

emergency. contraception.  
what part of EC don't you understand?

## Limited Success: One Year of Access to Emergency Contraception *What Activists and Advocates Can Do to Eliminate Barriers*

A Special Report by the National Organization for Women Foundation

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One year ago, the U.S. Food and Drug Administration (FDA) approved non-prescription sale of emergency contraception (EC, brand name *Plan B*) for women aged 18 and older, following a controversial delay of more than seven years.

Easing access to emergency contraception was a major victory for millions of women, but the FDA's politically-influenced process, and the unjustifiable limitation that women 17 and under will continue to need a prescription for EC, leaves many unsettling questions about inattention, deception and delay on women's vital health care needs.

### **Background:**

The FDA's approval came after the agency, which had disregarded the recommendations of its own staff and advisory committees, was heavily pressured by advocates, and Senators Patty Murray (D-Wash.) and Hillary Rodham Clinton (D-N.Y.) promised to hold up confirmation of an FDA commissioner-nominee until a decision was made. Two FDA advisory panels had recommended in December, 2003 that the agency permit over-the-counter sale of EC, with *no* age restrictions and finding the drug safe and effective.

In May, 2004, ignoring professional staff recommendations, the FDA issued a "not approvable" letter to the manufacturer, saying it was concerned about adolescents having access to EC. They offered no professional validation for those concerns. Dr. Susan Wood, director of the Office of Women's Health and Assistant Commission for Women's Health at the FDA, resigned in August, 2005 in protest of the agency's handling of the Plan B application – which had been re-submitted after the earlier denial. A Government Accountability Office (GAO) report in October, 2005 documented unusual involvement of high-ranking FDA officials in the decision-making process, noting that the decision on non-prescription EC had been made even before the in-house scientific review was completed. Depositions taken in a lawsuit brought by the Center for Reproductive Rights found that anti-EC pressure on FDA officials came from White House political advisors.

This tortured tale – only briefly summarized here – illustrates the unnecessarily difficult path that women's health advocates have had in improve women's access to birth control. And it points up the damage done by right-wing religious political forces whose well-funded and ceaseless efforts effectively harass, demean and deny women their fundamental right to determine their own reproductive lives. Their successes in limiting access to birth control have endangered women's

lives and health, expanded the number of women and children living in poverty, and wasted time and energy better spent on the myriad problems relating to access to health care for everyone.

This report details a number of remaining concerns relating to younger women's access to EC, care for rape survivors, military women's access, pharmacists' refusal, emergency room care, teen pregnancy and poverty, and pending legislation.. More information on each of these topics, with suggestions for action, follows.

**Significant Barriers for Young Women** - That young women under 18 must continue to get a doctor's prescription in order to purchase emergency contraception erects a barrier which assures that there will continue to be hundreds of thousands of unwanted pregnancies and many young mothers who did not plan to become pregnant and are ill-prepared to care for infants.

Even adult women must ask at the pharmacist's counter to purchase emergency contraception as pharmacies are keeping the pills "behind-the-counter" – a measure FDA requested and the manufacturer acceded to its distribution plan. Proof of age may be requested as well. These are hurdles to some women who may be sensitive about asking for EC out loud. Prior to FDA approval, NOW objected to the age limitation and to the *behind* the counter access.

**What You Can Do:** All women should have access to contraceptives, regardless of age or ability to pay. Check with your local pharmacy to find out how over-the-counter EC is dispensed, and whether pharmacies or pharmacists are imposing additional barriers. NOW has proposed a series of steps that would ease access for all women and ultimately lead to full over-the counter availability, [http://www.now.org/issues/reproductive/ec\\_action\\_plan.html](http://www.now.org/issues/reproductive/ec_action_plan.html)

**Access for Young Rape Survivors** - The most disheartening and compelling aspect of the decision to require young women to first get a doctor's prescription is that about 44% of rape and sexual assault victims are under age 18. And a third of those involve a perpetrator who is a family member. From 2004-2005, there were 200,780 (annual average) victims of rape, attempted rape and sexual assault, according to the Bureau of Justice Statistics, U.S. Department of Justice. This statistic was collected by the National Crime Victimization Survey which gauges the number of rapes, attempted rapes and sexual assaults – both reported and unreported to police – for persons age 12 and older. The figure suggests that there are tens of thousands young rape survivors each year – some estimate between 22,000 and 25,000 annually -- who face the multiple barriers of finding a co-operative doctor, getting an appointment and locating a pharmacy that will fill a prescription for emergency contraception for a minor – all within 72 to 120 hours of unprotected intercourse.

**What You Can Do:** Any activist can call hospitals in your area, ask to speak to the administrator for emergency room services and ask whether ER personnel are required to provide information about EC to rape survivors, and whether they provide emergency contraception on the spot. Urge them to fully inform survivors of the availability of EC and provide the drug at that time or make arrangements with a nearby pharmacy to assist the survivor in promptly obtaining EC. For under-age survivors, the attending ER doctor should provide the rape survivor with a prescription.

