NHeLP's Reproductive Health Data and Insurance Accountability Project

the DATA PROJECT

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NATIONAL HEALTH LAW PROGRAM

Reproductive Health Care Coverage in Medi-Cal

Introduction

Access to comprehensive reproductive health care, which includes abortion services, is critical to a person's overall health and well-being. This issue brief, focusing on Medicaid coverage of abortion and family planning services in California, is part of a series of National Health Law Program issue briefs discussing abortion and family planning coverage in state Medicaid programs.

Medicaid Overview

Medicaid is a federal-state partnership that provides health care services to 74.5 million low-income individuals.[1] States must follow certain federal Medicaid requirements as a condition of their participation.[2] In return, the federal government reimburses states for a portion of their Medicaid costs.[3]

Medi-Cal, California's Medicaid program, provides coverage to approximately 13.5 million individuals.[4] As of October 2016, women comprised 54% of all Medicaid enrollees in California.[5] Medi-Cal enrollees receive services either through managed care or on a fee-for-service basis. Approximately 10.3 million individuals in 58 counties are enrolled in Medi-Cal managed care.[6] Medi-Cal contracts with approximately 21 plans throughout the state.[7]

Managed care organizations (MCOs) are "capitated" plans, meaning that they receive a per-member-per-month payment from the state in return for providing health care services to enrollees. MCOs typically require enrollees to use a specific network of providers. MCOs have a comprehensive risk contract with the state—they must provide inpatient hospital services and a minimum number of outpatient services.

Fee-for-services (FFS) is a payment model where physicians are paid set reimbursement rates for individual services. As a result, physicians have a financial incentive to provide more services because reimbursement is based on quantity, not quality, of care. In addition, individuals who receive services on a FFS basis are not restricted to a specific network of specialists.

Family Planning Coverage

Since 1972, the Medicaid Act has required states to cover "family planning services and supplies" for enrollees of childbearing age.[8] The exact scope of services is not defined in federal law, and each state has some flexibility to determine which services and supplies it will cover, leading to some variability among state programs.[9] The federal government provides states an enhanced Federal Medical Assistance Payment rate (FMAP) of 90% for family planning services. States receive a FMAP rate of 50% for all other Medicaid services.[10] Federal law prohibits states, Medicaid providers, and Medicaid health insurance plans from imposing co-payments or other cost-sharing on family planning services or supplies.[11]

In addition, federal law guarantees that enrollees have "freedom of choice" to obtain family planning services and supplies from any qualified Medicaid provider, whether inside or outside their managed care networks.[12] Federal law allows managed care plans to implement "utilization review" or "medical management techniques" to reduce costs and ensure efficient use of services.[13] Medical management techniques may include limited formularies, prior authorization, step therapy (try and fail), and other limits on services.[14]

However, managed care plans must "provide that each beneficiary is free from coercion or mental pressure and free to choose the method of family planning to be used."[15]

Full-scope Medi-Cal

California's full-scope Medi-Cal program – traditional Medi-Cal and the Medi-Cal expansion – provides robust contraceptive coverage. Medi-Cal covers oral contraceptives, oral emergency contraceptives, contraceptive patches, vaginal rings, foam, gels, and creams, male and female condoms, contraceptive implants, contraceptive injections, and intrauterine devices (IUD). Medi-Cal requires a prescription before it will cover over-the-counter contraceptives. Enrollees are permitted emergency contraception up to once a month and up to six packs in any given year.[16]

Medi-Cal managed care plans must provide enrollees with up to a 12-month supply of oral contraceptives, if the contraception is dispensed in an on-site clinic and billed by a qualified family planning provider.[17]

Medi-Cal also covers family planning counseling, vasectomies and tubal ligations, and treatment for complications resulting from previous family planning procedures.[18] As required by federal law, all of these family planning services and supplies are exempt from cost-sharing.[19]

The state also covers sterilization; however, to prevent coercion, state and federal regulations require patient consent and a 30-day waiting period.[20] In cases of premature delivery or emergency abdominal surgery, the waiting requirement is reduced to 72 hours after the consent form is signed.[21] Since 2016, state law limits medical management techniques, such as prior authorization and step therapy, in the provision of contraception.[22] Plans may, however, still require a prescription for an over-the-counter contraception.

