



An Advocate's Guide to Medi-Cal Services

December 2022

Chapter VI: Reproductive and Sexual Health Services

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Outline of Medi-Cal Reproductive and Sexual Health Services*

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*This is a non-exhaustive list of services. It may not include all available services.

Medi-Cal is critical to the reproductive and sexual health of all Californians. Under federal law, all states must offer coverage to certain low-income populations, including pregnant people and parents. In the 39 states like California that have expanded Medicaid under the Affordable Care Act, most previously uninsured, low-income individuals now have access to full Medicaid benefits.¹ Medi-Cal therefore plays a major role in the financing of reproductive and sexual health care services for millions of low-income people and other individuals in California.

This chapter focuses on the range of reproductive and sexual health services available to Medi-Cal beneficiaries. It highlights services such as contraception and family planning, pregnancy care, and abortion.

A. Family Planning and Family Planning-Related Services

While the Medicaid Act does not define “family planning services and supplies,” CMS provides guidance on the types of family planning services and supplies that are covered.² This guidance describes “family planning-related services” as medical, diagnosis, and treatment services “pursuant to” a family planning visit such as screening and treatment for cervical and breast cancer, and sexual health counseling.³

1. Access to Family Planning Services and Supplies

Since 1972, the Social Security Act has required all states to cover family planning services and supplies without co-payments or cost sharing for beneficiaries of childbearing age (including sexually active minors).⁴ To promote access to family planning services and supplies, beneficiaries are entitled to receive family planning services and supplies from any qualified Medicaid provider.⁵ In the case of a Medicaid beneficiary receiving services from a Medi-Cal managed care plan (MCP), this means the beneficiary can obtain family planning services from a particular provider even if the provider is out-of-network.⁶ This protection is known as “freedom of choice” in family planning. California codified this requirement through the Protection of Choice for Family Planning Act (SB 743), which went into effect on January 1, 2018. SB 743 provides the same protection as the federal family planning freedom of choice provision, allowing Medi-Cal beneficiaries to seek services from any qualified Medi-Cal provider, even if the provider of choice is out of their Medi-Cal managed care network.⁷

Managed care plans must also guarantee direct access to a “women’s health specialist” and must ensure that family planning providers are available in network.⁸

Individuals covered under another person’s health plan—such as a parent’s or spouse’s—may also seek contraceptive services, abortions, and other “sensitive services” confidentially without notifying or involving a parent or spouse.⁹ Medi-Cal sensitive services include services related to STIs, pregnancy, family planning, abortions, HIV, sexual assault and rape, and other minor

ADVOCACY TIP:

- ✓ Barriers to care and confusion about state and federal requirements continue to prevent some Medi-Cal beneficiaries from accessing the family planning services and supplies that they need. In the Medi-Cal managed care context, NHeLP has a [Medi-Cal Managed Care Toolkit for Accessing Family Planning Services and Abortion Care](#) with background information on federal and state law, as well as tools for advocates and clinics to use in their work.

consent services.¹⁰ The individual requesting confidential services must submit a Confidential Communication Request to their Medi-Cal managed care plan or medical provider, and the request must be implemented within seven days of receipt of an electronic or telephone request and 14 days of receipt of a request sent by mail.¹¹

2. Patient Visits and Counseling Services

Medi-Cal covers family planning patient visits and counseling without cost-sharing as part of the family planning benefit. Counseling services may include contraceptive counseling and instruction in pregnancy prevention. Through these visits, individuals can obtain contraceptives, prescriptions for contraceptives, and/or advice about contraception.¹²

3. Contraceptives

California's Medi-Cal program provides robust contraceptive coverage. Contraceptives are designed to prevent pregnancy and also may be used to treat other medical conditions. Medi-Cal covers all types of Food and Drug Administration (FDA)-approved birth control methods, such as oral contraceptives or "the pill"; transdermal patch hormonal contraceptive devices; injectable contraceptives; vaginal rings; diaphragms; foam, gel, jelly, and cream; male and female condoms; long-acting reversible contraceptives (LARCs) including intrauterine contraception (commonly known as IUDs) and implantable subdermal contraceptives; and emergency contraception.¹³

Emergency contraception (EC) pills often referred to as "Plan B" and is a method of pregnancy prevention. Instead of taking it before intercourse like with other oral contraception, emergency contraception is taken after sexual intercourse. EC does not cause an abortion and is not the same as the "abortion pill."

Physicians, physician assistants, certified nurse midwives, nurse practitioners, registered nurses, and pharmacists are all authorized to dispense contraceptives in California.¹⁴ Medi-Cal MCPs must cover up to a 12-month supply of FDA approved, self-administered contraceptives, consistent with a provider's prescription. The MCP may not impose utilization controls that limit the supply of FDA approved, self-administered hormonal contraceptives dispensed or furnished by a provider, pharmacist or other authorized location that is less than a 12-month supply.¹⁵ In addition, the MCP must not impose utilization controls, such as prior authorizations and step therapy that are more restrictive than those used under fee-for-service.¹⁶

Medi-Cal requires a prescription before it will cover contraceptive supplies that are available over-the-counter (OTC) such as emergency contraception pills (also known as "Plan B"), male condoms, interior (or "female") condoms, spermicides,

and sponges.¹⁷ Medi-Cal also imposes quantity limits for OTC contraceptives. For example, beneficiaries are allowed up to one pack of emergency contraception per month.¹⁸

4. Sexually Transmitted Infections

Medi-Cal covers both the testing and treatment of sexually transmitted infections (STIs) including but not limited to chlamydia, human papillomavirus (HPV), gonorrhea, genital herpes, and syphilis, as a family planning-related service.¹⁹ The treatment or diagnostic tests for the management of urinary tract infections (UTIs) is also covered when provided as part of, or as a follow-up to, a family planning visit where the UTI was identified or diagnosed.²⁰

Children and young adults up to age 21 who are enrolled in Medi-Cal can also receive STI and other preventive screenings as an Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) benefit. See section E of this chapter for additional information.

