Backgrounder

Published by The Heritage Foundation

No. 2181
September 15, 2008

Reforming Health Care to Protect Parents' Rights

Daniel Patrick Moloney, Ph.D.

In pursuing health care reform, federal and state policymakers alike need to respect and protect parental rights and responsibilities. Currently, they are not doing so.

A 14-year-old grade-school girl in Kentucky arrives at the local health clinic seeking birth control. Who should decide whether she receives it? The doctor? The girl? Or her parents? The state legislature says that the girl is not even old enough to consent to sexual activity. Yet public officials, under authorization from Congress, have written rules that allow the girl to enroll in one of a number of federal programs, and this federal law would overrule state law and prohibit the clinic from informing her parents.

A Common Problem

Thousands of similar situations occur each year—not surreptitiously, but legally, under the authority of policies and laws, some of which have been in place for decades. In exercising this authority, government intrudes into some of our most intimate living arrangements, separating parents from children, and putting the family doctor at odds with the wishes of the parents.

As a result, the moral values of ordinary people are often replaced by those of a health care establishment composed of government bureaucrats, liberal professional organizations, industry lobbyists, and major hospital systems. Because they control the funding and set the health care policies, they can, and often do, pre-empt many Americans from making health care decisions that reflect their own values.

Talking Points

- Medicaid, SCHIP, Title X, and other government health care programs deny parents the right to know which medical services their children receive, even when the services include birth control, psychiatric counseling, or substance-abuse therapy. Their policies limit parents' ability to raise their children according to their own moral values.
- This sort of problem will always occur when the government runs or controls health care. Medical decisions frequently involve moral judgments that balance several considerations—procedures performed, spending limits, ethics, and so on. If the government controls these decisions, it imposes one set of moral judgments on everyone.
- Any health care reform must allow parents to *own* and *control* their family's health insurance. Reform based on personal choice and competition allows parents to ensure that the medical decisions that affect their families are compatible with their moral judgments.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Family/bg2181.cfm

Produced by the Richard and Helen DeVos Center for Religion and Civil Society

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 • heritage.org

In the continuing debate over major reforms in federal health care policy, these moral concerns are often overshadowed by other challenges—such as controlling health care costs and providing accessible health insurance to low-income Americans. But in addressing these problems, policymakers at the state and federal level must not choose solutions that would override individuals' deeply held convictions. This is especially important in our religiously and morally pluralistic society.[1]

The debate over health care solutions is focused on two broad and very different approaches to comprehensive reform. One is a government-controlled insurance program, either centrally managed and regulated or based almost exclusively on government payment. The other is based on personal choice and market competition, where individuals and families make the key financial decisions, particularly when it comes to insurance coverage, benefits, medical procedures, and treatments. On the question of whose moral values are controlling the sensitive matter of health care decision-making, these two approaches are worlds apart.

A national health insurance program, government-run or government-controlled, would centralize control over health care financing and delivery, and would centralize the power of approved third-party payers to impose their values on a morally pluralistic society. Political decisions would, in effect, supplant moral ones. A reform based on personal choice and competition in a pluralistic market would ensure that patients—or in the case of minors, their parents—exercise the primary control over how their health care dollars are spent, allowing them to make health care decisions that are consistent with their values. A market-based reform, in other words, is inherently compatible with parental authority.

The Bureaucratic Suppression of Moral Decisions

Current federal health insurance programs routinely govern the health care of minors in ever larger numbers, and in so doing, government officials pre-empt or interfere with important decisions that should be made by parents. In contrast, new policies that would inject principles of consumer choice and competition into the financing and delivery of health care can restore respect for the primary relationships between parents and children, leaving families free to live according to their moral convictions.