Note: California's family planning expansion program is available to individuals regardless of age and immigration status.

Note: Individuals who have family planning coverage may still be eligible for Family PACT coverage if they require access to confidential services and cannot or do not want to use their other coverage. Please see the Family PACT website for more information on enrollment.

Family planning expansion

Since 1996, California has provided family planning services and supplies to individuals who are not otherwise eligible for full-scope Medi-Cal through a § 1115 Medicaid demonstration project (waiver) known as the Family Planning, Access, Care, and Treatment program (Family PACT).[23] In July 2010, California converted its § 1115 waiver into a State Plan Amendment (SPA) family planning expansion.[24] Men and women of reproductive age with incomes at or below 200% of the Federal Poverty Line are eligible for Family PACT.[25] Enrollees must be California residents; however, there is no immigration status requirement. Undocumented immigrants are eligible for Family PACT.[26]

As with full scope Medi-Cal, California's family planning expansion program covers family planning services and devices free of charge. Specifically, Family PACT covers the initiation and management of all FDA-approved prescription contraceptives, individual

reproductive health education and counseling, and clinical and preventive services, such as HIV-testing and breast and cervical exams.[27] Enrollees may receive retroactive reimbursement for family planning services received up to three months prior to enrollment in the program.[28] Family PACT eligibility determination and enrollment can occur at a family planning provider during intake, allowing for instant access to family planning services.[29] Providers enroll individuals using a state-provided certification form, and provide the individual with a program card good for one year.[30]

Abortion Coverage

For the first few years after abortion access was upheld as a constitutional right under *Roe v. Wade*, Medicaid covered abortions in the same way it covered other medical services.[31] Unfortunately, three years after *Roe*, Congress severely restricted federal Medicaid coverage of abortion through an annual appropriations bill rider commonly known as the "Hyde Amendment." The Hyde Amendment allows federal Medicaid funds to cover abortions only when necessary to save the life of the pregnant individual (life endangerment) or in pregnancies resulting from rape or incest.[32] Federal law requires that state Medicaid programs cover these limited abortions for which federal funding is available. States may also use state-only funds to provide broader abortion coverage.

Under the California Constitution, Medi-Cal must provide comprehensive abortion coverage.[33] Thus, Medi-Cal enrollees are able to receive abortions beyond the Hyde exceptions. The state pays for all abortion services using state-only funds.[34]

The state prohibits requiring a medical justification for abortion services.[35] In addition, plans can only require prior authorization for inpatient hospitalizations for an abortion procedure.[6] Managed care plans must not only ensure that enrollees have timely access to abortion services, but they must also "implement and maintain procedures that ensure confidentiality and access to these sensitive services."[37] Abortion services are not subject to cost-sharing.[38]

In addition, Medi-Cal patients can seek abortion services from any Medi-Cal provider, including those who are out-of-network.[39] This important protection allows individuals to see any Medi-Cal provider without a referral from a primary care provider or approval from a managed care plan.[40]

ADVOCACY TIP:

Young people aged 12-21 years can receive certain health care services, including abortion services, confidentially and without parental notification through California's state-funded program known as Minor Consent Medi-Cal.

California has also adopted the federal option to offer "presumptive eligibility" (PE) for pregnant individuals.[41] California's PE program is also available for pregnant undocumented individuals.[42] PE provides immediate, temporary coverage for ambulatory prenatal services on the basis of preliminary information pending the state's determination of the person's regular Medi-Cal eligibility.[43] A person can apply for PE through a qualified provider, who asks the person a series of questions during her visit about her income, residency, and other health coverage. If the provider determines that she appears eligible, she can receive Medi-Cal services that

same day.[44] By the end of the following month, the person must begin a full Medi-Cal application.[45] She will remain eligible for Medi-Cal under presumptive eligibility until the state makes a decision on her Medi-Cal application.[46] PE covers abortion care.[47] Once the person has PE, she may seek services from any Medi-Cal provider for abortion services, as set forth above.[48]