5. Sterilization

Medi-Cal provides coverage for sterilization services, or any medical treatment, procedure, or operation for the purpose of rendering an individual permanently incapable of reproducing. Medi-Cal covers vasectomies, tubal ligations, as well as treatment for complications resulting from previous family planning procedures.²¹ Medi-Cal will cover a hysterectomy as a treatment option for a medical issue, however it is not covered as a sterilization procedure.²²

Coverage of sterilization is subject to stringent state and federal legal requirements that limit both who may be sterilized and establishes stringent informed consent procedures.²³ Historically, women of color, low-income women, and people with developmental disabilities have been subjected to forced sterilization throughout the United States, including in California. To protect against coercion, federal law prohibits the expenditure of federal Medicaid funds on sterilizations for individuals who are younger than 21 years of age or those who are mentally incompetent.²⁴ State law prohibits the performance of sterilization on anyone who is institutionalized, which includes those residing in prison and those who have been admitted to a hospital or psychiatric health facility due to a mental health diagnosis (even if voluntarily committed to such hospital facility).²⁵ In addition, a person who is in labor, has given birth or had an abortion within the past 24 hours, is seeking to obtain or obtaining an abortion, or is under the influence of alcohol or another substance cannot consent to sterilization.²⁶

Federal and state regulations allow for coverage of a sterilization only if the beneficiary has provided informed consent at least 30 days before the procedure is performed. In order for consent to be informed, the individual

obtaining the consent must first offer to answer any questions the patient may have concerning the procedure. The individual must also provide the beneficiary with certain information, such as a description of alternative methods of family planning and a thorough explanation of the specific procedure to be performed, as well as a copy of the consent form and a booklet on sterilization prepared by the California Department of Health Care Services (DHCS).²⁷ The information must be effectively communicated in order to overcome any language or communication barrier.²⁸ If a doctor fails to comply with these requirements, they will not receive payment from DHCS, and will be reported to the Medical Board of California.²⁹

The consent form itself also must include that the person securing the consent certifies that they believed that the individual to be sterilized appeared mentally competent and voluntarily consents to the sterilization.³⁰ Consistent with federal law, Medi-Cal imposes a 30-day waiting period between the time an individual signs a consent form for sterilization and the time when the procedure may be performed.³¹

There are two exceptions to this time frame. Voluntary sterilization may be performed at the time of emergency abdominal surgery if the written informed consent to be sterilized was given at least 30 days before the individual intended to be sterilized and at least 72 hours have passed after written informed consent to be sterilized was given.³² In the case of premature delivery, a sterilization can be performed if written informed consent was given at least 30 days before the expected due date and at least 72 hours have passed after written informed consent to be sterilized was given.³³

6. Other services

Medi-Cal beneficiaries may also obtain coverage of laboratory exams and tests associated with family planning procedures (e.g., as a result of bleeding while taking oral contraceptives) for beneficiaries.³⁴ Pregnancy tests are also covered under Medi-Cal.³⁵

B. Abortion Services

The Hyde Amendment, which has been added to the annual appropriations measure for the federal Department of Health and Human Services (HHS) since 1976, prohibits the use of federal Medicaid funds to cover abortions except when necessary to save the life of a pregnant person or in pregnancies resulting from rape or incest.³⁶ Federal law mandates that state Medicaid programs cover the 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, and therefore Medi-Cal pays for such services using state-

only dollars.³⁷ Additionally, in November 2022, California voters passed Proposition 1, the Constitutional Right to Reproductive Freedom, which amends the California Constitution to explicitly grant individual reproductive freedom, including the fundamental right to choose to have an abortion, and the fundamental right to choose or refuse contraceptives.³⁸

Medi-Cal covers abortion services regardless of the gestational age of the fetus. California prohibits health plans, including Medi-Cal MCPs, from requiring medical justification or prior authorization for abortion services. The only exception is that prior authorization is permitted for non-emergency inpatient abortions.³⁹ Health plans must ensure that beneficiaries have timely access to abortion services, and “implement and maintain procedures that ensure confidentiality and access to these sensitive services,” including for teenagers.⁴⁰ Unlike some states, there is no requirement that a Medi-Cal beneficiary wait a certain period of time before obtaining an abortion or that the recipient involve a parent or guardian.⁴¹ To ensure timely care, abortions are covered under the presumptive eligibility program, discussed in more detail below.

ADVOCACY TIP:

- ✓ In the fall 2022, the State of California launched abortion.ca.gov, a website to provide information about abortion to people both inside and outside of California. The website includes information about the legal right to abortion in California, tools to help find an abortion provider, and other support resources such as how to pay for an abortion and how to find health and wellness supports. The website is currently available in English, Spanish, Korean, Tagalog, Vietnamese, and Chinese (simplified and traditional characters).