To better understand how government currently intrudes on these relationships, consider again the 14-year-old girl in Kentucky requesting birth control at a health clinic. Examine further the details from this real-life case:

> The girl told the doctor that she was not yet sexually active, but that the mother of her boyfriend, who had driven her to the clinic, wanted her on birth control so that her son would not father a child out of wedlock if they were to have sex. The girl wants her boyfriend to like her, she told the doctor, and she wanted to remain on good terms with his mother. That's why she was asking to be put on prescription birth control. However, she does not want her parents to find out. Because the girl requested confidentiality, the doctor had her enroll in a federal program to pay for the contraception, so that the charges would not show up on her parents' insurance bill.[2]

Unless they pay close attention to the health care debates in state legislatures, typical Americans are unaware of the intrusiveness of current government policy. Representatives of professional health care organizations often argue that minors should be

1. For a more thorough discussion of this issue, and the related matter of patients' freedom of conscience, see Robert E. Moffit and Jennifer A. Marshall, "Patients' Freedom of Conscience: The Case for Values-Driven Health Plans," Heritage Foundation *Backgrounder* No. 1933, May 15, 2006, at *http://www.heritage.org/research/healthcare/bg1933.cfm*.
2. Addia Wuchner, "Prepared Statement of Addia Wuchner, Board of Directors, Northern Kentucky Independent Health District," testimony for "Protecting the Rights of Conscience of Health Care Providers and a Parent's Right to Know" before the Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives, July 11, 2002, pp. 47–48, at *http://purl.access.gpo.gov/GPO/LPS24409* (September 3, 2008).

allowed to receive reproductive health care without their parents' knowledge or consent.[3] The American Association of Pediatrics states bluntly, "Comprehensive health care of adolescents should include a sexual history that should be obtained in a safe, nonthreatening environment through open, honest, and nonjudgmental communication, with assurances of confidentiality… The primary reason adolescents hesitate or delay obtaining family planning or contraceptive services is concern about confidentiality."[4] Specifically for this reason, Congress enacted a federal law, popularly known as Title X, which provides that whenever a sexually active minor seeks confidential birth control, she is to be treated independently from her parents. Therefore, she can accept birth control without consulting her parents, and if she requests confidentiality without parental knowledge, the government will foot the bill for her contraception and related medical costs, regardless of her parents' income.

Under current law, Congress makes confidential access to birth control for school-age girls such a priority that it picks up the tab even for services that the girl's family insurance would cover. Since federal law trumps state law, it does not matter that the laws of her state deem her too young to consent to sex.

Limiting Medical Judgment. Doctors make delicate decisions about teen health care every day, but current federal confidentiality rules can render it nearly impossible for a doctor to perform the medical action that his professional judgment demands. Consider, for example, the case of the 16-year-old boy in North Carolina who went to his pediatrician complaining of severe daily headaches. The doctor questioned the boy after his mother stepped out of the room, and discovered that the boy regularly used marijuana and cocaine, and occasionally LSD, hallucinogenic mushrooms, and Ecstasy. The doctor informed the boy that his headaches might be related to his drug use, and recommended that he undergo treatment for substance abuse. The doctor asked for permission to tell his mother, and the boy said no. He said he was not afraid of his parents' reaction; he simply thought he had his drug use under control, it was no big deal, and his parents would not care. Under North Carolina law, if the child is on private insurance and the doctor judges the matter "essential to the life or health of a minor," he can ignore the boy's request for confidentiality and tell the mother about his addiction.[5] In this case, the doctor did tell the mother, and the boy was enrolled in a drug treatment program a few weeks later.[6]

The Medicaid Angle. If the child's family had been on Medicaid instead of private insurance, the story would have been different. Under federal law, Medicaid prohibits any doctor from breaching the confidentiality of any patient, even to the parents of children.[7] Had the boy's family been enrolled in Medicaid, the law would have enforced his right to confidential medical care, deferring to the short-term self-interest of a drug-addicted minor and overruling the doctor's expert judgment regarding his objective medical needs.

In both of these real cases, federal laws and the reigning ethos of the professional health care associations intrude on intimate health care choices of parents and families. In both cases, they exclude parents from key decisions regarding the welfare of their own children. In both cases, they impose one