Logistical Matters: Access to General Services

Medi-Cal managed care regulations require that enrollees have timely access to covered services. Specifically, a Medi-Cal enrollee is entitled to access primary care within 30 minutes or 10 miles of their home unless the Department of Health Care Services, the state Medicaid agency, has approved an alternate access standard for the managed care plan's network.[49] Medicaid enrollees are also entitled to an appointment within ten business days for routine primary care, fifteen business days for routine specialty care, two days for urgent care for services that do not require prior authorization, or four days for urgent care for services that require prior authorization.[50]

Beginning July 1, 2017, Medi-Cal will cover non-emergency medical transportation to all covered services when "currently available resources have been reasonably exhausted."[51] Non-emergency medical transportation includes mileage reimbursement, taxi cabs, passenger cabs or any other public or private conveyance."[52] Medi-Cal managed care plans are required to provide transportation for enrollees and the Department of Health Care Services provides transportation for fee-for-service enrollees.[53]

Grievances and Appeals

ADVOCACY TIP:

To learn more about grievance and appeals rights in Medi-Cal managed care plans, see the National Health Law Program's issue brief on internal grievances and external review for service denials.

If a health plan or the Department of Health Care Services fails to provide a Medi-Cal enrollee timely access to, or denies coverage for, services, the enrollee is entitled to appeal that decision.[54] When enrollees in a managed care plan disagree with the plan's decision that a service was not medically necessary or appropriate, they may file a grievance with their health plan within 90 days of receiving notice of the plan's denial and should receive a decision within 30 days from their plan.[55] To receive an expedited review, an enrollee's physician must indicate that following the standard timeframe would seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.[56] An enrollee is entitled to a decision within three business days of an expedited appeal.[57]

All Medi-Cal enrollees can also request a state fair hearing before an Administrative Law Judge with the California Department of Social Services.[58] Enrollees should request a fair hearing within 90 days of the action or inaction, unless the person has "good cause" for filing after the 90-day period. Enrollees in managed care plans may request a fair hearing before, after, or at the same time as filing a grievance with their health plan.[59]

Conclusion

NHeLP's Reproductive Health Data and Insurance Accountability Project seeks to systematically collect data on the specific obstacles that providers, advocates, and patients face in providing and accessing abortion and family planning services. If you have encountered a barrier to accessing these services, or have any questions arising from this issue brief, please contact the National Health Law Program at nhelp@healthlaw.org or 310-204-6010.

Resources

National Health Law Program
310-204-6010
www.healthlaw.org

ACCESS: Women's Health Justice
510-923-0739
www.accesswhj.org

Health Consumer Alliance
1-888-804-3536
www.healthconsumer.org

[1] Medicaid.gov, *Total Medicaid Enrollees- VIII Group Break Out Report* (Updated December 2016) at 4, https://www.medicaid.gov/medicaid/program-information/downloads/cms-64-enrollment-report-jan-mar-2016.pdf.

[2] 42 C.F.R. § 430.10.

[3] 42 U.S.C. § 1396d(b). See Federal Financial Participation in State Assistance Expenditures; *Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2014 through September 30, 2015*, 79 Fed. Reg. 3385, 3387 (Jan. 21, 2014) (setting fiscal year 2015 FMAPs).

[4] Cal. Dep't of Health Care Srvs., Research & Analytic Studies Div., *Medi-Cal Monthly Enrollment Fast Facts* (Oct. 2016) at 1, http://www.dhcs.ca.gov/dataandstats/statistics/Documents/Fast_Facts_October_16_ADA.pdf.

[5] *Id.* at 2.

[6] Cal. Dep't of Health Care Srvs., *Medi-Cal Managed Care Enrollment Report – Feb. 2016*, http://www.dhcs.ca.gov/dataandstats/reports/Documents/MMCD_Enrollment_Reports/MMCEnrollRptFeb2016.pdf.

[7] Cal. Dep't of Health Care Srvs., *Medi-Cal Eligibility and Covered California – Frequently Asked Questions*, http://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/Medi-CalFAQs2014a.aspx (last accessed Mar. 28, 2016); *see also* Cal. Dep't of Health Care Srvs., *Medi-Cal Managed Care Health Plan Directory*, http://www.dhcs.ca.gov/individuals/Pages/MMCDHealthPlanDir.aspx (last accessed Mar. 28, 2016).