Abortion services are not subject to cost sharing, and Medi-Cal beneficiaries can obtain abortion services from any qualified Medi-Cal provider (e.g., an OB/GYN) willing to provide such services, including out-of-network providers in the case of Medi-Cal beneficiaries enrolled in managed care. This protection allows individuals to see any Medi-Cal provider without a referral from a primary care provider or approval from a health plan.⁴²

Medi-Cal covers other services and supplies incidental or preliminary to an abortion, including office visits, laboratory exams, ultrasounds, urine pregnancy tests, and patient education.⁴³ Following an abortion, Medi-Cal provides coverage of patient education and follow-up. In the case of a medication abortion, Medi-Cal covers a post-abortion ultrasound to confirm a complete abortion without complications.⁴⁴

Where a Medi-Cal provider objects to performing an abortion because of moral, ethical, or religious objections, that provider must file a written

statement beforehand, and the medical institution must provide another provider to that patient. The burden is not on the Medi-Cal MCP to find a replacement provider.

C. Pregnancy Services

1. Pregnancy Services Overview – Prenatal, Labor/Delivery, Postpartum Care

Medi-Cal provides full-scope coverage at no cost to pregnant people with incomes up to 213% of the federal poverty level (FPL).⁴⁵ As of April 1, 2022, the Medi-Cal postpartum coverage period now lasts for 12 months following the end of the pregnancy. The Medi-Cal coverage continues during this 12-month period regardless of citizenship or immigration status, and regardless of changes in income during that time. The postpartum coverage begins on the last day of the pregnancy and ends on the last day of the month in which the 365th day following the pregnancy falls.⁴⁶

Pregnant people may choose to receive their prenatal care, labor and delivery, and postpartum care in a hospital setting from an OB/GYN, or to access certified nurse midwife services, as well as freestanding birth centers.⁴⁷ These freestanding birthing centers, or specialty clinics, also provide comprehensive perinatal, obstetrical, and delivery services.⁴⁸ Beginning on January 1, 2023, Medi-Cal beneficiaries will have access to full spectrum doula care during and after their pregnancies.⁴⁹

Adolescents can receive pregnancy testing, prenatal care, and labor and delivery services, among other services, without permission or notifying a parent or guardian.⁵⁰ Pregnant adolescents—individuals who are under the age of 18 years old— may face a different set of challenges when seeking health care services as compared to adults who become pregnant. Some adolescents and young people have difficulty finding a provider, encounter provider stigma, and/or are unaware of the confidentiality protections in Medi-Cal.

Medi-Cal offers prenatal services such as prescribed medication, laboratory services, radiology, and dental services.⁵¹ Other pregnancy-related services covered by Medi-Cal during pregnancy include home blood glucose monitors for patients with diabetes, genetic counseling, tobacco cessation services, mental health services, and substance use disorder services.⁵² Medi-Cal covers both vaginal and caesarian deliveries. Delivery includes hospital admission, patient history, physical examination, management of labor, hospital discharge, and all applicable postoperative care. After a baby is born, the parent, guardian or a provider that has obtained written consent may establish Medi-Cal eligibility for the child by completing the Newborn Referral Form and sending it to the county of residence.⁵³

Postpartum services, or services provided after childbirth, child delivery, or a miscarriage, include hospital and scheduled office visits, assessment of uterine involution, and contraceptive counseling.⁵⁴ Unlike some other states' Medicaid programs, Medi-Cal covers the purchase or rental of lactation aids, including manual or electronic breast pumps. For babies up to one year of age with impaired sucking abilities due to conditions such as cleft lip, Medi-Cal covers Haberman Feeders, or specialty bottles that assist with feeding.⁵⁵

2. Doula Services During and After Pregnancy

Doula services was included as a Medi-Cal benefit in the state budget for the first time in 2021.⁵⁶ The Medi-Cal reimbursement rates for the doula services was also established in the state budget.⁵⁷

Doulas provide non-medical support for pregnant people during the prenatal, labor and delivery, and postpartum period. Doula services include health education, advocacy, and a range of supports including physical and emotional support before, during, and after the end of pregnancy. These services can assist in preventing perinatal complications and improve health outcomes overall, as well as improving feelings of satisfaction with the birth experience. In addition to emotional and physical support, doulas can also offer health navigation, education, birth planning, lactation support, and connections with community-based resources.⁵⁸ Doula services are provided as preventive services in both Medi-Cal managed care and fee-for-service. Additionally, the doula benefit covers full-spectrum doula care, which includes care for all ways in which a pregnancy ends, including abortion or miscarriage.⁵⁹

Under the new Medi-Cal benefit, pregnant and postpartum Medi-Cal beneficiaries can receive eleven visits during the perinatal period, excluding labor and delivery which are covered separately. Of the eleven visits, the initial visit is expected to be longer, and up to two of the postpartum visits can be extended visits of three hours. Visits can take place at a variety of locations including the beneficiary's home, at an office visit, in an alternative birthing center, or through telehealth. To access this benefit and to receive approval for additional visits, pregnant people will need a recommendation to doula care services from a physician or other licensed Medi-Cal provider.⁶⁰

The CA Department of Health Care Services submitted a State Plan Amendment for approval to the Center for Medicare and Medicaid Services on November 7, 2022.⁶¹ Additional details around implementation of the benefit were still being worked out at the time of this manual's publication. The benefit is scheduled to begin on January 1, 2023.

