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A. Medicaid is Important to Women of Childbearing Age

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Women make up the majority of individuals enrolled in Medicaid programs (56% of the total). Medicaid is a major source of health coverage for women in the United States. Medicaid covers 7.8%

B. Reproductive Health Services Are Vital to Good Health

The availability of reproductive health services is essential to the health and well-being of women. Medicaid covers 7.8%

- Contraceptive Services and Supplies

- Sterilizations
- Fertility Treatments
- Abortion
- Emergency Contraception for Rape Victims
- Condoms to Combat the Spread of HIV/AIDS and other STDs

Federal law allows a religious MCO to avoid, provide, or refer to abortion services, and some states have laws that prohibit MCOs from providing or referring to abortion services.

Other problems in accessing reproductive health services in Medicaid MCOs have been reported to include:

- Illegal Imposition of Fees on Contraceptive Services
- Lack of Information on the Scope of Covered Services
- Lack of Choice of Contraceptive Provider

The point of denial may occur at the health plan level where, for example, a prior authorization request is denied.

C. Freedom of Choice Protections Must Be Enforced But Are Limited

Beneficiaries enrolled in Medicaid managed care are entitled to a choice of MCOs, and MCOs are required to provide a choice of providers.

While important, this right only goes so far:

Freedom-of-choice applies only to family planning. Not all reproductive health services fall under this protection.

Women cannot exercise their rights if they are uninformed. Women must have clear, up-front information about their rights and the services they are entitled to receive.

D. Due Process Rights Afford Protection to Reproductive Health Access

Women receive important protection through their notice and fair hearing rights. The United States Constitution guarantees these rights to all individuals.

Medicaid benefits (including family planning and other reproductive health services) are a property interest protected by the Constitution. Medicaid beneficiaries have a constitutional property interest in their benefits. When a state actor (e.g., a health plan or HMO) denies a benefit, the individual has a right to notice and a fair hearing. Courts have recognized HMOs as state actors that are subject to this requirement.

Because of these Constitutional protections, a woman who is denied reproductive health services must be given notice of the denial and the opportunity to be heard.

- the intended action (e.g., denial),
- the reasons for the action, and
- the facts and the laws that support it.

In addition, the right to notice and fair hearing should be triggered when the health plan denies a prior authorization for a service.

Women should receive written notices about the services that they are being denied so that they can challenge the denial.

A woman also can challenge the imposition of a federal family planning restriction on her choice of family planning provider.¹⁰

1 Diane Rowland, et al., The Key to the Door: Medicaid's Role in Improving Health Care for Women and Children, 19 J. Health Politics, Policy & Law 103 (1994).

2 Id., citing National Gov.'s Ass'n, MCH Update: State Medicaid Coverage of Pregnant Women and Children, 19 J. Health Politics, Policy & Law 103 (1994).

3 Rachel Benson Gold, Key Policies Emerging to Govern delivery of Family Planning in Medicaid Managed Care, 19 J. Health Politics, Policy & Law 103 (1994).

4 Health Care Financing Administration, U.S. Dep't of Health & Human Services, [Medicaid Principles and Policies Manual, Table 7](#) (last modified Feb. 1999).

5 Health Care Financing Administration, U.S. Dep't of Health & Human Services, [Medicaid Principles and Policies Manual, Table 9](#) (last modified Feb. 1999).

6 Health Care Financing Administration, U.S. Dep't of Health & Human Services, [Medicaid Managed Care, Final Rule, 42 C.F.R. 431.1008](#) (last modified April 8, 1999).

7 See, e.g., California Department of Health Servs., 1998 Managed Care Annual Statistical Report (March 1999).

8 Alan Guttmacher Institute, [Support for Family Planning Improves Women's Lives](#), (visited Jul. 11, 1999).

9 See National Conf. of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services, 1998.

10 42 U.S.C. § 1396u-2(b)(3)(B).

11 This language is a rule of construction within “anti-gag” language which prohibits health plans from l

12 Benson Gold, *supra* note 3 at 3-4.

13 42 U.S.C. § 1396a(a)(23)(B).

14 For a discussion on the scope of services covered by Medicaid, see Fact Sheet: Medicaid Coverage

15 *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970).

16 *Id.*; *Moffit v. Austin*, 600 F. Supp. 295, 297 (W.D. Ky. 1984); 42 C.F.R. §§ 431.200 et seq.

17 See e.g., *Perry v. Chen*, 985 F. Supp. 1197, 1202 (D. Ariz. 1996) (holding that Medicaid MCOs are s

18 42 C.F.R. § 431.210. Additional information that must be included is: the right to request a hearing; th

19 Under federal Medicaid, no cost-sharing can be imposed on family planning services. 42 U.S.C. §§ 1

20 See, *supra* note 13 and accompanying text.

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