[8] 42 U.S.C. § 1396(a)(4)(C).

[9] Ctr. for Medicaid & Medicare Servs., *State Medicaid Manual* § 4270.

[10] *See also* Fed. Financial Participation in State Assistance Expenditures; *Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2015 through September 30, 2016*, 79 Fed. Reg. at 71427-28.

[11] 42 U.S.C. §§ 1396o(a)(2), (b)(2); 42 C.F.R. § 447.53(b)(5).

[12] 42 C.F.R. § 431.51.

[13] *Id.* § 456.1.

[14] Catherine McKee, Dipti Singh, & Susan Berke Fogel, Nat'l Health Law Program, *Improving Coverage: Using State Law to Maximize Access to Family Planning and Abortion Services* 8 (Apr. 2015), http://www.healthlaw.org/publications/browse-all-publications/nhelp-improving-coverage#.VvsEduIrK00; Agata Pelka, Nat'l Health Law Program, *Medical Management and Access to Contraception* (updated Mar. 2016), http://www.healthlaw.org/about/staff/erin-armstrong/all-publications/medical-management-and-access-to-contraception#.VvsEpuIrK00.

[15] 42 C.F.R. § 441.20.

[16] Cal. Dep't of Health Care Servs., *Medi-Cal Provider Manual* Ch. Family Planning at pp. 2, 7-12.

[17] Cal. Dep't of Health Servs., Letter to All Medi-Cal Managed Care Plans, All Plan Letter No. 16-003: Family Planning Services Policy for Contraceptive Services (Feb. 5, 2016), http://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/PL1998/MMCDPL98011.pdf.

[18] Cal. Dep't of Health Care Servs., *Medi-Cal Provider Manual* Ch. Family Planning at p. 2.

[19] *See* 42 U.S.C. § 1396o(a)(2)(D); 42 C.F.R. § 447.56(a)(2)(ii); Cal. Dep't of Health Care Servs., *Medi-Cal Provider Manual* Ch. Provider Regulations at p. 9.

[20] *See* 42 C.F.R. §§ 441.253, 447.255, 447.257-58; Cal. Dep't of Health Care Servs., *Medi-Cal Provider Manual* Ch. Sterilization at pp. 1-11. The Medi-Cal "Sterilization Consent Form" is available at https://files.medi-cal.ca.gov/pubsdoco/forms/PM-330_Eng-SP.pdf.

[21] *See* 42 C.F.R. § 441.258(c)(3); Cal. Dep't of Health Care Servs., *Medi-Cal Provider Manual* Ch. Sterilization at p. 3.

[22] S.B. 1053, Contraceptive Coverage Equity Act (2014).

[23] Essential Access Health, *Family PACT*, http://www.essentialaccess.org/advocacy/policy-priorities/family-pact.

[24] Cal. Dep't Health Care Servs., State Plan Am. 10-014 Atts. 3.1-A, 2.2-A (July 1, 2010), http://www.dhcs.ca.gov/formsandpubs/laws/Documents/10-014%20Recent%20Amendment.pdf.

[25] *Id.* See also Cal. Welf. & Inst. Code § 14132(aa); Cal. Dep't of Health Care Servs., *Family PACT Policies, Procedures and Billing Instructions Manual* Ch. Client Eligibility Determination at p. 3. Additionally, to qualify, individuals must be residents of California, have no other source of health insurance that provides family planning services coverage, and have a medical necessity for family planning services. See Cal. Dep't of Health Care Servs., *Family PACT Policies, Procedures and Billing Instructions Manual* Ch. Client Eligibility Determination at p. 3.

[26] *See* Cal. Dep't of Health Care Servs., *Family PACT Policies, Procedures and Billing Instructions Manual* Ch. Client Eligibility Determination at p. 3.

[27] Cal. Welf. & Inst. Code § 14132(aa)(8); *see also generally* Cal. Dep't of Health Care Servs., *Family PACT Policies, Procedures and Billing Instructions Manual* Chs. Benefits: Family Planning, Benefits: Family Planning-Related Services, & Benefits Grid; Cal. Dep't of Health Care Servs., *Fact Sheet on Family PACT: An Overview* (updated Jan. 2012), http://bixbycenter.ucsf.edu/sites/bixbycenter.ucsf.edu/files/2012_FPACT_Overview.pdf.

