



Post-Abortion Contraceptive Coverage in Medicaid

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Medicaid Coverage of Family Planning Services and Supplies (FPSS)

Medicaid is critical for the reproductive and sexual health care of people with low incomes; it is the single largest source of public funding for family planning services and supplies.¹ The Centers for Medicare & Medicaid Services (CMS) has established that states must cover a broad range of family planning services sufficient to give beneficiaries meaningful choices to this type of care.² CMS has also recommended that states cover all FDA-approved contraceptive methods.³

But what happens when a pregnant person needs FPSS during an abortion visit?

The Hyde Amendment (an annual federal appropriations rider) prohibits the use of federal funds to pay for abortion, except to save the life of the pregnant individual or in instances of rape or incest.⁴ Yet federal reimbursement is allowed for certain services, tests, and procedures that are provided to a pregnant person whether or not that person seeks abortion services. As explained below, the extent of coverage depends on whether the State Medicaid

¹ See Adam Sonfield, Guttmacher Inst., *The Central Role of Medicaid in the Nation's Family Planning Effort*, 15 GUTTMACHER POL'Y REVIEW 2 (Spring 2012), <http://www.guttmacher.org/pubs/gpr/15/2/gpr150207.pdf> .

² See Ctrs. for Medicare & Medicaid Serv., Dear State Health Official (June 14, 2016) (#16-008) at 3, <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16008.pdf>.

³ *Id.*

⁴ Dept. of Defense & Labor, Health & Human Serv., & Education Appropriations Act of 2019 and Continuing Appropriations Act of 2019, Pub. L. No. 115-245, 132 Stat. 2981, 3118, §§ 506-07 (2018).

Plan covers these ancillary services and whether these services are affiliated with the non-covered abortion.⁵

The CMS State Medicaid Manual provides informational and procedural material needed by the States to administer the Medicaid program.⁶ The Manual explicitly lists the abortion-related services for which federal funding is not available:

- physician/surgical charges for performing the abortion including pre- and post-operative care and visits related to performing the abortion;
- hospital or clinic charges associated with the abortion including the facility fee for any potential use of an operating room, supplies and drugs necessary to perform the abortion and charges associated with routine, uncomplicated pre- and post-operative visits by the patient;
- physician charges for administering the anesthesia necessary to induce or perform an abortion;
- drug charges for medication usually provided to or prescribed for the patient who undergoes an uncomplicated abortion (including routinely-provided oral analgesics and antibiotics to prevent septic complication of abortion and Rho-GAM); and
- charges for histo-pathological laboratory tests performed routinely on the extracted fetus or abortion contents.⁷

The preceding services may be covered by the states, but they cannot be covered with federal Medicaid funds.

In addition, the CMS State Medicaid Manual identifies the services that must be available to pregnant individuals “regardless of whether [they were] seeking an abortion,” including:

- pregnancy tests that would have been performed whether or not the individual was seeking an abortion;

⁵ Ctrs. for Medicare & Medicaid Serv., STATE MEDICAID MANUAL § 4432(B), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927>.

⁶ *Id.* FOREWORD, 1.

⁷ *Id.* § 4432(B).

- tests to identify sexually transmitted infections (such as [but not exclusively] chlamydia, gonorrhea, and syphilis);
- laboratory tests routinely performed on a pregnant patient, such as pregnancy tests, pap smears, and urinalysis; and
- family planning.⁸

Any pregnant person, regardless of whether they continue or terminate their pregnancy, can receive contraceptive services because they are part of the definition of pregnancy-related services and not related to abortions.

Lastly, the CMS State Medicaid Manual states that Medicaid providers must distinguish between different services, some of which can be paid for by Medicaid and some which cannot, if they occur in a single visit. It establishes, “When multiple procedures are performed during a single hospital stay or clinic visit, you must distinguish between costs attributable to an abortion or other procedure matched at the [Federal Medical Assistance Percentage], and those attributable to a family planning service.”⁹ Therefore, it is clear that a family planning service, such as contraceptive counseling or device insertion, can be covered by Medicaid when performed during a single hospital or clinic visit if the services are distinguished.

Still, receiving appropriate reimbursement and payment for these services during an abortion visit can be challenging. Payers may have policies that deny or lower reimbursement for an additional procedure provided on the same day as an abortion.¹⁰ For this reason, advocates nationwide have worked with their states to improve Medicaid coverage for same-day, post-abortion contraceptive services. These efforts typically amend the State Plan Amendment to unbundle payment for certain providers and facilities, including hospitals, freestanding clinics, and ambulatory surgical centers.

