



How Per Capita Caps Harm the Prevention and Treatment of New Viruses

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Introduction

If Congress enacts a per capita cap on Medicaid, states will have fewer resources to prevent and treat the spread of any new diseases or viruses. Per capita caps and block grants cut the Medicaid program by limiting the amount of funding that the federal government would contribute. Under a per capita cap, federal dollars would be capped per Medicaid enrollee and under a block grant, states would receive a pre-set amount of Medicaid dollars. Both of these approaches put Medicaid enrollees at risk for losing coverage and services. The negative consequences of per capita caps are exacerbated when new diseases – and their potentially expensive treatments – are identified such as Zika.

New viruses and diseases can cause a state to incur significant unexpected costs for screening and/or treatment. Under a per capita cap or block grant, a state would have to shift resources from other enrollees or services if it needs new or greater funding to respond to a particular virus or disease or individuals suffering from the new virus or disease may not receive all the services they need. As Jocelyn Guyer and David Rosales from Manatt Health Solutions point out,

This open-ended federal commitment is key to Medicaid's ability to respond quickly to major disasters and public health crises, allowing states to rapidly deploy health care services and emergency health coverage, even as Congress debates providing help through other federal programs.¹

A perfect example of this is the rise of the Zika virus, which particularly impacts pregnant women, last year. This most recent outbreak of the Zika virus was first identified in 2015 in Brazil.² While originally thought of as a geographically limited virus, it quickly spread and became prevalent in parts of the United States, particularly southern states and Puerto Rico. Under the [American Health Care Act](#) (AHCA), Congress would set a state's Medicaid funding based on its historical expenditures. So any new virus or disease – such as Zika – would not be in the state's prior budget and thus unaccounted for in a state's annual spending.

I. What is the Zika Virus and Who Is Affected?

The Zika virus disproportionately affects women of reproductive age, those who are already pregnant, and their families, particularly those who are low income or who work outdoors. The virus can be transmitted during sexual activities from individuals who have the virus to their partners and from pregnant women to their fetuses.³ A pregnant woman who is not experiencing symptoms of the Zika virus can still pass the virus to her developing fetus.⁴ Pregnant women who are infected with the Zika virus may face miscarriage, stillbirth, and other pregnancy-related complications.⁵ One in ten pregnant women who were confirmed to have a Zika virus infection had a pregnancy resulting in which the fetus or the born infant experienced Zika-related complications, including microcephaly, a condition in which the brain may be underdeveloped causing seizures, hearing and vision problems, and developmental delays.⁶ Treatment, care, and services for an infant born with microcephaly may be well over \$4 million dollars, and may reach as much as \$10 million over their lifetime.⁷ As of now, seventy-two infants have been reported to be born with Zika-related complications within the United States and in the District of Columbia.⁸ Many of these children likely are eligible for Medicaid on the basis of disability because of the effect of microcephaly or other Zika-related complications.

In addition to the challenges and higher costs of caring for individuals born with Zika-related complications, states have spent additional federal funding to screen individuals, particularly pregnant women, for the disease.⁹ Pregnant women who are infected are often monitored closely during pregnancy, adding to the costs of their pre-natal care.¹⁰ Since Medicaid pays for nearly 50% of all births in the U.S., many of those requiring additional pre-natal care will likely be enrolled in Medicaid.¹¹ Within the United States and its territories, the Zika virus has disproportionately impacted Puerto Rico and southern states. In 2016, in Florida, 299 pregnant women were confirmed to have the Zika virus.¹² In 2016, the commonwealth of Puerto Rico had over 34,000 cases of the Zika virus and so far in 2017, the commonwealth has over 400 cases.¹³

II. The Harm of Per Capita Caps on Medicaid Enrollees Coping with the Zika Virus

Medicaid covers many services, including preventive measures, for enrollees. These services include coverage for pregnancy care and related services, family planning and contraception, and the Early and Periodic Screening, Diagnostic and Treatment Program for children and adolescents, all of which are particularly important for women and their families.¹⁴