3. See, for example, Madlyn C. Morreale, Amy J. Stinnett, and Emily C. Dowling, eds., *Policy Compendium on Confidential Health Services for Adolescents,* 2nd Edition, (Chapel Hill, N.C.: Center for Adolescent Health & the Law, 2005), at *http://www.cahl.org/PDFs/Policy%20CompendiumPDFs/PolicyCompendium.pdf* (September 3, 2008).
4. American Academy of Pediatrics, Committee on Adolescence, Policy Statement "Contraception and Adolescents," *Pediatrics*, Vol. 104, No. 5, November 1999, p. 1162, at *http://aappolicy.aappublications.org/cgi/reprint/pediatrics;104/5/1161.pdf* (September 3, 2008).
5. This example is based on the case described by Pedro Weisleder, "The Right of Minors to Confidentiality and Informed Consent," *Journal of Child Neurology,* Volume 19, Number 2 (February 2004), pp. 145–148.
6. Pedro Weisleder, "The Right of Minors to Confidentiality and Informed Consent," p. 148.
7. Sections 1902(a)(7)(A) and 1902(a)(8) of the Social Security Act; 42 CFR 31. See also the interpretation of these Medicaid statutes in federal case law, especially *T.H. v. Jones*, 425 F. Supp. 823 (1975), 425 US 986 (1976) (striking down a Utah law requiring parental notification as a condition for a minor receiving Medicaid-funded contraception).

set of values on the entire country, trampling on local and state laws reflecting their communities' deliberate moral judgments.[8]

Government Health Programs Separate Parents and Children

Problems of parental choice and control are typical in federal health care programs, especially in Medicaid, SCHIP, and Title X.

Medicaid. Medicaid, for instance, prohibits parental notification for any medical procedure it covers.[9] This means that children are not required to notify their parents if, while on Medicaid, they receive any of the following medical services (this list is not exhaustive):

- abortions (in the cases of rape, incest, and the life of the mother),
- birth control,
- pregnancy tests,
- the morning-after pill,
- tests for sexually transmitted diseases,
- gynecological exams,
- prescription drugs,
- treatment for drug abuse,
- treatment for psychiatric disorders (including depression, suicide, and attention deficit disorder),
- sexual-orientation counseling, and
- personalized sexual education.

As in the example of the drug-using teenager above, the doctor is prohibited from informing the parent of a child on Medicaid about the case, even if the doctor believes it is in the best interests of the child, unless he can obtain the consent of the minor.

SCHIP. Medicaid is a welfare program. While children from working and middle-class families are not eligible for Medicaid, they are often eligible for another federal program called the State Children's Health Insurance Program (SCHIP). In a number of states, however, this program is an extension of Medicaid and offers many of the same services—including abortion, birth control, psychiatric treatment, substance-abuse treatment, prescription drugs, and sex education—but specifically for children.

Under SCHIP each state can elect to apply Medicaid's rules, or to design an entirely different program from scratch. Despite this flexibility, however, all 50 states continue to offer Medicaid-style family planning services for children, and most states have also continued Medicaid's policies regarding confidential care for minors. As a result, children from middle-class families are frequently able to receive these services without their parents' knowledge.[10]

Title X. In addition to Medicaid and SCHIP, which pay for a full range of medical care, the federal government also has a special program that funds only reproductive health care and activities related to population control, the above-mentioned Title X. Under Title X, a clinic charges its clients based on their ability to pay for its services, from wealthy clients who pay full price to lower-income patients who pay a nominal fee or nothing at all.

While Medicaid and SCHIP only pay for children who qualify for their programs, the Title X program will completely cover confidential birth control for any child who is not independently wealthy. Once a girl asks that her parents not be notified, as in the case of the 14-year-old Kentucky girl, the government pays for her services,[11] which include birth

8. Section 1937 of the Social Security Act allows the states to opt out of the default Medicaid benefits package, and therefore opt out of the federal rules that override state parental consent laws. Since 2006, when this was made possible, however, no state has opted to do so.
9. Sections 1902(a)(7)(A) and 1902(a)(8) of the Social Security Act; 42 CFR 31; 45 CFR 164.502. See also Abigail English, "The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges," *Perspectives on Sexual and Reproductive Health*, Vol. 36, No. 2 (March/April 2004), at *http://findarticles.com/p/articles/mi_m0NNR/is_2_36/ai_n6069101/print* (September 3, 2008); and Center for Reproductive Rights, "Parental Consent and Notice for Contraceptives Threatens Teen Health and Constitutional Rights," Domestic Fact Sheet No. F008, November 2006, at *http://reproductiverights.org/pub_fac_parentalconsent.html* (September 3, 2008).
10. For a discussion of the relationship between SCHIP and Medicaid, see Daniel P. Moloney, "SCHIP Expansion: More Birth Control for Minors, Less Involvement by Parents," Heritage Foundation *WebMemo* No. 1715, December 3, 2007, at *http://www.heritage.org/Research/HealthCare/wm1715.cfm*.

control, the morning-after pill, gynecological examinations, and abortion. The Alan Guttmacher Institute, the research arm of Planned Parenthood, says that Title X is the "gold standard" of teen confidentiality rules,[12] and it lobbies federal and state lawmakers to incorporate these rules into every expansion of government control over health insurance.