3. Comprehensive Perinatal Services Program

Medi-Cal also covers perinatal services under the Comprehensive Perinatal Services Program (CPSP) during pregnancy and through 60 days postpartum.⁶² Services under CPSP include nutrition services, health education, and care coordination.

To receive these services, the beneficiary must first undergo assessments conducted by their provider.⁶³ Following the nutrition assessment, a pregnant person may receive nutrition services such as prenatal vitamins or interventions that emphasize the importance of maintaining good nutrition during pregnancy and lactation. Health education interventions are provided to assist the pregnant person in making appropriate, well-informed decisions about pregnancy, delivery, and parenting. Psychosocial interventions are directed toward helping the pregnant person understand and deal effectively with the biological, emotional, and social stresses of pregnancy.

Beneficiaries who receive CPSP services may receive referrals for additional services when appropriate, such as resources to address food insecurity, economic security, housing needs, child care, and other issues.⁶⁴

D. Reproductive and Sexual Health Care in Early and Periodic Screening, Diagnostic, and Treatment Services

The Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit provides comprehensive health care services for children and youth under 21 years old who are enrolled in Medi-Cal.⁶⁵ EPSDT entitles those eligible to receive medical, vision, hearing, and dental screening at pre-set periodic intervals and when needed to determine whether a health issue or condition exists.⁶⁶

The EPSDT medical screening is especially important for young people. Medi-Cal covers services as recommended by the “Bright Futures”/American Academy of Pediatrics periodicity schedule.⁶⁷ Bright Futures recommends providers deliver reproductive and sexual health services including STI screenings, HPV vaccines, pregnancy testing, HIV testing, family planning, and sexuality education and counseling.⁶⁸ Bright Futures also recommends that physicians provide “confidential, culturally sensitive and nonjudgmental” sexuality education and counseling to children, adolescents, and their caretakers, and that the entire clinical environment create an atmosphere where the discussion of sexual health is comfortable, regardless of social status, gender, disability, religious beliefs, sexual orientation, ethnic background, or country of origin.⁶⁹ The comprehensive health and developmental history assessment should also include a discussion of sexuality, healthy relationships, and sexual health.⁷⁰

E. Assisted Reproductive Services

The Medicaid Act explicitly allows states to exclude fertility drugs from plan coverage.⁷¹ Accordingly, assisted reproductive services intended to promote childbearing are generally not included as Medicaid family planning services.

Medi-Cal covers a very limited range of assisted reproductive services. Diagnosis and treatment for infertility are generally not covered.

F. Additional Coverage Categories for Reproductive and Sexual Health Services

A Medi-Cal beneficiary can access the reproductive and sexual health services described above if the beneficiary has full-scope Medi-Cal. However, there are several programs that provide access to reproductive and sexual health services for individuals who have not qualified for full-scope Medi-Cal.

1. Family Planning, Access, Care, and Treatment (Family PACT)

The Family PACT Program covers family planning services and family planning-related services for individuals who have a gross family income at or below 200% of the FPL, have no other source of health care coverage for family planning services, and reside in California.⁷² Family PACT covers contraception, emergency contraception, sterilization, health education and counseling, physical exams, pregnancy testing, sexually transmitted infection testing and treatment, cancer screening, and HIV screening.⁷³ As of July 1, 2022, Family PACT covers the HPV-9 vaccine as a clinic benefit.⁷⁴ Family PACT does not cover prenatal services, labor and delivery, or abortion.⁷⁵ Family PACT is a limited scope Medi-Cal program, but a component of Family PACT is funded solely by state funds, and therefore individuals qualify for Family PACT services regardless of their immigration status.⁷⁶

2. Minor Consent Medi-Cal

The Medi-Cal Minor Consent program is a source of reproductive and sexual health coverage for minors. The program covers certain services for which a minor can legally provide consent. The minimum age requirement for consent varies depending on the service. Minors of any age including children under 12 may consent for pregnancy and pregnancy-related care, family planning services including contraception and abortion, and sexual assault services.⁷⁷ Minors age 12 and older can also consent for STI screenings and treatment, services to treat substance use disorders, and outpatient mental health services.⁷⁸

The program provides temporary coverage and must be renewed monthly for services except pregnancy. Beneficiaries are permitted to apply or renew by telephone or in-person, and counties must accept telephonically recorded, electronic signatures and/or handwritten signatures.⁷⁹

A person must be under age 21 and living with a parent or guardian in order to enroll in Minor Consent Medi-Cal (a minor who is temporarily living at school or college is considered to be living at home).⁸⁰ Eligibility is determined on the basis of the minor's income and resources, not the income and resources of the minor's parent(s) or guardian(s).⁸¹ Minors do not have to provide any identification when they apply, and eligibility workers are prohibited from requiring documents related to immigration status when assessing eligibility for the program. However, if the minor is employed, then they must provide pay stubs to verify income.⁸² Services provided under the program are confidential, therefore providers are not allowed to contact parents or guardians about the minor's receipt of these services.⁸³

3. Medi-Cal Access Program

The Medi-Cal Access Program (MCAP) – formerly known as the Access for Infants and Mothers Program – provides comprehensive Medi-Cal services for individuals during their pregnancy and their postpartum period, including labor and delivery. Individuals who qualify for the program are entitled to Medi-Cal services such as maternity care, family planning physician services, hospital services, prescription drugs, medical transportation, durable medical equipment, mental health care, substance use disorder treatment, among other categories of benefits.⁸⁴ They are also eligible for doula services when the benefit is covered by Medi-Cal. Beneficiaries receive all services without cost sharing, but they are required to pay a fee for coverage equal to 1.5% of their annual income; such fee can be paid all at once or via monthly payments.⁸⁵ Although called a Medi-Cal program, MCAP is funded with dollars from the Children's Health Insurance Program (CHIP).⁸⁶