[28] Cal. Dep't of Health Care Servs., *Family PACT Policies, Procedures and Billing Instructions Manual* Ch. Client Eligibility Determination at p. 1.

[29] *Id.* at 1, 4; *id.* Ch. Family PACT Program Overview at pp. 4-5.

[30] *Id.* Ch. Client Eligibility Determination at pp. 1, 4, 6-7.

[31] *Roe v. Wade*, 410 U.S. 113 (1973).

[32] *See* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. G, §§ 506, 507, 128 Stat. 2130, 2515 (2014).

[33] *See Comm. to Defend Reprod. Rights v. Myers*, 625 P.2d 779, 886 (Cal. 1981) (striking down abortion funding restrictions as an unconstitutional invasion of a woman's freedom of reproductive choice); Cal. Dep't of Health Care Srvs., *Medi-Cal Medical Services Provider Manual* Ch. Abortions at p. 1.

[34] *Id., id.*

[35] Cal. Dep't of Health Care Servs., *Medi-Cal Provider Manual* Ch. Abortions at p. 1.

[36] *Id.*; Cal. Dep't of Health Care Servs., Letter to all Medi-Cal Managed Care Health Plans, All Plan Letter No. 15-020: Abortion Services (Sept. 30, 2015), http://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2015/APL15-020.pdf.

[37] Cal. Dep't of Health Care Servs., Letter to all Medi-Cal Managed Care Health Plans, All Plan Letter No. 15-020: Abortion Services.

[38] *See* Cal. Welfare & Inst. Code § 14134(a)(6)(D); Cal. Code Regs. tit.22, § 51002.

[39] *Id.*

[40] *Id.*

[41] Cal. Dep't of Health Care Servs., State Plan Am. Transmittal No. 13-0021-MM1 § S28 (Jan. 1, 2014), http://www.dhcs.ca.gov/formsandpubs/laws/Documents/13-0021_%20Approved%20Package.pdf; Cal. Welf. & Inst. Code § 14148.7.

[41] Cal. Dep't Health Care Servs., *Presumptive Eligibility for Pregnant Women Frequently Asked Questions*, https://files.medi-cal.ca.gov/pubsdoco/presumptive_eligibility/PE_for_PW_faq.asp.

[43] Cal. Dep't of Health Care Servs., Medi-Cal Provider Manual Ch. Presumptive Eligibility at p. 1; *see also* Cal. Dep't Health Care Servs., *Presumptive Eligibility for Pregnant Women Provider Fact Sheet* (Sept. 2011) ; 42 U.S.C. § 1396r-1 (presumptive eligibility option for pregnant women).

[44] Cal. Dep't of Health Care Servs., Medi-Cal Provider Manual Ch. Presumptive Eligibility at p. 1.

[45] *Id.* at pp. 1, 13.

[46] *Id.* p. 13.

[47] *Id* at p. 19.

[48] *Id.* at p. 10.

[49] Cal. Code Regs. tit. 22, § 53885(a).

[50] Cal. Code Regs. tit. 28, § 1300.67.2.2(c)(5); Cal. Dep't of Health Care Servs.

[51] A.B. 2394, Medi-Cal: nonmedical transportation, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2394.

[52] *Id.*

[53] *Id.*

[54] 42 C.F.R. § 438.402; Cal. Code Regs. tit. 22, § 53858.

[55] 42 C.F.R. § 438.402(b)(2); Cal. Code Regs. tit. 28, § 1300.68.01(b); Cal. Dep't of Health Care Servs., *County Organized Health Systems Boilerplate Contract*, Ex. A, Att. 14, http://www.dhcs.ca.gov/provgovpart/Documents/COHSBoilerplate032014.pdf.

[56] Cal. Dep't of Health Care Servs., *County Organized Health Systems Boilerplate Contract*, Ex. A, Att. 14.

[57] *Id.*

[58] Cal. Code Regs. tit. 22, § 50951.

[59] *Id.*

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