Any cuts to the Medicaid program will hinder the ability of states to respond effectively to the Zika virus or other new viruses, leaving women and families without the resources needed to

protect themselves from this virus or to receive treatment. The AHCA would change federal Medicaid funding from an open-ended funding guarantee that is responsive to state needs to an annual fixed amount of federal funds. AHCA alters the Medicaid funding stream by implementing a per capita cap.¹⁵

With capped Medicaid funds, states will have less ability to monitor, to diagnose and treat individuals for newly emerging viruses like the Zika virus, and pursue proactive measures to prevent outbreaks in their communities. The funding structure for Puerto Rico's Medicaid program highlights how caps on Medicaid will severely restrict a state's ability to respond to a public health emergency. Unlike the fifty states and the District of Columbia, Puerto Rico, is subject to a statutory cap for federal Medicaid dollars.¹⁶ Once these dollars are exhausted, the island does not receive any additional financial support for its Medicaid program during the fiscal year and must rely on local funding.¹⁷ Forty-nine percent of Puerto Ricans receive coverage through Medicaid.¹⁸ Due in part to the statutory cap and low matching rate, Puerto Rico cannot afford to provide certain services or benefits.¹⁹

Because a per capita cap will be based on a state's Medicaid historical spending, any new illness or disease that requires additional budgetary resources to prevent or treat transmission of an illness will leave states with a Hobbesian choice -- do not spend money to prevent the spread of the virus or cut other Medicaid spending to ensure funding for new screening and treatment. In addition, a per capita cap will not give states the flexibility to implement effective responses that take into account future scientific developments that will help in the surveillance, prevention, and treatment. As part of the per capita cap, states will have to reimburse the federal government for any dollars that they spend beyond what is allotted to them under their total cap and will receive less federal payments the following year. This "clawback" provision will further disincentive states from using the flexibility they have under the Medicaid program to respond to viruses including Zika since they will not want to risk exceeding their cap. Per capita caps will only exacerbate current funding problems that states are confronting in their surveillance efforts regarding the Zika virus as federal, emergency dollars appropriated last year for these efforts are running out.²⁰

These cuts to Medicaid will create a patchwork system of how states respond to health emergencies, creating or worsening disparities in access to health care since a state is locked into its historical spending. Under a per capita cap, states will continue to pay their share of costs to receive federal funding and existing matching rates and requirements will apply. States such as Florida and Texas that were deemed high risk areas for the virus last year historically have spent less per enrollee in their Medicaid programs.²¹ These states will consequently have less flexibility and federal funding to respond to the Zika virus if a per capita cap is enacted. To continue responding to the Zika virus, these states may have to raise their own revenues by making cuts to other Medicaid services and to other health and social

programs. For individuals and families in these states that are at high risk for this virus, a per capita cap will make it more likely that they will not get the care they need just because of their zip code. These issues can impact states in any number of ways as new outbreaks of Zika or other previously unknown viruses arise.

Under a per capita cap, states will need to make painstaking decisions regarding who gets care and what type and how much care they receive, pitting vulnerable communities against each other. For instance, due to the costs of care for a child with microcephaly, a child born with this disability may not get the lifetime care they need or they may receive limited services which will impact not only their health but their quality of life. Without the full range of services these children need, their families will shoulder the additional responsibilities of accessing and paying for any of these services that cannot be provided through their state's Medicaid program-for many low-income families that will be impossible. Or states would have to cut other Medicaid funds to make room for the unanticipated costs of treating Zika-infected children. The statutory cap and the stresses caused by the Zika virus will overburden a state's health safety net and overwhelm their health care system.

III. Conclusion

The Zika virus provides a time-sensitive example of the long term consequences for the health and wellbeing of Medicaid enrollees if per capita caps are adopted. Medicaid is one of the few health programs that can provide states the resources and tools needed to prevent the spread of new viruses and diseases on a large scale and to appropriately address the needs of individuals who may need screening and treatment. Imposing drastic financial cuts on the Medicaid program will leave states with fewer resources and less flexibility to grapple with the negative economic and health consequences of the Zika virus and any other future new virus or disease. In turn, many individuals and families who are diagnosed with Zika or other new diseases will not have the resources and treatment needed to cope with the burdens of this disease.