In order to qualify for MCAP, a person must be pregnant or in their post-partum period, a California resident, not covered by other health insurance, and have income between 213% and 322% of the federal poverty level.⁸⁷ Individuals can qualify for MCAP regardless of their immigration status. Effective April 1, 2022, MCAP coverage will continue for 12 months following the end of the pregnancy, regardless of any changes in income during that time.⁸⁸

4. Presumptive Eligibility for Pregnant Women

The presumptive eligibility program is a means by which pregnant individuals can obtain temporary Medi-Cal coverage prior to submitting an application for Medi-Cal coverage. Under the program, women who are pregnant or believe they are pregnant can visit a provider that participates in the program and provide information on their income; if the provider determines their income is low enough to qualify for Medi-Cal then coverage begins immediately and services can be provided on the same day.⁸⁹ Only outpatient prenatal services – including abortions – and prescription drugs are covered.⁹⁰ Labor and delivery and family planning services are not covered. Moreover, coverage is temporary,

expiring by the last day of the month following the month in which the individual obtained coverage of the presumptive eligibility program (i.e., coverage can be for two months at most).⁹¹ Thus, women who are found eligible for the program should submit a full Medi-Cal application to ensure they continue to receive coverage after the temporary coverage period expires.

G. Breast and Cervical Cancer Screening and Treatment Programs

Cervical and breast cancer screenings are covered as a family planning-related benefit for Medi-Cal beneficiaries. Uninsured and underinsured individuals regardless of gender with incomes below 200% of the federal poverty level may also be eligible for free screenings and diagnostic services through the Every Woman Counts program.⁹² Family PACT also provides free and confidential breast and cervical cancer screenings.

Full-scope Medi-Cal provides treatment to beneficiaries diagnosed with breast and/or cervical cancer, among other forms of cancer. A California resident who has breast or cervical cancer may be eligible for Medi-Cal coverage even if the person would not otherwise qualify for Medi-Cal. There are two separate Breast and Cervical Cancer Treatment Programs (BCCTPs).

Under the federal BCCTP, an individual is entitled to full-scope of Medi-Cal services, including breast and cervical cancer treatment if the individual (1) is uninsured; (2) resides in California; (3) has an income at or below 200% of the federal poverty level; (4) has a need for breast or cervical cancer treatment; (5) is a U.S. citizen or an alien with satisfactory immigration status; and (6) is under the age of 65. Both women and men can receive coverage under the program if they have breast cancer. An individual enrolled in the federal BCCTP program is entitled to Medi-Cal coverage so long as that individual continues to receive cancer treatment and meets the other eligibility criteria for coverage.⁹³

Individuals who do not otherwise qualify for federal BCCTP can still receive Medi-Cal coverage under the state-only BCCTP. Many of the eligibility requirements that apply to the federal BCCTP also apply to state-only BCCTP, but the programs differ in that individual over 65 years of age, undocumented immigrants, and those with health insurance can qualify for the state-only BCCTP. Unlike the federal program, the state-only BCCTP covers only breast and cervical cancer treatment, services related to such treatment, and reimbursement of insurance premiums under certain circumstances. Moreover, the state-only BCCTP is time limited. It covers breast cancer treatment services for up to 18 months, and cervical cancer treatment services for up to 24 months, although the coverage period can be extended if cancer reoccurs.⁹⁴

H. Reproductive and Sexual Health for Dual Eligibles

Dual-eligible individuals of reproductive age – those who qualify for coverage under both the Medicare and Medicaid programs due to disability or chronic illness – often face barriers to receiving the sexual and reproductive health care they need.

Medicare does not include comprehensive coverage of contraception or abortion. For example, Medicare covers abortions, but only in the case of rape, incest, or life-threatening circumstances to the pregnant woman.⁹⁵ Medi-Cal (Medicaid) is the payer of last resort, and therefore claims for dual eligibles beneficiaries must first be submitted to Medicare to obtain a denial before billing Medi-Cal, unless the health care services are not covered by Medicare.⁹⁶ Obtaining a coverage denial may be difficult as many reproductive health providers are not Medicare providers. In addition, some providers may be unwilling to go through the burden of submitting multiple claims. A dual eligible individual seeking coverage of an abortion must find a provider enrolled in both Medicare and Medi-Cal who will first submit a claim to Medicare and then follow with a claim to Medi-Cal once the Medicare denial has been received.

