

## Chapter 13: Women's Health Services

This chapter focuses on the health care needs of women and how those needs can be met through the Medi-Cal program. For information on all Medi-Cal services, please see Chapter 11 of this manual.

### The Basics

Medicaid is a critical source of family planning services for low-income women. Nationally, twelve percent of all women – 7.3 million – rely on Medicaid and related programs for family planning services. Medicaid is the single largest source of public funding for family planning services and supplies.<sup>1</sup>

Medicaid requires states to cover family planning benefits for program beneficiaries.<sup>2</sup> Federal law also ensures that beneficiaries are not charged for these services.<sup>3</sup> It provides that deductions, cost sharing and other charges cannot be imposed for family planning services provided to categorically or medically needy individuals.<sup>4</sup>

In addition, beneficiaries are required to be given freedom of choice with regard to family planning providers. This means that a Medi-Cal beneficiary has the right to select the Medi-Cal participating provider of her choice for family planning services, even if she is enrolled in a managed care plan.<sup>5</sup>

California has been granted a Family Planning Waiver by the Centers for Medicare & Medicaid Services (CMS). Under this waiver, eligibility for family planning services is much broader than for full-scope Medi-Cal.<sup>6</sup>

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<sup>1</sup> See Henry J. Kaiser Family Found. & Guttmacher Inst., *Medicaid's Role in Family Planning* (Oct. 2007); see also Adam Sonfield, Casey Aldrich and Rachel Benson Gold, Guttmacher Inst., *Public Funding for Family Planning, Sterilization and Abortion Services FY 1980-2006* (Jan. 2008); see also, National Health Law Program, *Q&A: Medicaid Coverage of Reproductive Health Services*, (Feb. 2008), at:

[www.healthlaw.org/library/item.184599-](http://www.healthlaw.org/library/item.184599-)

[Q A Medicaid Coverage of Reproductive Health Services Feb 08.](#)

<sup>2</sup> 42 U.S.C. § 1396d(a)(4)(c); see also CMS State Medicaid Manual § 4270B.

<sup>3</sup> 42 U.S.C. § 1396o(a)(2)(D); 42 C.F.R. § 447.53(b)(5).

<sup>4</sup> In 2006, the Medicaid Act was amended to give States the option to enroll some Medicaid beneficiaries into pre-existing health insurance plans that do not have to comply with Medicaid's traditional rules governing coverage of mandatory and optional service, and could theoretically exclude family planning services. To date, only a few states have chosen the pre-existing insurance option, and none has excluded family planning or other reproductive health services. See 42 U.S.C. § 1396u-7 (added by Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 6044 (Feb. 6, 2006) (eff. Mar. 31, 2006).

<sup>5</sup> 42 U.S.C. § 1396a(a)(23)(B).

<sup>6</sup> California's Family Planning Waiver has been operating on monthly extensions while CMS and DHCS continue negotiations. See the Family PACT Web site for the latest information on the waiver extension at: [www.familypact.org/en/Providers/waiver-status.aspx](http://www.familypact.org/en/Providers/waiver-status.aspx).

**Advocacy Tip** ► Women enrolled in Medi-Cal managed care are allowed to go outside of their approved provider networks to receive family planning services. These services will be paid for by Medi-Cal.

## Medi-Cal Services in General

Medi-Cal provides a wide range of medically necessary services crucial to the health of all enrolled beneficiaries. These services include among other things: hospital in-patient and out-patient care, laboratory and x-ray services, prescription drugs, dental services, alcohol and drug treatment, and primary care case management.<sup>7</sup>

Some Medi-Cal services are particularly important for low-income women. These include:<sup>8</sup>

- Well-woman checkups, including pelvic exams, pap smears and breast exams
- Family planning services
- Screening and treatment of sexually transmitted infections
- Emergency contraception
- Pregnancy care
- Abortion
- Cancer screening and treatment
- HPV vaccine
- Voluntary sterilization
- Limited infertility services

## Family Planning/ Birth Control

As stated above, family planning services and supplies are mandatory services under Medicaid.<sup>9</sup> However, the federal statute does not define what specific services and supplies states must cover. States have discretion to determine the specific scope of services and the family planning supplies that will be covered, so long as each service is “sufficient in amount, duration, and scope to reasonably achieve its purpose.”<sup>10</sup> These services are available to women of child-bearing age and, where appropriate, to men.

