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## House Bill on Medicaid Providers Would Limit Beneficiaries' Access to Care

By Judith Solomon

While congressional Republicans attempt to cut off federal funds for Planned Parenthood, several governors are trying to bar Planned Parenthood from their Medicaid programs. Such state efforts have not succeeded to date because the Medicaid statute makes clear that beneficiaries can obtain family planning services from any qualified provider willing to participate in a state's Medicaid program. But a bill the House will likely consider this week would seriously weaken that protection, usually referred to as "freedom of choice," by allowing states to bar providers from Medicaid based on their "involvement in abortions" — even though federal law already prohibits Medicaid from paying for abortions with federal funds except in cases of danger to the life of the mother, rape, or incest.

By giving states unfettered discretion to restrict freedom of choice, the bill could have a significant impact on women's access to family planning services and other health care. Medicaid is the largest funder of family planning services, and Planned Parenthood is a major provider of those services for low-income women. In over two-thirds of counties with a Planned Parenthood clinic, the clinics serve at least *half* of all women receiving publicly funded contraceptive services; in one-fifth of the counties, Planned Parenthood serves *all* such women.<sup>1</sup>

Limiting access to Planned Parenthood and other providers of family planning services would likely increase unplanned pregnancies and raise state costs. (A California program to extend family planning services to some women not otherwise eligible for Medicaid saved the state \$4 billion over five years.) Moreover, if a state chose to broadly define "involvement with abortions" and bar major health care providers from Medicaid on that basis, beneficiaries could lose access to other services, such as treatment for sexually transmitted diseases and even prenatal care.

### Medicaid Beneficiaries Can Choose Family Planning Providers

The Medicaid statute allows beneficiaries to receive health care from any provider participating in the state's Medicaid program that is "qualified to perform the service or services."<sup>2</sup> This freedom of

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<sup>1</sup> Jennifer Frost, "Quantifying Planned Parenthood's Critical Role in Meeting the Need for Publicly Supported Contraceptive Care," *Health Affairs Blog*, September 8, 2015 <http://healthaffairs.org/blog/2015/09/08/quantifying-planned-parenthoods-critical-role-in-meeting-the-need-for-publicly-supported-contraceptive-care/>.

<sup>2</sup> The "freedom of choice" provision is at section 1902(a)(23) of the Social Security Act.

choice can be limited, however, when states provide health care through managed care arrangements, which most states now do for at least some beneficiaries. Managed care arrangements deliver care through a select network of providers, and states can restrict beneficiaries to providers in the network.

There is an exception, however, for family planning services: states are *not* allowed to restrict freedom of choice of providers for these services. This means that beneficiaries receiving care through managed care organizations can still receive family planning services from any qualified provider of those services, even if the provider is not part of their managed care organization's network. Enabling women to choose their own family planning provider ensures that they can receive these services where they feel comfortable, whether or not the provider participates in their managed care plan.

Several states have sought to bar providers that perform abortions from their Medicaid programs. Since federal law already prohibits Medicaid from paying for abortions with federal funds except in cases of danger to the life of the mother, rape, or incest, the main impact of such measures would be to bar access to providers for services that Medicaid *does* cover, most notably family planning services. Most states have defended their restrictions by claiming that providers that perform abortions are not "qualified" to participate in the state's Medicaid program under state law or other state criteria.

Without exception, courts have ruled that these restrictions on provider participation violate the freedom of choice provision. Courts have agreed with the Department of Health and Human Services that the reference in the free choice provision to "qualified" providers relates to the provider's "capability of performing the needed medical services in a professionally competent, safe, legal, and ethical manner."<sup>3</sup> The fact that a provider may provide abortions paid for with private funds does *not* disqualify it from delivering family planning and other health care services to Medicaid beneficiaries if it is qualified to deliver those services.

## **Bill Would Allow States to Severely Restrict Freedom of Choice**

A House bill (H.R. 3495) that will likely soon reach the floor would change the Medicaid statute to enable states to bar providers "based on the individual's or entity's involvement in abortions." It would not only allow states to terminate their provider agreements with Planned Parenthood, but also go much farther in allowing states to determine the *degree* of involvement in abortion that would trigger a ban on participation in Medicaid. For example, not all Planned Parenthood clinics perform abortions, but the bill would allow a state to bar clinics that do *not* perform abortions from participating in Medicaid solely because of their affiliation with the national organization.