Moreover, while Medicaid beneficiaries have access to extensive family planning services and supplies, Medicare generally only covers contraception for non-contraceptive purposes. However, the Centers for Medicare and Medicaid Services (CMS) recently clarified that since Medicare does not pay for LARCS, a provider seeing dually-eligible patients does not need to obtain a Medicare denial. Instead, the provider can directly submit a claim to Medicaid.⁹⁷

Endnotes

- ¹ Kaiser Fam. Found., Status of State Action on the Medicaid Expansion Decision, <https://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act> (last visited Nov. 22, 2022).
- ² CMS, Dear State Health Official Letter 3 (June 14, 2016) (SHO # 16-008), <https://www.medicaid.gov/federal-policy-guidance/downloads/sho16008.pdf> [hereinafter SHO # 16-008].
- ³ See CMS, Dear State Medicaid Director Letter (April 16, 2014) (SMD # 14-003), <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-003.pdf> (clarifying the scope of family planning and family planning related services).
- ⁴ 42 U.S.C. § 1396o(a)(2)(D).
- ⁵ 42 U.S.C. § 1396a(a)(23).
- ⁶ 42 U.S.C. § 1396a(a)(23)(B); 42 C.F.R. § 431.51(b)(2).
- ⁷ CAL. WELF. & INST. CODE § 14132.07; see also Amy Chen & Priscilla Huang, Nat'l Health Law Prog., *California's Medi-Cal "Protection of Choice for Family Planning Act"* (2018), <https://healthlaw.org/resource/fact-sheet-californias-medi-cal-protection-of-choice-for-family-planning-act/>.
- ⁸ 42 C.F.R. § 438.206(b)(2).
- ⁹ 2013 Cal. Stat. ch. 444 (S.B. 138).
- ¹⁰ CAL. FAM. CODE §§ 6924, 6925, 6926, 6927, 6928, and 6929; CAL. HEALTH & SAFETY CODE §§ 121020, 124260.
- ¹¹ CAL. CIV. CODE § 56.107(5).
- ¹² Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Family Planning 2*, 6 (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/famplanning.pdf> [hereinafter *Medi-Cal Provider Manual, Family Planning*].
- ¹³ *Id.* at 9-12.
- ¹⁴ Cal. Dep't Health Care Servs., All Plan Letter 18-019 at 2 (Nov. 21, 2018), <https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2018/APL18-019.pdf> [hereinafter All Plan Letter 18-019].
- ¹⁵ CAL. HEALTH & SAFETY CODE § 1367.25(d)(4).
- ¹⁶ CAL. HEALTH & SAFETY CODE § 1367.25(d); CAL. WELF. & INST. CODE § 14000.01; see also All Plan Letter 18-019, *supra* note 14, at 2.
- ¹⁷ Kaiser Fam. Found., *Medicaid Coverage of Family Planning Benefits: Findings from a 2021 State Survey* (Feb. 17, 2022), <https://www.kff.org/report-section/medicaid-coverage-of-family-planning-benefits-findings-from-a-2021-state-survey->.
- ¹⁸ *Medi-Cal Provider Manual, Family Planning*, *supra* note 12, at 5.

- ¹⁹ *Id.* at 17-23.
- ²⁰ SHO # 16-008, *supra* note 2.
- ²¹ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Sterilization* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/Masters-MTP/Part2/ster.pdf> [hereinafter *Medi-Cal Provider Manual, Sterilization*].
- ²² Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Hysterectomy* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/hyst.pdf>.
- ²³ 42 C.F.R. §§ 441.250-259; see generally CAL. CODE REGS. tit. 22, §§ 51305.1-51305.4.
- ²⁴ 42 C.F.R. § 441.253.
- ²⁵ CAL. CODE REGS. tit. 22, § 51305.1(a)(4), (b)(2).
- ²⁶ CAL. CODE REGS. tit. 22, § 51305.3(b).
- ²⁷ 42 C.F.R. § 441.257(a); CAL. CODE REGS. tit. 22, § 51305.3.
- ²⁸ *Medi-Cal Provider Manual, Sterilization, supra* note 21, at 4.
- ²⁹ CAL. WELF. & INST. CODE § 14193.
- ³⁰ 42 C.F.R. § 441.258.
- ³¹ *Medi-Cal Provider Manual, Sterilization, supra* note 21, at 6.
- ³² CAL. CODE REGS. tit. 22, § 51305.1(a)(6)(A).
- ³³ CAL. CODE REGS. tit. 22, § 51305.1(a)(6)(B).
- ³⁴ *Medi-Cal Provider Manual, Family Planning, supra* note 12, at 2.
- ³⁵ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Pregnancy Determination* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/pregdeterm.pdf>.
- ³⁶ Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. G, §§ 506, 507 (Dec. 16, 2014).
- ³⁷ *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).
- ³⁸ Constitutional Right to Reproductive Freedom, SCA 10, 2021-2022 Cal. State Legislature (2022), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20212022OSCA10.
- ³⁹ Cal. Dep't Health Care Servs., All Plan Letter 22-022 (Oct. 28, 2022), <https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2022/APL22-022.pdf> [hereinafter All Plan Letter 22-022].
- ⁴⁰ *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307 (Cal. 1997).
- ⁴¹ Guttmacher Inst., State Facts About Abortion: California, 2022, <https://www.guttmacher.org/state-facts>.

[guttmacher.org/fact-sheet/state-facts-about-abortion-california](https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-california) (last visited Nov. 22, 2022).

⁴² All Plan Letter 22-022, *supra* note 39.

⁴³ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Abortions* 8 (2021), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/abort.pdf>.

⁴⁴ *Id.* at 6.

⁴⁵ Cal. Dep't Health Care Servs., State Plan Amendment Request # 21-0066 (2021), <https://www.dhcs.ca.gov/formsandpubs/laws/Documents/SPA-21-0066-Approval.pdf>.

⁴⁶ Cal. Dep't Health Care Servs., All County Welfare Directors Letter No. 21-15 (Aug. 6, 2021), <https://www.dhcs.ca.gov/services/medi-cal/eligibility/letters/Documents/21-15.pdf> [hereinafter All County Welfare Directors Letter No. 21-15].