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<sup>7</sup> Cal. Welf. & Inst. Code § 14132 (general listing of covered Medi-Cal services); *see generally* Medi-Cal Provider Manual, California Department of Health Care Services [http://files.medi-cal.ca.gov/pubsdoco/Manuals\\_menu.asp](http://files.medi-cal.ca.gov/pubsdoco/Manuals_menu.asp).

<sup>8</sup> *Id.* For more specifics on which family planning services are covered and any conditions on coverage, *see* Medi-Cal Provider Manual, Medical Services, Family Planning chapter, available at: [files.medi-cal.ca.gov/pubsdoco/manuals\\_menu.asp](http://files.medi-cal.ca.gov/pubsdoco/manuals_menu.asp).

<sup>9</sup> 42 U.S.C. § 1396d(a)(4)(C).

<sup>10</sup> 42 C.F.R. § 440.230(b); *see also* CMS, State Medicaid Manual § 4270B.

Medi-Cal provides family planning to Medi-Cal beneficiaries including all types of FDA-approved birth control methods.<sup>11</sup> This includes oral contraception, or “the pill,” as well as long-term reversible methods such as Intrauterine Contraception (commonly known as IUDs), injectables such as Depo-Provera, emergency contraception, and diaphragms. Medi-Cal also provides for family planning counseling and health education.

**Advocacy Tip ►** Beneficiaries should be made aware that there are many options for pregnancy prevention and that they should talk to their medical provider about what method is best for them. In addition, they should obtain information about how to prevent sexually transmitted infections.

If a woman is enrolled in Medi-Cal with no share of cost or in Healthy Families, she can obtain these services through her primary care physician and regular pharmacy. If she is not eligible for Medi-Cal, or only eligible with a share of cost, she may be able to obtain family planning services through the Family PACT (Family Planning, Access, Care, and Treatment) program. Women, teens and men, regardless of their immigration status, are eligible for Family PACT if they reside in California, have a gross family income below 200% FPL, are at risk of pregnancy or of causing pregnancy, and have no other source of health coverage for family planning services.<sup>12</sup> Individuals can enroll on-site at the office of any Family PACT provider, and do not have to go to a Medi-Cal office. Many family planning clinics, community clinics and county health departments are Family PACT providers.<sup>13</sup>

## Teenagers and Birth Control

A teenager can access birth control through Medi-Cal, Healthy Families, or Family PACT. Teens have the right to expect that their conversations and medical care about reproductive health with their medical providers will be kept confidential.<sup>14</sup>

Most teens discuss their sexuality with at least one parent; however, it is important for teens to know that they can keep their reproductive medical care and medical records private, if they want. Their doctors are required to keep this information confidential unless the teen gives her permission to share it with her parents. It is a good idea for teens to make sure that their providers clearly know if they want this information kept confidential. Unfortunately, beneficiaries sometimes report that managed care systems and medical offices

<sup>11</sup> Cal. Welf. & Inst. Code § 14132(aa)(8)(B); see also Medi-Cal Provider Manual, *Family Planning*, California Department of Health Care Services [http://files.medi-cal.ca.gov/pubsdoco/Manuals\\_menu.asp](http://files.medi-cal.ca.gov/pubsdoco/Manuals_menu.asp).

<sup>12</sup> Cal. Welf. & Inst. Code § 24003; Family PACT: An Overview, California Department of Public Health, [www.familypact.org/Resources/Documents/FS\\_060517\\_FPACTOverview\\_Final.pdf](http://www.familypact.org/Resources/Documents/FS_060517_FPACTOverview_Final.pdf).

<sup>13</sup> A list of local Family PACT providers can be obtained on the program's homepage: [www.familypact.org/en/home.aspx](http://www.familypact.org/en/home.aspx).