Appendix: Medicaid Services Related to the Zika Virus

Coverage for Pregnancy

In 2010, Medicaid covered nearly 45 percent of all births in the United States and in many states, Medicaid covers well over half of births.²² Under Medicaid, states must provide coverage to pregnant women including “services that are necessary for the health of the pregnant woman and fetus” and services for illnesses and conditions which “threaten the carrying of the fetus to full term or the safe delivery of the fetus.”²³ These would include services, such as ultrasounds and amniocentesis, which are recommended by the Centers for

Disease Control and Prevention for pregnant women who have been possibly exposed to the Zika virus.²⁴

Family Planning Services and Supplies

Medicaid is the single largest source of public funding for family planning services and supplies.²⁵ States are required to cover family planning services for all Medicaid enrollees of reproductive age, except for those who qualify as medically needy.²⁶ Twenty-six states have extended their Medicaid family planning programs to individuals who would not otherwise be eligible for Medicaid.²⁷ The Center for Medicaid and CHIP Services released additional guidance to State Medicaid directors highlighting that family planning services for men and women, including women who are pregnant, are important services that prevent further Zika infections.²⁸

Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program

Children under the age of 21 who are enrolled in Medicaid receive a comprehensive set of health benefits under EPSDT. The goal of the program is to ensure that children receive age appropriate screening and preventive and treatment services that are necessary to “correct or ameliorate” health problems regardless of whether these services are available for adults in a state’s Medicaid program. These services are critical for children born with microcephaly as a result of the Zika virus and for those who may show signs of other Zika-related conditions as they develop.

ENDNOTES

¹ JOCELYN GRUYER AND DAVID ROSALES, MANATT HEALTH, MEDICAID’S ROLE IN PUBLIC EMERGENCIES AND HEALTH CRISES, 1 (Apr. 2017), <https://www.manatt.com/Insights/White-Papers/2017/Medicaid%E2%80%99s-Role-in-Public-Emergencies-and-Health-C>.

² WORLD HEALTH ORGANIZATION, ZIKA VIRUS, (Sept. 2016), <http://www.who.int/mediacentre/factsheets/zika/en/>.

³ CENTERS FOR DISEASE CONTROL AND PREVENTION, ZIKA: THE BASICS OF THE VIRUS AND HOW TO PROTECT AGAINST IT (2016), <https://www.cdc.gov/zika/pdfs/fs-zika-basics.pdf>.

⁴ *Zika Virus, Pregnancy*, Centers for Disease Control and Prevention, <https://www.cdc.gov/zika/pregnancy/index.html> (last updated Apr. 4, 2017).

⁵ *Zika Virus, Effects During Pregnancy*, Centers for Disease Control and Prevention, <https://www.cdc.gov/zika/hc-providers/pregnant-women/effects-during-pregnancy.html> (last updated Apr. 27, 2017).

⁶ MEGAN R. REYNOLDS ET AL., VITAL SIGNS: UPDATE ON THE ZIKA VIRUS-ASSOCIATED BIRTH DEFECTS AND EVALUATION OF ALL U.S. INFANTS WITH CONGENITAL ZIKA VIRUS EXPOSURE-U.S. ZIKA VIRUS PREGNANCY REGISTRY, 2016 (2017), <https://www.cdc.gov/mmwr/volumes/66/wr/mm6613e1.htm>.

⁷ Transcript for CDC Telebriefing, Centers for Disease Control and Prevention, Zika Summit Press Conference, (Apr. 1, 2016), <https://www.cdc.gov/media/releases/2016/t0404-zika-summit.html>; Daniel Chang, *One in 10 Pregnant Women With Zika Had Fetus or Baby with Birth Defects, CDC Says*, MIAMI HERALD, Apr. 4, 2017, <http://www.miamiherald.com/news/health-care/article142594664.html>.

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⁹ Katie Worth, *As Zika Season Nears, States Brace for an End to CDC Funding*, FRONTLINE, Apr. 21, 2017, <http://www.pbs.org/wgbh/frontline/article/as-zika-season-nears-states-brace-for-an-end-to-cdc-funding>.

¹⁰ See e.g., TITILOPE ODUYEBO ET AL., MORBIDITY & MORTALITY WKLY REP., UPDATE: INTERIM GUIDANCE FOR HEALTH CARE PROVIDERS CARING FOR PREGNANT WOMEN WITH POSSIBLE ZIKA VIRUS EXPOSURE-UNITED STATES, 739-744(2016), https://www.cdc.gov/mmwr/volumes/65/wr/mm6529e1.htm?s_cid=mm6529e1_e.