⁸ *Id.*

⁹ *Id.* § 4432(B)(3). The Federal Medical Assistance Percentage, or FMAP, is the reimbursement rate each state receives to cover the federal government’s share of the state’s Medicaid program costs. The FMAP varies between 50 and 77 percent for Medicaid costs generally, but is 90 percent for Medicaid family planning services and supplies. *See* 42 U.S.C. § 1396b(a)(5).

¹⁰ *See* U. of Cal. San Francisco. *Immediate post-abortion*, <https://larcprogram.ucsf.edu/immediate-post-abortion> (last visited Mar.16, 2021).

State Examples¹¹

A few states explicitly cover contraceptive services at the same time as abortion services.

New York

In 2013, the New York State Department of Health submitted two Medicaid state plan amendments to CMS to pay for same-day, immediate post-abortion Long Acting Reversible Contraceptives (LARC) administration in freestanding clinics, ambulatory surgical centers, and outpatient hospital services. CMS approved these changes in 2017.¹²

North Carolina

CMS approved a State Plan Amendment to add diagnosis related groups (DRGs), a system of classification for hospital inpatient services, for LARC payment.¹³ The added specifications, which went into effect October 2018, include codes for LARC after abortion, caesarian delivery, vaginal delivery, and ectopic pregnancy.¹⁴

¹¹ While LARCs are highly effective contraceptive methods, we acknowledge the global history of coercive practices related to contraception. Black, Indigenous, and other people of color as well as people with disabilities have been particularly targeted in these practices, which we unequivocally denounce.

¹² See Ctrs. for Medicare & Medicaid Serv., State Plan Amendment - N.Y. (SPA) #:13-0039 (Nov. 19, 2017), https://www.health.ny.gov/regulations/state_plans/status/non-inst/approved/docs/app_2017-11-29_spa_13-39.pdf; State Plan Amendment - N.Y. (SPA) #:13-0044 (Sept. 1, 2017), https://www.health.ny.gov/regulations/state_plans/status/non-inst/approved/docs/app_2017-09-01_spa_13-44.pdf.

¹³ See Ctrs. for Medicare & Medicaid Serv., State Plan Amendment - N.C. (SPA) #:17-0010 (Nov. 15, 2017), <https://www.medicaid.gov/sites/default/files/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/NC/NC-17-0010.pdf>.

¹⁴ See N.C. Medicaid Div. of Health Benefits, N.C. Medical Bulletin (Oct. 2018), <https://files.nc.gov/ncdma/documents/files/Medicaid-Bulletin-2018-10.pdf>; Clarification on Billing for Long Acting Reversible Contraceptives (LARCs) (Jan. 24, 2019), <https://medicaid.ncdhhs.gov/blog/2019/01/24/clarification-billing-long-acting-reversible-contraceptives-larcs> (last visited Mar. 16, 2021).

Oregon

The state has a quasi-governmental body called the Health Evidence Review Commission (HERC), which makes recommendations for priority health services to guide the legislature's Medicaid funding decisions.¹⁵ In November 2016, HERC strongly recommended Medicaid coverage of LARC in all settings, including immediate post-abortion.¹⁶ These changes took effect on January 1, 2017. This coverage was later extended to enrollees in the state's section 1115 demonstration program after CMS approval, effective January 1, 2018.¹⁷ It was also extended to post-abortion LARC in ambulatory surgical centers.¹⁸]

Conclusion

Family planning services and supplies is a mandatory Medicaid service. Nothing in federal law prohibits Medicaid coverage for non-abortion services like contraception that are provided during an abortion visit, so long as such services are not "directly related" to the ineligible abortion. While the law is clear, the primary challenge for obtaining reimbursement arises from policies instituted at the state and payer levels. State Medicaid programs can take steps to facilitate payment for all family planning services, including those provided immediately post-abortion, by modifying coding requirements, issuing provider bulletins, and leveraging hospital quality improvement initiatives.

¹⁵ See Or. Health Authority, Health Evidence Review Commission, <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/About.aspx> (last visited Mar. 16, 2021).

¹⁶ See Or. Health Authority, Oregon Health Plan Prioritized List Changes - Timing of Long-Acting Reversible Contraceptive (LARC) Placement, <https://www.oregon.gov/oha/HPA/DSI-HERC/EvidenceBasedReports/Prioritized-List-LARC.pdf> (last visited Mar. 16, 2021).

¹⁷ See Ctrs. for Medicare & Medicaid Serv., Oregon Health Plan Demonstration (Project Numbers: 21-W00013/10 & 11-W00160/10 (Dec. 6, 2017), <https://www.medicare.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/or/Health-Plan/or-health-plan2-appvl-prioritization-list-12062017.pdf>.

¹⁸ See Or. Health Authority, Updates about claim processing, policy and resources for Oregon Health Plan providers (Nov. 30, 2018), <https://content.govdelivery.com/accounts/ORDHS/bulletins/21f4ce6> (last visited Mar. 16, 2021).