<sup>14</sup> Cal. Welf. & Inst. Code § 24009; see also Cal. Fam. Code § 6925 (minor's right to consent to treatment related to pregnancy); *American Academy of Pediatrics v. Lundgren*, 16 Cal. 4<sup>th</sup> 307, 66 Cal. Rptr.2d 210 (1997) (statute requiring pregnant minor to seek parental consent or judicial authorization before obtaining an abortion violates her right to privacy under the California Constitution). For a minor's right to privacy of her medical records: Cal. Health & Safety Code §§ 123110(a), 123115(a). These rights under California law are more expansive than under the federal HIPAA law and therefore, are not preempted by HIPAA.

do not always have good systems for keeping this information confidential either because they send bills or notices to the parent's house or because someone in the medical office might breach confidentiality. If teens are concerned about confidentiality, they should consider seeking care at a Family PACT provider, or a free or low-cost family planning clinic, or see a Medi-Cal provider through the Medi-Cal Minor Consent Program described in Chapter 7 of this manual. To find a nearby family planning clinic, she may visit [www.teensource.org](http://www.teensource.org).

## Emergency Contraception

Medi-Cal and Family PACT also provide coverage for emergency contraception.<sup>15</sup> Emergency contraception is often referred to as “Plan B,” “EC” or the “morning after pill.” Instead of taking it before intercourse, like with other oral contraception, emergency contraception is taken after sex. It should be considered when a woman has had unprotected sex, such as when the parties did not use birth control, when the condom broke, when the woman was late getting an injectable contraceptive, or missed two or more birth control pills in a row, or in the case of sexual assault. Emergency contraception is most effective within 24 hours of sex, but it can prevent pregnancy for up to five days.<sup>16</sup>

Emergency contraception is a method of pregnancy prevention. It does not cause an abortion and is not RU486 or what is commonly referred to as the “abortion pill.” Instead it temporarily stops eggs from releasing, stops fertilization and/or stops eggs from attaching to the womb. It will not harm an existing fetus nor will it cause difficulty with becoming pregnant in the future. The American College of Obstetricians and Gynecologists recommends that women be given advance prescriptions for EC so that they can have it on hand in case they need it.<sup>17</sup>

Emergency contraception has been approved by the FDA for sale without a prescription for individuals 18 years of age and older. Teens age 17 and under still must have a prescription.<sup>18</sup> Even though it is now an over-the-counter drug for adults, EC is only sold in pharmacies. For information on pharmacies that stock emergency contraception, visit [www.ec-help.org/index.htm](http://www.ec-help.org/index.htm). The cost ranges from \$30 to \$50. Family planning clinics may be able to offer emergency contraception on a sliding fee for low-income women.

Medi-Cal, Family PACT, and Healthy Families require a prescription for emergency contraception for adults as well as for teens, in order that the program can pay for the emergency contraception.<sup>19</sup> California also has a program called “Pharmacy Access.” This

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<sup>15</sup> Medi-Cal Provider Manual, Family Planning at 8 (PlanB® is covered but with a limit of two packs per month, for total of six packs per year).

<sup>16</sup> See generally The Emergency Contraception Website, Office of Population Research, Princeton University, <http://ec.princeton.edu/emergency-contraception.html>.

<sup>17</sup> American College of Obstetricians and Gynecologists, *Emergency contraception*. ACOG practice bulletin No. 69 (Dec. 2005).

<sup>18</sup> Food and Drug Administration, FDA Approves Over-the-Counter Access for Plan B for Women 18 and Older; Prescription Remains Required for Those 17 and Under (Aug. 24, 2006) [www.fda.gov/bbs/topics/NEWS/2006/NEW01436.html](http://www.fda.gov/bbs/topics/NEWS/2006/NEW01436.html).

<sup>19</sup> A few states provide emergency contraception to low-income women without a prescription. Those states are Hawaii, Illinois, Maryland, New Jersey, New York, Oklahoma, Oregon, and Washington.

program allows participating pharmacies to have agreements with medical professionals that enable pharmacists to dispense emergency contraception directly to a patient, even when she does not have a prescription. The pharmacist can bill the program for reimbursement as if there were a prescription, but the woman is able to obtain EC quickly and without needing to see her physician. For more information about finding a Pharmacy Access site, visit the Pharmacy Access Partnership <http://www.ec-help.org>.

**Advocacy Tip** ► Because individuals on Medi-Cal, Healthy Families, and Family PACT need a prescription for emergency contraception in order to have it paid for by their insurance, it is wise to advise them to have their physician prescribe it for them before they need it. By doing so, affordability issues and timing issues will not impede access.

