC recommended items and services must be covered without cost-sharing…when prescribed by a health care provider." Accordingly, [INSURANCE COMPANY] must cover [BREAST PUMP REQUESTED] as required under the Affordable Care Act.

LAST PARAGRAPH OPTIONS:
(1) I have spent [TOTAL AMOUNT] out-of-pocket on [NAME OF BREAST PUMP], despite the fact that it should have been covered. I have attached copies of receipts which document these out-of-pocket expenses. [COMPANY NAME] must rectify this situation by reimbursing me for the out-of-pocket costs I have incurred during the period it was not covered without cost-sharing. Furthermore, [COMPANY NAME] must ensure breastfeeding support and supplies, including lactation counseling are covered without cost-sharing in the future by changing any corporate policies that do not comply with the Affordable Care Act.

(2) I am prepared to order [BREAST PUMP REQUESTED] when [COMPANY NAME] assures that I have coverage without cost-sharing. I expect that [COMPANY NAME] will rectify this situation and notify me within 30 days of receipt of this letter that [BREAST PUMP REQUESTED] will be covered without cost-sharing.

Sincerely,

[YOUR SIGNATURE]

Encl:
Frequently Asked Questions about the Affordable Care Act (Part XII), available online at http://www.dol.gov/ebsa/faqs/faq-aca12.html)

Copies of Receipts Documenting Out-of-Pocket Costs

Sample Letter:
Coverage for Lactation Consultant

To Whom It May Concern:

I am enrolled in a [INSURANCE COMPANY NAME] plan, policy number [POLICY NUMBER]. I recently tried to access lactation counseling that should be covered by my health insurance. The Patient Protection and Affordable Care Act requires insurance coverage of breastfeeding support and supplies with no cost-sharing. However, when I contacted [INSURANCE COMPANY NAME] about the coverage by [SPECIFY METHOD, PHONE] on [DATE], I was told I could not get coverage of [LACTATION COUNSELING] because [SPECIFY REASON, SUCH AS NO IN-NETWORK PROVIDERS].

Under § 1001 of the Patient Protection and Affordable Care Act (ACA), which amends § 2713 of the Public Health Services Act, all non-grandfathered group health plans and health insurance issuers offering group or individual coverage shall provide coverage of certain preventive services for women with no cost-sharing. The list of women's preventive services that must be covered in plan years starting after Aug. 1, 2012 includes "comprehensive lactation support and counseling and costs of renting or purchasing breastfeeding equipment [] for the duration of breastfeeding" (see attachment).

My health insurance plan is non-grandfathered and the plan year started on [PLAN YEAR DATE]. Thus, the plan must comply with the women's preventive services provision.

The insurance plan has not established a process for me to obtain in-network lactation counseling, as required by federal law. Federal guidance on the preventive services clarify that, "… if a plan or issuer does not have in its network a provider who can provide the particular service, then the plan or issuer must cover the item or service when performed by an out-of-network provider and not impose cost-sharing with respect to the item or service."

Since [PLAN YEAR DATE], I have spent [TOTAL AMOUNT] out-of-pocket on [LACTATION COUNSELING], despite the fact that it should have been covered during that time. I have attached copies of receipts which document these out-of-pocket expenses. [COMPANY NAME] must rectify this situation by reimbursing me for the out-of-pocket costs I have incurred during the period it was not covered without cost-sharing. Furthermore, [COMPANY NAME] must ensure breastfeeding support and supplies, including lactation counseling are covered without cost-sharing in the future by changing any corporate policies that do not comply with the Affordable Care Act.

Sincerely,

[YOUR SIGNATURE]

Encl:
Frequently Asked Questions about the Affordable Care Act (Part XII), available online at http://www.dol.gov/ebsa/faqs/faq-aca12.html)

Copies of Receipts Documenting Out-of-Pocket Costs

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