¹¹ KATHY GIFFORD ET AL., THE HENRY J. KAISER FAMILY FOUND., MEDICAID COVERAGE OF PREGNANCY AND PERINATAL BENEFITS: RESULTS FROM A STATE SURVEY, (2017), <http://kff.org/womens-health-policy/report/medicaid-coverage-of-pregnancy-and-perinatal-benefits-results-from-a-state-survey/>.

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¹³ *Zika Virus, Zika Cases in the US*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/zika/geo/united-states.html> (click on “2017” and “2016” for respective case counts in the U.S. and its territories) (last visited June 7, 2017).

¹⁴ For more information on these services, see Appendix: Medicaid Services Related to the Zika Virus.

¹⁵ See KIM LEWIS & MARA YODELMAN, NATIONAL HEALTH LAW PROGRAM, TOP 10 CHANGES TO MEDICAID UNDER HOUSE REPUBLICANS’ ACA REPEAL BILL, 1 (June. 20, 2017) <http://www.healthlaw.org/issues/medicaid/defending-medicaid/top-10-changes-to-medicaid-under-house-republicans-aca-repeal-bill#.WTiwGWgrLIU>.

¹⁶ THE HENRY J. KAISER FAMILY FOUND., PUERTO RICO: MEDICAID, FISCAL ISSUES AND THE ZIKA CHALLENGE, 1 (Sept. 2016) <http://files.kff.org/attachment/Fact-Sheet-Puerto-Rico-Medicaid-Fiscal-Issues-and-the-Zika-Challenge>.

¹⁷ MEDICAID AND CHIP PAYMENT AND ACCESS COMMISSION, MEDICAID AND CHIP IN PUERTO RICO, 3 (May 2017) <https://www.macpac.gov/wp-content/uploads/2016/09/Medicaid-and-CHIP-in-Puerto-Rico.pdf>.

¹⁸ See THE HENRY J. KAISER FAMILY FOUND., *supra* note 16, at 1.

¹⁹ See Letter from Eduardo Bhatia to Donald Sundquist, Chairman, Medicaid Commission (Aug. 17, 2005) (on file with NHeLP-DC); See also THE HENRY J. KAISER FAMILY FOUND., *supra* note 16, at 3.

²⁰ In April, the Centers for Disease Control and Prevention told state health officials that funding for surveillance, prevention, and treatment efforts regarding the Zika virus will most likely run out this summer. See *supra* note 9.

²¹ THE HENRY J. KAISER FAMILY FOUND., DATA NOTE: VARIATION IN PER ENROLLEE MEDICAID SPENDING ACROSS STATES, (Feb. 23, 2017) <http://kff.org/medicaid/issue-brief/data-note-variation-in-per-enrollee-medicaid-spending-across-states/>.

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²³ 42 C.F.R. § 440.210(a)(2)(i)-(ii).

²⁴ See *supra* note 10.

²⁵ In 2010, Medicaid accounted for 75 percent of all public funds spent on contraceptive services and supplies. USHA RANJI ET AL., THE HENRY J. KAISER FAMILY FOUND., MEDICAID AND FAMILY PLANNING: BACKGROUND AND IMPLICATIONS OF THE ACA, 4 (2016), <http://files.kff.org/attachment/issue-brief-medicaid-and-family-planning-background-and-implications-of-the-aca>.

²⁶ 42 U.S.C. § 1396d(a)(4)(C); 42 C.F.R. § 441.20.

²⁷ GUTTMACHER INST. MEDICAID FAMILY PLANNING ELIGIBILITY EXPANSIONS, (June 1, 2017), <https://www.guttmacher.org/state-policy/explore/medicaid-family-planning-eligibility-expansions>.

²⁸ See Center for Medicaid and CHIP Services, Medicaid Benefits Available for the Prevention, Detection and Response to the Zika Virus, Informational Bulletin from Vikki Wachino, Director CMCS, 2-3, (June 1, 2016) (on file with NHeLP-DC).