## Abortion Services

Abortion is a fundamental right under the California Constitution.<sup>20</sup> Medi-Cal provides coverage for abortion services.<sup>21</sup> Generally, abortions are paid out of state-only funds because of restrictions on the use of federal funds for these purposes. The federal restrictions are due to the “Hyde Amendment” which has been attached each year to federal appropriations bills for the past 30 years.<sup>22</sup> Federal Medicaid funds can only be used to cover abortion services when the woman's life is threatened by "physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself" or to end a pregnancy caused by rape or incest.<sup>23</sup> These restrictions also apply to federal coverage of medication abortions, often referred to as “RU-486” or the abortion pill. The Hyde Amendment only restricts the use of federal funds and does not prohibit a state from using its own funds to cover abortion services.

Women who are not yet enrolled in Medi-Cal but are likely to be found eligible, can get coverage through presumptive eligibility for pregnancy-related services to receive an abortion without having to wait for the full application process. For more information on

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National Institute for Reproductive Health, *Expanding Medicaid Coverage for EC at the State Level* (2007), [www.prochoiceny.org/assets/files/ecreport.pdf](http://www.prochoiceny.org/assets/files/ecreport.pdf); for more information about whether and how state Medicaid programs are covering emergency contraception, see National Health Law Program, *Over the Counter or Out of Reach? A Report on Evolving State Medicaid Policies for Covering Emergency Contraception* (June 2007).

<sup>20</sup> *People v. Belous*, 80 Cal. 2d 354 (1969).

<sup>21</sup> ACWL 79-21 (Aug. 15, 1979); *Committee to Defend Reproductive Rights v. Meyers*, 29 Cal. 3d 252 (1981).

<sup>22</sup> For more information about the impact of the Hyde Amendment, see [www.hyde30years.nnaf.org](http://www.hyde30years.nnaf.org).

<sup>23</sup> The Hyde Amendment is usually included in the Labor-HHS Appropriations bill or any continuing resolution or omnibus bill that includes funding for the Departments of Labor and HHS. It applies to all federal funding for abortions, including in the Medicaid program, for women in the military, and in Indian Health Services. See, e.g., Dep't of Labor, Health and Human Serv., and Educ., and Related Agencies Appropriations Act of 2006, Pub. L. No. 109-149. For additional information about federal funding, see CMS, *State Medicaid Manual* § 4270 (abortions may not be claimed as a family planning service), § 4430 (stating that states receive federal funds in expenditures for medically necessary abortions), and § 4432 (federal funds available for services associated with non-federally funded abortions if the services would have been performed regardless of whether pregnant woman was seeking an abortion).

presumptive eligibility, see Chapter 7. Abortion is not included in the definition of “family planning services and supplies” and is not covered by Family PACT.

Not all Medi-Cal providers offer abortion services. Providers are allowed to refuse to perform abortions under federal and state refusal clauses. However, women enrolled in HMOs, including Medi-Cal HMOs, are entitled to direct access to an ob/gyn without getting a referral from their primary care provider.<sup>24</sup> This is especially important if a woman's primary care provider refuses to provide or make referrals for abortion services. Local Planned Parenthood offices or other clinics are a good source of information and counseling for women who are considering abortion. A referral list for clinics can be found by calling 1-888-940-0889. Women can also talk to a counselor at Planned Parenthood by calling 1-800-230-7526. If a woman or teen has already had an abortion and wishes to speak with someone, she can call the Exhale After Abortion Talkline at 1-866-439-4253. The Talkline offers confidential information, resources, and support for teens and adults.

Teens can obtain confidential abortion services in California without notifying their parents or getting their parents' consent.<sup>25</sup> Two ballot initiatives have been introduced in recent years to require parental notification, Proposition 73 (2006) and Proposition 85 (2007), but both were defeated by the voters. Medi-Cal, Minor's Consent Medi-Cal, and Healthy Families cover abortion services for teens. Neither providers nor advocates may notify parents or require parental consent for any services including abortion.<sup>26</sup>

**Advocacy Tip** ► While most teens talk to their parents about their sexuality, it is important that teens have access to confidential reproductive health services. Family PACT providers offer confidentiality and simple on-site enrollment for family planning services. Planned Parenthood and similar clinics offer confidentiality for abortion services.

## Sterilization Services

Medi-Cal provides coverage for sterilization services. Women of color, low-income women, and women with mental disabilities have historically been coerced to be sterilized. In recent times, women who are substance abusers have been offered cash to be sterilized. In order to protect against coercion, there are stringent legal requirements for informed consent before a woman can be sterilized.