Under the bill's broad and vague language, states likely could even bar hospitals from Medicaid if they provide emergency care to women with complications after an abortion, or bar physicians who volunteer to provide family planning services at clinics where abortions are performed. The impact on access to health care services for Medicaid beneficiaries could go well beyond family planning and other women's health services. States also could use their new authority to pressure providers to stop performing abortions or other activities that the state deems as "involvement with abortions" or risk being barred from Medicaid.

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<sup>3</sup> *Planned Parenthood of Indiana v. Commissioner of the Indiana State Department of Health*, 699 F.3d 962 (7<sup>th</sup> Cir. 2012).

But even if states only prohibited participation by Planned Parenthood and other providers that actually perform abortions, the impact on women's health care services still would have a very serious impact on access to care for low-income women. Planned Parenthood is a major provider of family planning services for low-income women. In over two-thirds of counties with a Planned Parenthood clinic, the clinics serve at least half of all women receiving publicly funded contraceptive services; in one-fifth of the counties, Planned Parenthood serves *all* such women.<sup>4</sup>

## **Adverse Impact on Women's Health and Higher Medicaid Costs**

Medicaid is the largest source of public funding for family planning services. States must make family planning services available to people enrolled in their Medicaid programs, and over half the states have expanded coverage for family planning services to women not otherwise eligible for Medicaid, usually through waivers. The benefits under state family planning programs vary — all states provide at least contraceptive services and supplies to prevent unplanned pregnancies, but some also cover health education and promotion, testing and treatment for sexually transmitted infections, and other related services.<sup>5</sup>

The federal government pays 90 percent of Medicaid costs of family planning services in all states. This encourages states to expand coverage of family planning services to low-income women who aren't otherwise eligible for Medicaid.

Family planning waivers have proven effective in avoiding the costs of unplanned pregnancies; California's program, for example, saved roughly \$14,000 for each prevented pregnancy, totaling \$4.08 billion in savings over five years.<sup>6</sup> That's why Congress allowed states to extend family planning services without a waiver as part of health reform.

Limiting access to Planned Parenthood and other providers of family planning services would leave some beneficiaries without access to care and raise Medicaid spending on unplanned pregnancies. The Congressional Budget Office (CBO) found that a permanent ban on federal funds for Planned Parenthood would raise federal spending by \$130 million over ten years due to an increase in the number of pregnancies that Medicaid would cover. CBO found that the impact would diminish over time as more providers stepped in to fill the gap resulting from defunding Planned Parenthood, but it expressed uncertainty as to the timing and the extent to which this would occur.<sup>7</sup>

The House bill, which gives states broad discretion to bar providers from Medicaid, wouldn't have the same impact as eliminating federal funding for Planned Parenthood, as the impact would be limited to states that exercised the option and would depend on the number and characteristics of

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<sup>4</sup> Jennifer Frost, "Quantifying Planned Parenthood's Critical Role in Meeting the Need for Publicly Supported Contraceptive Care," *Health Affairs* blog, September 8, 2015, <http://healthaffairs.org/blog/2015/09/08/quantifying-planned-parenthoods-critical-role-in-meeting-the-need-for-publicly-supported-contraceptive-care/>.

<sup>5</sup> Usha Ranji, Yali Bair, and Alina Salganicoff, "Medicaid and Family Planning: Background and Implications of the ACA," Kaiser Family Foundation, July 8, 2015, <http://kff.org/womens-health-policy/issue-brief/medicaid-and-family-planning-background-and-implications-of-the-aca/>.

<sup>6</sup> *Ibid.*

<sup>7</sup> Letter from Keith Hall, Director of CBO, to Kevin McCarthy, Majority Leader of the House of Representatives, September 22, 2015.

the providers the state excluded. However, if a state limited access to family planning services, it would likely increase unplanned pregnancies and raise state costs. Moreover, depending on how the state defined “involvement with abortions,” Medicaid beneficiaries could lose access to other services such as treatment for sexually transmitted diseases and even prenatal care, because fewer providers could participate in the state’s Medicaid program.