

California's Medi-Cal "Protection of Choice for Family Planning Act"

By [Amy Chen and Priscilla Huang](#)

Medicaid is the largest source of public funding for family planning services, accounting for 75% of all public funds spent on contraceptive services and supplies. Since 1972, Medicaid enrollees seeking family planning services have enjoyed free choice of provider. This allows Medicaid enrollees to seek services from any Medicaid provider, even if the enrollee is in managed care and their chosen provider is outside of their managed care network.

In 2017, responding to fears that the current administration might try to weaken or dismantle Medicaid's federal freedom of choice in family planning, reproductive health advocates in California sought to codify the provision into state law. California's Protection of Choice for Family Planning Act (SB 743, authored by Senators Ed Hernandez and Connie Leyva) was signed into law by Governor Jerry Brown in October 2017 and went into effect on January 1, 2018. This fact sheet provides an overview of the law's requirements, and a similar state requirement allowing Medi-Cal enrollee—any individual enrolled in California's state Medicaid program—to seek most abortion care services from any qualified Medi-Cal provider.

What does the Protection of Choice for Family Planning Act do?

Free choice of provider in family planning has been a part of the Medicaid program since family planning services and supplies were first added as a Medicaid benefit in 1972. This provision allows Medicaid enrollees to go to their health provider of choice, even if the enrollee is in managed care and their chosen provider is outside of their Medicaid managed care network. Medicaid enrollees are also to be "free from coercion or mental pressure and free to choose the method of family planning to be used."¹

California's Protection of Choice for Family Planning Act is identical to the federal free choice of provider in family planning provision. It allows Medi-Cal managed care enrollees to seek services from any qualified Medi-Cal provider, even if the provider of choice is out of their Medi-Cal managed care network.

California is unique among states in that in addition to the protection of choice for family planning, it also has a similar requirement allowing Medi-Cal enrollees to seek most abortion care services from any qualified Medi-Cal provider without prior authorization

¹ 42 C.F.R. § 441.20.

or a referral, even if the provider of choice is out of their Medi-Cal managed care network.²

What family planning services are covered by Medi-Cal?

Medi-Cal covers oral contraceptives, oral emergency contraceptives, contraceptive patches, vaginal rings, male and female condoms, contraceptive implants, contraceptive injections, intrauterine devices (IUDs), and foams, gels, and creams.³ Medi-Cal managed care plans are required to provide enrollees with up to a 12-month supply of oral contraceptives.⁴ Medi-Cal also covers family planning counseling, vasectomies, tubal ligations, and treatment for complications from family planning procedures.⁵

State and federal laws are designed to expand and ease access to contraception. Federal law prohibits charging managed care enrollees any co-payments, cost-sharing, or any other types of out-of-pocket costs when accessing family planning services and supplies.⁶ California state law prohibits medical management techniques, including prior authorization and step therapy, when providing contraception.⁷

Where can a Medi-Cal enrollee obtain family planning services?

A Medi-Cal enrollee can go to any qualified provider contracted with Medi-Cal to provide family planning services. This includes any Medi-Cal approved institution, agency, pharmacy, individual, or organization. The state cannot deny an enrollee's right to see a provider of her choice unless there is evidence of fraud or criminal action, material non-compliance with relevant requirements, or material issues concerning the fitness of the provider to perform the covered services or appropriately bill for them.

² 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>. For more information about which abortion-related services are covered by Medi-Cal, please see NHeLP and ACCESS, California Abortion Coverage in Medi-Cal and Private Insurance, <https://accesswhj.org/sites/default/files/docs/NHeLP-CAAbortionCoverageFactSheet-Web.pdf>.

³ Cal. Dep't of Health Care Servs., Medi-Cal Provider Manual Ch. Family Planning at pp. 2, 7-12.

⁴ 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>.

⁵ Cal. Dep't of Health Care Servs., Medi-Cal Provider Manual Ch. Family Planning at p. 2.