⁴⁷ 42 U.S.C. § 1396d (l)(3)(C).

⁴⁸ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Pregnancy: Alternative Birthing Centers* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/altern.pdf>.

⁴⁹ Cal. Dep't Health Care Servs, Doula Services as a Medi-Cal Benefit, <https://www.dhcs.ca.gov/provgovpart/Pages/Doula-Services.aspx> (last visited Nov. 22, 2022).

⁵⁰ CAL. FAM. CODE § 6925.

⁵¹ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Pregnancy: Early Care and Diagnostic Services* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/pregearly.pdf>.

⁵² *Id.*

⁵³ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Pregnancy: Postpartum and Newborn Referral Services* (2022), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/pregpost.pdf>.

⁵⁴ *Id.* at 5.

⁵⁵ Cal. Dep't Health Care Servs., *Durable Medical Equipment (DME): Other DME Equipment* (2020), <https://files.medi-cal.ca.gov/pubsdoco/Publications/masters-MTP/Part2/duraother.pdf>.

⁵⁶ Cal. Health & Human Servs, Budget Summary (2021), <https://www.ebudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/HealthandHumanServices.pdf>.

⁵⁷ Cal. Health & Human Servs, Budget Summary (2022), <https://www.ebudget.ca.gov/2022-23/pdf/Revised/BudgetSummary/HealthandHumanServices.pdf>.

- ⁵⁸ See, e.g., Amy Chen, Alexis Robles-Fradet, & Helen Arega, Nat'l Health Law Prog., *Building A Successful Program for Medi-Cal Coverage for Doula Care: Findings from A Survey of Doulas in California* (2020), <https://healthlaw.org/resource/doulareport/>.
- ⁵⁹ Cal. Dep't Health Care Servs, *Doula FAQ Sheet* (2022), <https://www.dhcs.ca.gov/provgovpart/Documents/Doula-FAQ-Sheet.pdf>.
- ⁶⁰ Cal. Dep't Health Care Servs, *Draft Doula Provider Manual* (2022), <https://www.dhcs.ca.gov/services/medi-cal/Documents/Doula-Provider-Manual-DRAFT.pdf>. Additional guidance on doula coverage is forthcoming. See Dep't Health Care Servs., All Plan Letter 22-031 (Dec. 22, 2022), <https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2022/APL22-031DoulaServices.pdf>.
- ⁶¹ Cal. Dep't Health Care Servs, State Plan Amendment Request # 22-0002 (Nov. 21, 2022), <https://www.dhcs.ca.gov/formsandpubs/laws/Documents/SPA-22-0002-Pending-Redacted.pdf>.
- ⁶² CAL. CODE REGS. tit. 22, §§ 51179, 51348(a).
- ⁶³ CAL. CODE REGS. tit. 22, § 51348; Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Pregnancy: Comprehensive Perinatal Services Program (CPSP)* 5 (2018), http://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/pregcom_m00o03.doc [hereinafter *Medi-Cal Provider Manual, Pregnancy: Comprehensive Perinatal Services Program (CPSP)*].
- ⁶⁴ CAL. CODE REGS. tit. 22, § 51348(a); *Medi-Cal Provider Manual, Pregnancy: Comprehensive Perinatal Services Program (CPSP)*, *supra* note 63, at 12.
- ⁶⁵ 42 U.S.C. § 1396d(r).
- ⁶⁶ *Id.* For a comprehensive overview of EPSDT, see CMS, *EPSDT—A Guide for States: Coverage in the Medical Benefit for Children and Adolescents* (2014), https://www.medicaid.gov/medicaid/benefits/downloads/epsdt_coverage_guide.pdf.
- ⁶⁷ Cal. Dep't Health Care Servs., *Medi-Cal Provider Manual, Preventive Services* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/prev.pdf>.
- ⁶⁸ Joseph F. Hagan, Jr. et al., Am. Acad. of Pediatrics, *Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents* 174 (4th ed. 2017). A free pocket guide version of the Bright Futures guidelines is available at <https://www.aap.org/en/practice-management/bright-futures/bright-futures-materials-and-tools/bright-futures-guidelines-and-pocket-guide/>.
- ⁶⁹ *Id.*
- ⁷⁰ *Id.*
- ⁷¹ 42 U.S.C. §1396r-8(d)(2)(B).