Federal regulations prohibit federal Medicaid funds from being used to perform sterilizations of individuals who are age 21 or younger, mentally incompetent or who have not given informed consent.<sup>27</sup> States must ensure that Medicaid recipients are "free from

<sup>24</sup> Cal. Health & Safety. Code § 1367.695.

<sup>25</sup> *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307 (1997).

<sup>26</sup> Cal. Welf. & Inst. Code § 24009; see also Cal. Fam. Code § 6925 (minor's right to consent to treatment related to pregnancy); *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 66 Cal. Rptr.2d 210 (1997) (statute requiring pregnant minor to seek parental consent or judicial authorization before obtaining an abortion violates her right to privacy under the California Constitution).

<sup>27</sup> See 42 C.F.R. §§441.250-441.259; Cal. Code Regs. tit. 22, § 51305.1(a).

coercion or mental pressure and free to choose the method of family planning to be used."<sup>28</sup> The regulations specify the informed consent rules, which include a requirement that a woman provide informed consent at least 30 days prior to the procedure, or 30 days prior to an expected due date in the case of a premature delivery.<sup>29</sup>

In California, the conditions that must be met before Medi-Cal will pay for sterilization are:

- The individual must be at least 21 years of age at the time consent is obtained;
- Must not be mentally incompetent;
- Must be able to understand the content and nature of informed consent;
- Must not be institutionalized;
- Must have voluntarily given informed consent in accordance with the statutorily prescribed requirements; and
- At least 30 days but not more than 180 days must have passed between the date of written consent and the date of sterilization.<sup>30</sup>

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.<sup>31</sup> Also, 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.<sup>32</sup>

There is also a required informed consent process before sterilization.<sup>33</sup> The individual obtaining the consent must first offer to answer any question the patient may have concerning the procedure. The individual must also provide the patient with information, including a copy of the consent form and a booklet on sterilization prepared by DHCS. California regulations also specify particular information that the patient must be given, and assurances that the information was effectively communicated, including rights to an interpreter and arrangements that ensure that a woman who has sight or hearing impairments has received the information effectively.<sup>34</sup> If a doctor fails to comply with these requirements, she will not receive payment from DHCS, and she will be reported to the Medical Board of California.<sup>35</sup>

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<sup>28</sup> 42 C.F.R. § 441.20. See also 42 C.F.R. § 441.257.

<sup>29</sup> 42 C.F.R. § 441.258(c); Cal. Code Regs. tit. 22, § 51305.1.

<sup>30</sup> Cal. Code Regs. tit. 22, §§ 51305.1-51305.4; Cal. Welf. & Inst. Code § 14191. See *California Medical Association v. Lackner*, 124 Cal. App. 3d 28 (1981).

<sup>31</sup> Cal. Code Regs. tit. 22, § 51305.1(a)(6)(A).

<sup>32</sup> Cal. Code Regs. tit. 22, § 51305.1(a)(6)(B).

<sup>33</sup> 42 C.F.R. § 441.257; Cal. Code Regs. tit. 22, § 51305.3.

<sup>34</sup> Cal. Code Regs. tit. 22, § 51305.5(a).

<sup>35</sup> Cal. Welf. & Inst. Code § 14193.

## **Pregnancy Care**

Medi-Cal provides full coverage for beneficiaries for pre-natal, delivery and post-partum care. If a woman does not have satisfactory immigration status or does not qualify for regular Medi-Cal, she should be able to get restricted Medi-Cal benefits which cover all of these stages of care for a pregnant woman. For more information on Medi-Cal programs that cover pregnancy, please see Chapter 7.

## **Breast and Cervical Cancer**

Full-scope Medi-Cal and the Breast and Cervical Cancer Treatment Program (BCCTP) both provide free treatment to eligible California residents diagnosed with breast and/or cervical cancer and whose family income is below 200% FPL. There is a federal BCCTP program, as well as a state-only program. For the state based program, individuals do not need to have satisfactory immigration status to qualify. For more information on these programs, see Chapter 7.

## **Testing and Treatment for Sexually Transmitted Diseases and Infections**

Medi-Cal, including Minor Consent Medi-Cal, Healthy Families, and Family PACT all provide coverage for the testing and treatment of sexually transmitted diseases and infections for women and teens.

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