**Rape Survivors Who Go to Emergency Rooms** – A few states mandate that hospital emergency room personnel advise rape survivors of the availability of emergency contraception and provide EC. According to the Center for Reproductive Rights, emergency rooms in Arkansas and Colorado are required to provide information about EC. Those states which mandate that emergency contraception is to be dispensed in the ER upon request are: Connecticut, Minnesota and Oregon, California, Illinois, Massachusetts, New Jersey, New Mexico, New York, South Carolina and Washington.

Despite these mandates, a 2006 study by Catholics for a Free Choice found that many Catholic hospitals are not complying with state laws in Washington, South Carolina, New York, and California. Emergency room access to EC has become more difficult as a result of the hospital merger trend, where numerous formerly community and non-sectarian hospitals have been taken over by the Catholic Church and the number of reproductive rights medical services have been curtailed. For more information: <http://www.catholicsforchoice.org> and [http://www.mergerwatch.org/hospital\\_mergers.html](http://www.mergerwatch.org/hospital_mergers.html)

**What You Can Do:** Educate your state legislators about the need for emergency room mandates for EC services in all hospitals. You can check the state government websites for the states named above to find models of legislation that they have passed.

**Treatment Hindered for Military Rape Survivors** – There is a critical lack of access to EC at military health care facilities for the 350,000 women serving in the armed services [See "[Tell Congress: Stop Denying Emergency Contraception to our Servicewomen](#)"]. Most appalling is the fact that last year nearly 3,000 military women reported being sexually assaulted while on duty and there is no guarantee that appropriate medical care will be made available to them.

Five years ago, the Department of Defense placed emergency contraception on its Basic Care Formulary required to be stocked at all military treatment facilities, but it was quickly removed from the list after pressure from the Bush administration. Now, emergency contraception is available only at those individual health facilities that decide to make it available. In the meantime, the lack of emergency contraception doubly victimizes servicewomen – some of whom suffer from trauma serious enough to impair their military careers.

Legislation sponsored by Sen. Hillary Clinton (D-N.Y.) and Rep. Michael Michaud (D-Maine), the **Compassionate Care for Servicewomen Act (S. 1800/H.R. 2604)** would require full access to emergency contraception for servicewomen at all U.S. military health care facilities around the world. This legislation may have a chance of adoption as an amendment to a defense spending bill.

**What You Can Do:** Contact any military facility in your area and ask whether that facility makes EC available to military women and their dependents. Let them know how important it is to a rape survivor's recovery that she be able to prevent a pregnancy resulting from the rape. Learn about the Compassionate Care for Servicewomen Act and make sure your member of Congress understands what it would do for the women serving our country in the military.

**Groups Promote Pharmacist Refusals** - There is a national campaign by right-wing religious and political groups who are urging pharmacists to refuse to fill prescriptions for contraception of all kinds because of religious beliefs or personal moral values. The campaign is promoting state "conscience clause" laws and has the support of the U.S. Conference of Catholic Bishops and Pharmacists for Life International, among others. A spokesman for the Christian Legal Society explained to the Washington Post (March 28, 2005) that "any action that inhibits or prohibits human life is a sin." A majority of the public does not agree with this statement. The effect of so-called consciences clauses is to impose those extreme views on others by denying appropriate and desired medical care. These groups have also extended their effort among doctors, nurses and other health care providers, including hospitals and clinics.

According to a March 2007 report, four states (Arkansas, Georgia, Mississippi and South Dakota) have passed laws allowing pharmacists to refuse to dispense emergency contraception drugs, while Florida's law states that health care providers may not be held liable for refusing to dispense contraceptive or family planning devices, services or information. Maine, Colorado, South Dakota and Tennessee have adopted similar laws, some extending the refusal permission to physicians. In contrast, Illinois governor Rod Blagojevich issued an emergency 150 day rule ordering pharmacies to dispense FDA-approved contraceptives, although there are multiple bills pending that would permit refusals by health care providers (including pharmacists) to dispense emergency contraception, any prescription drugs or "participate in a health care service that violates his/her conscience." Another ten states have restriction legislation that has been filed and referred to committee.

NOW Foundation and a few women's rights allies in Congress believe that it is an unethical practice for individual pharmacists to refuse to fill legal prescriptions because they believe that contraception is immoral. Legislation in Congress, the **Access to Birth Control Act** (H.R. 2596, Rep. Carolyn Maloney, D-N.Y. and S. 1551, Sen. Frank Lautenberg, D- N.J.), would require pharmacies to ensure that a valid prescription is filled without delay and, if that is not possible for any reason, the pharmacy must refer the customer to another nearby pharmacy which can fill the prescription.

**What You Can Do:** Find out whether your state is considering legislative changes related to pharmacists' refusals: <http://www.ncsl.org/programs/health/conscienceclauses.htm> and make sure your U.S. Representative knows about the Access to Birth Control Act and its importance to women. Write letters to the editor about any efforts to promote so-called conscience clauses.