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Examining the Alternatives for the Women's Health Program

Governor's proposal for a state-only program that excludes Planned Parenthood is a poor choice

The Women's Health Program provides essential well-woman services. The program is part of Medicaid, a federal-state partnership. For every dollar the state spends in the program, the federal government provides nine more. These federal dollars are at risk, however, because of a new state rule that excludes Planned Parenthood from participating in the program. This new state rule violates federal law, which guarantees women freedom of choice to select their own providers. Now the Governor has proposed keeping the state's new rule but paying for the program with state funds only. This policy paper examines the state's alternatives and explains why paying for the program with state funds only is a poor choice.

Women's Health Program Is Vitaly Important

The Women's Health Program does three important things. It provides essential well-woman services, including Pap smears, breast exams, and birth control to low-income women. It saves the state over \$40 million annually in the cost of unplanned births. And, by reducing unplanned pregnancies, it reduces abortions.

Contraception Is Key to Women's Health and Families' Economic Opportunity

Losing the program would be tragic because access to birth control is central to maintaining the health of women and children and ensuring economic opportunity for families. Women need birth control to reduce high and growing rates of pre-term births, births too close together causing medical risks for the newborn and mother, and births to unmarried teen moms. Birth control to plan the timing and size of families is also critical to ensuring Texas families can escape poverty and join the middle class. With more than half of all Texas births unplanned, our state should be expanding, not restricting, access to birth control.

Women's Health Program Even More Important after Cuts to Other Birth Control Funding

During the 2011 Legislative Session, the legislature voted to drastically slash funding for the state's only other family planning program, which is run by the Department of State Health Services. These cuts by the Texas legislature have already taken place and left 150,000 women without access to well-woman care. If the state shuts down the Women's Health Program, it will cut off another 114,000 women from access to vital health services. Without the program, the state would be able to serve only about 61,000 women this year—an 80 percent reduction in the number low-income women who get access to vital health care and birth control.



New State Rules Imperil Federal Participation in the Women’s Health Program

The Women’s Health Program is part of Medicaid, a federal-state partnership. In this particular program, for every dollar the state spends, the federal government provides nine more. These federal dollars are at risk because of a new state rule. At the insistence of state leaders, the state is adopting new rules to deny funding to any health care provider that has any ties to or shares a name with an abortion provider, even if they are legally and physically separate. State leaders readily admit that the new rule is designed solely to deny funding to Planned Parenthood. Under federal law, however, the state can’t deny women the right to select their own health care providers. After being notified of the proposed new state rule, the federal government explained to state officials that it would have to cut off federal funding for the program if the state implemented its new rule. Despite this federal warning, the state has announced it is moving forward, effective March 14. Consequently, after March 31, the federal government will terminate funding, in essence ending the program, which means no federal funding for any Women’s Health Program providers in the state, including public hospital clinics, county health departments, and Federally Qualified Health Centers.

Tragically, New State Rule Increases Rather than Reduces Abortions

State leaders have explained that their goal is to undermine Planned Parenthood in the hopes of reducing abortions. But Planned Parenthood already provides abortions completely independently of public funding—with no direct or indirect subsidy whatsoever. Consequently whatever happens to its well-women health programs, Planned Parenthood will continue to provide abortion services. Tragically by devastating family planning, the state will actually increase abortions.

Old State Rule Worked Well

Up until the state proposed a new rule, the system was working fine. No Women’s Health Program dollars went to fund abortion or to any providers who offered abortions. The state had strict guidelines requiring any family planning providers that affiliated with abortion providers to be legally distinct entities with no direct or indirect subsidy of the abortion affiliate. The old rule worked, was upheld by the courts, and is still in use at the Department of State Health Services.

New State Rule Violates Federal Law Guaranteeing Women Freedom of Choice

Long-standing federal law in the Social Security Act ([42 U.S. Code § 1396A](#)) expressly provides that states cannot restrict women’s right to choose their own willing and qualified provider. Here is the relevant section of the law in relevant part:

(a) A State plan for medical assistance must (23) provide that . . . (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required . . . who undertakes to provide him such services, . . . except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan or by a provider or supplier to which a moratorium [because of a high risk of fraud, waste, or abuse] is applied during the period of the moratorium . . .

Consequently every woman in the Women’s Health Program is free to select any provider she wishes as long as the provider is qualified to perform the service she needs. The only exceptions are if the provider has a felony conviction or if the provider has been suspended from providing services because of a high risk of fraud. Federal law gives women this right even when they are enrolled in Medicaid managed care.

To get around this freedom of choice requirement, Texas argues that it has the authority to determine who is “qualified to perform services.” But the state’s new rule doesn’t address qualifications at all. Planned Parenthood’s clinics meet all of the state’s licensing requirements and can legally provide family planning services to any Texan who seeks them. Instead the rule targets a particular provider because of who it affiliates with and excludes that provider from the Women’s Health Program. The U.S. Department of Health and Human Services has explained why [such a rule is illegal](#). And a [federal court has blocked Indiana](#) from trying to implement this sort of rule.

It may be useful to think about the rule through an analogy. Imagine if the state wrote a rule to say that a doctor isn’t “qualified to provide services” if she attends the Methodist Church. You can easily see the flaw in such a rule. The fact that a health care provider affiliates with others who engage in a constitutionally protected activity, such as being a Methodist, does not mean they are “unqualified to provide” health care services, even if the activity is unpopular. Even if Planned Parenthood clinics affiliate with others who provide abortions does not mean that the clinics aren’t qualified to provide health care services. If the state really thought Planned Parenthood was unqualified to provide services, then it would have moved to revoke needed licenses and other approvals to provide health services to any one any time. It didn’t.

A State-Only Program is a Poor Choice Because Remaining Providers Can’t Meet Needs

Today the Governor said that the state will fund the program with state dollars only, ending participation by Planned Parenthood and federal funding. Certainly this is better than ending the program all together. But even if the state were willing to make up all the lost federal dollars, without Planned Parenthood, the remaining providers simply lack the capacity to meet women’s needs.

Currently Planned Parenthood provides more than 40 percent of all services in the Women’s Health Program. Building new capacity would take both time (during which women would suffer) and money (which is in short supply). The legislature’s drastic family planning cuts at the State Department of Health Services make it particularly hard for other providers to meet the needs of women now served by Planned Parenthood. Many family planning providers have already been forced to reduce services and staff or close entirely. In some cases, wait times to serve their existing clients have significantly increased.

Recommendations

For Federal Government

The federal government should not flinch from strict enforcement of the federal law guaranteeing women freedom of choice in selecting their providers. If the state implements its rule excluding Planned Parenthood, the federal government should end its participation in the Women’s Health Program immediately.

For the State

The state should return to the old rules for the Women’s Health Program, which ensured that no program dollars subsidized abortion directly or indirectly, but did not bar Planned Parenthood from participating in the program.

Alternatively, the state should delay implementation of its new rule while it turns to the courts to establish its authority to exclude Planned Parenthood. If it wins its case, then it can implement its rule excluding Planned Parenthood without jeopardizing federal funding. If it loses its case, then the legislature can decide whether it wishes to end the program or continue the program without federal funding.

As a last choice, the state should continue to fund the Women’s Health Care Program with state funds only, but no one should think this solution is adequate. A state-only program would be a shadow of the program Texas has now, undermining the health care of women and children, costing taxpayers, and increasing abortions.

Reporters who wish to request an interview with Anne Dunkelberg or Stacey Pogue should contact Brian Stephens at stephens@cphp.org or 512.320.0222, ext. 112.

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