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

⁷ S.B. 1053, Contraceptive Coverage Equity Act (2014).

Can a Medi-Cal managed care enrollee go to a family planning provider even if that provider is out of the enrollee's Medi-Cal managed care network

Yes, the Protection of Choice for Family Planning Act permits a Medi-Cal managed care enrollee to seek services from the Medi-Cal family planning provider of their choice, even if that provider is out of the enrollee's Medi-Cal managed care network.⁸ Out-of-network family planning providers will be reimbursed by the state at the applicable fee-for-service rate.

If a Medi-Cal managed care enrollee receives their health care from an IPA (independent physician association), does the Protection of Choice for Family Planning Act still apply?

Yes, the Protection of Choice for Family Planning Act applies for Medi-Cal managed care enrollees who are part of an IPA as well. Managed care enrollees who are part of an IPA do not need a referral to see a family planning provider outside of their IPA, and neither can the IPA require such a referral.

Does a Medi-Cal managed care enrollee need a referral to see a family planning provider that is out of the enrollee's managed care network or IPA?

No, a Medi-Cal managed care enrollee does not need to a referral to see a family planning provider that is out of their Medi-Cal managed care network, and a health plan cannot require a referral. Out-of-network family planning providers will be reimbursed by the state at the applicable fee-for-service rate.

How do Medi-Cal enrollees find out about their right to go out-of-network for family planning services?

Federal regulations require managed care plans to inform their plan enrollees of their right to go out-of-network for family planning services.⁹ However, a recent survey from the Kaiser Family Foundation found that health plans typically rely on health providers to educate their members about their health care rights.¹⁰ Medi-Cal enrollees seeking to go out-of-network for their family planning services and supplies may be doing so for confidentiality reasons, or because they are dissatisfied with the services they are receiving from their in-network family planning provider. In some cases, reliance on those in-network providers to inform enrollees of their right to see family planning services out-of-network is insufficient. If a managed care plan is not informing enrollees

⁸ 42 CFR 431.51 (a)(5)

⁹ 42 CFR 438.10 (g)(2)(vii).

¹⁰ Caroline Rosenzweig, Laurie Sobel, Alina Salganicoff, Medicaid Managed Care and the Provision of Family Planning Services, Kaiser Family Foundation, Apr. 27, 2017, available at <https://www.kff.org/womens-health-policy/report/medicaid-managed-care-and-the-provision-of-family-planning-services>.

or if a provider is giving enrollee incorrect information about freedom of choice, contact NHeLP at numbers below.

Where can I find a list of Medi-Cal family planning providers?

Medi-Cal Managed Care Health Care Options has a searchable list of Medi-Cal managed care providers at <https://www.healthcareoptions.dhcs.ca.gov/choose/find-provider>. California Health & Human Services also maintains an online profile of Medi-Cal Fee-for-Service providers that is updated monthly at <https://data.chhs.ca.gov/dataset/profile-of-enrolled-medi-cal-fee-for-service-ffs-providers-as-of-june-1-2017>.

What if a health provider refuses a Medi-Cal enrollee's request for contraception, sterilization, abortion, or some other family planning service?

Under federal law, an individual health care provider can refuse to provide contraception, sterilization, abortion, and other services that violate their moral or religious beliefs. A Medi-Cal enrollee can seek family planning services from another provider either in or out of network for any reason and without a referral, including if their health provider refuses their request for reproductive health services.

What if a managed care plan requires a referral or prior authorization to see a family planning provider who is out-of-network?

Medi-Cal managed care plans are not allowed to require referrals or prior authorizations before their enrollees can see a family planning provider of their choice, even if that provider is out-of-network.¹¹ If a Medi-Cal enrollee encounters such a problem with their managed care plan, please contact Amy Chen or Priscilla Huang at the National Health Law Program at 310-204-6010 or nhelp@healthlaw.org.

¹¹ 42 CFR 438.10 (g)(2)(vii).