- ⁷² Cal. Dep't Health Care Servs., *Family PACT Policies, Procedures and Billing Instructions Manual, Client Eligibility* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/fpact/clientelig.pdf>.
- ⁷³ CAL. WELF. & INST. CODE § 14132(aa)(8); see also Cal. Dep't Health Care Servs., *Family PACT Policies, Procedures and Billing Instructions Manual, Family PACT Program Overview* (Dec. 31, 2021), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/fpact/fam.pdf>.
- ⁷⁴ Cal. Dep't Health Care Servs., *Family PACT Update, Bulletin 178* (July 2022), <https://files.medi-cal.ca.gov/pubsdoco/bulletins/artfull/fpact202207.aspx>.
- ⁷⁵ CAL. WELF. & INST. CODE §§ 14132(aa)(8) (Medicaid-funded component), 24001(a)(1) (state-funded component).
- ⁷⁶ The state-funded program is called the State-Only Family Planning Program. Sometimes this program is described as part of Family PACT, and in other cases it is described as a separate program. See CAL. WELF. & INST. CODE §§ 24000–24027.
- ⁷⁷ CAL. FAM. CODE § 6925. A law requiring parental consent for abortion was found unconstitutional as violating the right of privacy in the California Constitution. *Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307 (1997).
- ⁷⁸ Cal. Dep't Health Servs., *Medi-Cal Eligibility Procedures Manual Letter No. 183 at 4V-1* (Aug. 12, 1997), <http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/c183.pdf> [hereinafter *Eligibility Procedures Manual Letter No. 183*]. CAL. FAM. CODE § 6920 and subsequent provisions describe the health care services for which a minor may provide consent without the knowledge of such minor's parents or guardians. CAL. FAM. CODE §§ 6927, 6928 describes minor consent of medical treatment for sexual assault.
- ⁷⁹ Cal. Dep't Health Servs., *All County Welfare Directors Letter No: 19-17, Telephonic or Electronic Signature Capability* (June 21, 2019), <https://www.dhcs.ca.gov/services/medi-cal/eligibility/letters/Documents/c19-17.pdf>; see also Cal. Dep't Health Servs., *Medi-Cal Eligibility Division Information Letter No.: 21-09, Continuing Telephonic Flexibilities for the Minor Consent Program Beyond the COVID-19 Public Health Emergency* (June 24, 2021), <https://www.dhcs.ca.gov/services/medi-cal/eligibility/letters/Documents/l21-09.pdf>.
- ⁸⁰ *Eligibility Procedures Manual Letter No. 183, supra* note 78, at 4V-2.
- ⁸¹ *Id.* at 4V-1, 4V-2.
- ⁸² *Id.* at 4V-2, 4V-3; see also CAL. CODE REGS. tit. 22, §§ 50147.1, 50167(a)(6)(D)(4).
- ⁸³ Cal. Dep't Health Servs., *Medi-Cal Provider Manual, Minor Consent Program* (2020), <https://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/part2/minor.pdf>.
- ⁸⁴ CAL. WELF. & INST. CODE § 15822; Cal. Dep't Health Servs., *Medi-Cal Access Program* (2022), <https://www.dhcs.ca.gov/services/medi-cal/eligibility/MCAP/Pages/Medi-CalAccessProgram.aspx> (last visited Nov. 22, 2022).

- ⁸⁵ Cal. Dep't Health Servs., Who Qualifies for MCAP? (2022), <https://www.dhcs.ca.gov/services/medi-cal/eligibility/MCAP/Pages/Qualifying.aspx> (last visited Nov. 22, 2022).
- ⁸⁶ CAL. WELF. & INST. CODE § 15841(b).
- ⁸⁷ CAL. WELF. & INST. CODE § 15832(a)(1); CAL. CODE REGS. tit. 10, § 2699.200(b)(1). California's statute indicates income should be between 208% and 317% of the poverty level. However, as a CHIP program, MCAP follows Medicaid rules for determining modified adjusted gross income, and those rules require states to disregard the first five percentage points of income when determining eligibility. 42 U.S.C. §§ 1396a(e)(14)(I), 1397bb(b)(1)(B)(v). Therefore, once this disregard is taken into account, the MCAP eligibility range is 213% to 322% of the poverty level.
- ⁸⁸ All County Welfare Directors Letter No. 21-15, *supra* note 46.
- ⁸⁹ Cal. Dep't Health Servs., Information on the Presumptive Eligibility for Pregnant Women, https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/PE_Info_women.aspx (last visited Nov. 22, 2022) A list of qualified hospital presumptive eligibility providers in California is available on the DHCS website at <http://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/HospitalPE.aspx> or by calling 800-824-0088.
- ⁹⁰ 42 U.S.C. § 1396r-1(a); Cal. Dep't Health Care Servs., *supra* note 89.
- ⁹¹ 42 U.S.C. § 1396r-1(b)(1); CAL. WELF. & INST. CODE § 14148.7.
- ⁹² Cal. Dep't Health Servs., *Medi-Cal Provider Manual, Every Woman Counts* (2020), <https://files.medi-cal.ca.gov/pubsdoco/Publications/masters-MTP/Part2/ewoman.pdf>.
- ⁹³ Cal. Dep't Health Servs., Breast and Cervical Cancer Treatment Program (BCCTP), <https://www.dhcs.ca.gov/services/medi-cal/Pages/BCCTP.aspx> (last visited Nov. 22, 2022). *See also* 42 U.S.C. § 1396a(a)(10)(A)(ii)(XVIII), (aa).
- ⁹⁴ 42 U.S.C. § 1396a(a)(10)(A)(ii)(XVIII), (aa).
- ⁹⁵ CMS, National Coverage Determination (NCD) for Abortion (140.1), <https://www.cms.gov/medicare-coverage-database/details/ncd-details.aspx?NCDId=127&ncdver=2&bc=AAAAGAAAAAAA&> (last visited Nov. 22, 2022).
- ⁹⁶ Cal. Dep't Health Servs., *Medi-Cal Provider Manual, Medicare/Medi-Cal Crossover Claims Overview* (2020), <https://files.medi-cal.ca.gov/pubsdoco/Publications/masters-MTP/Part1/medicare.pdf>.
- ⁹⁷ CMS, *Frequently Asked Questions (FAQs) Medicaid Family Planning Services and Supplies* (2017), <https://www.medicare.gov/federal-policy-guidance/downloads/faq11117.pdf>.