



States Implement Health Reform



November 2011

Women's Health

Overview

The 2010 Affordable Care Act (ACA) contains many measures that affect women. This brief focuses on initiatives that relate specifically to health insurance coverage, Medicaid requirements and the states' role related to these issues.

Key Federal Provisions

Insurance Coverage. The ACA is predicted to increase insurance coverage for many women by 2014 through insurance exchanges and Medicaid expansion. The quality of coverage is likely to improve as well, with first dollar coverage for preventive care, coverage of essential benefits, and restrictions on discrimination in coverage.

- **Coverage of preventive care.** Section 1001 prohibits modified or new insurance plans issued after Sept. 23, 2010, from imposing copayments or coinsurance on certain services, including women's preventive care and screenings contained in guidelines by the Health Resources and Services Administration. The Institute of Medicine released recommendations to the U.S. Department of Health and Human Services (HHS) related to additional female preventive services to be covered, which were adopted in August 2011. The recommendations include coverage for: well-woman visits, contraception, breastfeeding support, domestic violence screening, and counseling. Insurance companies will have to cover these without cost sharing for new and renewing insurance policies beginning in Aug. 2012.
- **Essential health benefits.** Section 1302 requires all plans in the state health insurance exchanges to cover certain essential health services. The law specifically requires plans to include maternity and newborn care. Additional guidance is anticipated from HHS in late 2011. Health insurance exchanges must be operational by Jan. 1, 2014.
- **Pre-existing conditions.** Beginning in 2014, Section 1201 prohibits health insurers from: denying coverage to people with pre-existing health conditions; establishing rules for eligibility based on certain health factors, including ones caused by domestic violence; and using gender rating, a practice which charges women higher premiums based solely on gender.

Medicaid Provisions. The ACA expands Medicaid to all Americans under age 65 with family income at or below 133 percent of the federal poverty guidelines by Jan. 1, 2014. Additional Medicaid initiatives in the law specific to women include family planning, freestanding birth centers, the Pregnancy Assistance Fund, and smoking cessation programs for pregnant women.

- **Family planning services.** State Medicaid programs are required to cover family planning services, of which the federal government pays 90 percent. Waivers have allowed 22 states to extend family planning services to certain people who are otherwise ineligible for Medicaid. Section 2303 gives states additional flexibility to extend family planning services by amending their state Medicaid plans, which eliminates the need for waivers. According to the Guttmacher Institute, as of Nov. 2011, California, New Mexico, Oklahoma, South Carolina, Virginia and Wisconsin have used this option.
- **Freestanding birth centers.** Section 2301 requires states to provide separate payments to providers of prenatal, labor, delivery and postpartum care in a freestanding birth center, such as nurse midwives and birth attendants who are recognized under state law. This provision took effect upon enactment, except in states where such provisions are not authorized. Guidance released in March 2011 clarified that in order to comply with this provision, states need to submit amendments to their Medicaid plans that specify this coverage and reimbursements.
- **The Pregnancy Assistance Fund.** The law establishes the Pregnancy Assistance Fund with annual appropriations of \$25 million from 2010 to 2019. Funds are awarded to states on a competitive basis and passed through to eligible state agencies, institutions of higher education, high schools, community service centers, and state attorneys general in order to assist statewide



offices. As of Nov. 2011, HHS had awarded \$24 million to 17 states and tribes. Funds may be used for: school services for pregnant and parenting students; state-wide offices serving pregnant victims of domestic or sexual violence; and public awareness campaigns on services for pregnant and parenting teens and women.

- **Smoking cessation services for pregnant women.** Effective Oct. 1, 2010, Section 4107 requires Medicaid to cover, without cost-sharing, counseling and prescriptions needed by pregnant women to quit smoking.

Other Provisions. Additional provisions related to women within the ACA concern abortion coverage in the exchanges, nurse-midwives and break time for nursing.

- **Abortion coverage in the insurance exchanges.** The “Special Rules” (Section 1303) and the related White House executive order maintain Hyde Amendment restrictions that prohibit federal funds from being used for abortions (except in cases of rape, incest or when the life of the woman is in danger), and extends those restrictions to the exchanges. The law allows states to prohibit (through legislation) abortion coverage in health plans offered in an exchange. If coverage for abortion is included, the policyholder must pay a separate premium. As of Nov. 2011, 13 states had passed laws on abortion coverage in the exchanges.
- **Certified nurse-midwives.** Section 3114 increases Medicare reimbursement rates for certified nurse-midwife services to 100 percent of the Medicare physician fee schedule (up from the previous 65 percent), effective Jan. 1, 2011.
- **Break time for nursing mothers.** The law amends the Fair Labor Standards Act (FLSA) to require employers to provide “reasonable” break time (but not pay) in a place other than a bathroom, for an employee to express milk as often as needed for one year after her child’s birth. If this imposes undue hardship, employers with fewer than 50 employees are exempt. The law does not preempt related state laws.

Authorized but Unfunded Provisions. Additional initiatives are authorized, but have not yet been funded.

- **Improving women’s health.** Section 2509 charges the HHS Office on Women’s Health with establishing a National Women’s Health Information Center and a Coordinating Committee on Women’s Health. The offices of women’s health within various federal agencies must report on their activities related to women’s health,

establish goals for their agency, identify projects to be supported, consult with key partners to develop policies, and serve on the coordinating committee. Section 2509 authorizes appropriations for fiscal years 2010 through 2014. The first report to Congress was released in March 2011.

- **Postpartum depression.** Section 2952 enables the National Institute of Mental Health to conduct research on the mental health effects of pregnancy—whether it ends in giving birth, miscarriage or abortion. The law authorized \$3 million for new grants to states in FY 2010 (and sums as necessary for FY 2011 and FY 2012) to provide services to women with or at risk of postpartum depression and their families.
- **Breast cancer in young women.** Section 10413 creates a public education campaign to be administered by the Centers for Disease Control and Prevention to increase young women’s knowledge of breast health. The law calls for an advisory committee, an education campaign for physicians and others, and research on preventing breast cancer in younger women. The law authorized \$9 million for each fiscal year from 2010 through 2014 to award grants to provide health information from credible sources and substantive assistance directed to young women with breast cancer.

State Roles in Implementation

Most provisions in the ACA on women’s health do not require state action; however, lawmakers may consider:

- Enforcing provisions, including within the exchanges.
- Exploring state roles on abortion coverage in the exchanges.
- Amending Medicaid to cover standing birth centers or to adopt the family planning option.
- Adopting other authorized programs as funding is provided to states.

Resources

NCSL Health Reform Implementation: www.ncsl.org/healthreform

NCSL’s Health Reform and Women, Children and Adolescents webpage: www.ncsl.org/?tabid=20194

HealthCare.Gov: www.healthcare.gov/news/factsheets/2011/08/women.html

Association of Maternal and Child Health Programs: www.amchp.org/advocacy/health-reform/pages/default.aspx

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