Because Title X confidentiality rules are so strong and apply to children,[13] clinics supported by the program can even facilitate statutory rape, whereby adult men molest minor girls. In January of 1996, a 13-year-old girl went to the McHenry County Health Clinic in Illinois to request Depo-Provera, a long-term contraceptive injection. She told the doctor that she was sexually active and that she did not want her parents to know, so she received confidential services just like the 14-year-old Kentucky girl. After she received a prescription for the injection, her sex partner—her 37-year-old former teacher at Crystal Lake Middle School—drove her home from the clinic. They returned for follow-up shots on multiple occasions before she finally told her parents in February 1997.[14] More than two years later, when the parents tried to sue the clinic for facilitating statutory rape, a county judge ruled that the doctor's actions were legal under Title X.

Finally, parents should be aware that health clinics based in public schools receive funds from all three of these federal programs, and therefore are often governed by their rules prohibiting parental access to their children's health records. Nearly three-quarters of school-based clinics receive funds from Medicaid, and over half also receive funds from SCHIP.[15] Many of these clinics receive Title X funds themselves or have contracts with Title X clinics to provide reproductive services and sex education programs. In a school-based clinic that receives Title X funds, for example, a wealthy minor on private insurance can, at the discretion of the doctor, enroll in a government program that permits confidential access to birth control, STD testing, abortion, and more. Indeed, the movement toward including more elaborate clinics in public schools was in part to ensure that teenagers had access to confidential birth control.[16]

Sound Health Care Reform Can Return Power to Parents

Parents have the primary responsibility for their children, and thus ought to play a paramount role in any decisions affecting their children's lives. Doctors and government officials should certainly be allowed to contribute their professional advice or financial support, but the parents must have the ultimate right, in all but extraordinary circumstances, to raise their children the way they deem best. Medicaid, SCHIP, Title X, and other government health insurance programs routinely violate this most basic of principles. Members of Congress and state legislators alike should, therefore, take decisive steps to reform all three programs.

11. 42 CFR 59.2: "[U]nemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources."
12. Adam Sonfield, Casy Alrich, and Rachel Benson Gold, "State Government Innovation in the Design and Implementation of Medicaid Family Planning Expansions," Alan Guttmacher Institute, March 2008, p. 21, at *http://www.guttmacher.org/pubs/2008/03/28/StateMFPEpractices.pdf* (September 3, 2008).
13. 42 CFR 59.5: "(a) Each project supported under this part must…(4) Provide services without regard to religion, race, color, national origin, handicapping condition, *age,* sex, number of pregnancies, or marital status" (emphasis added). See also 42 CFR 59.11.
14. John A. Heisler, "Protecting the Rights of Conscience of Health Care Providers and a Parent's Right to Know," testimony before the Subcommittee on Health, Committee on Energy and Commerce," U.S. House of Representatives, July 11, 2002, pp. 53–57, at *http://purl.access.gpo.gov/GPO/LPS24409* (September 3, 2008). For background, see Roy Maynard, "A Public School's Private Shame," *World*, August 23, 1997.
15. Linda Juszczak, John Schlitt, and Aisha Moore, "School-Based Health Centers: National Census School Year 2004-5," National Assembly on School-Based Health Care, 2007, p. 5, at *http://www.nasbhc.org/atf/cf/%7BCD9949F2-2761-42FB-BC7A-CEE165C701D9%7D/Census2005.pdf* (September 9, 2008).
16. Julia Graham Lear, "It's Elementary: Expanding the Use of School-Based Clinics," California HealthCare Foundation Report, October 2007, pp. 3–4, at *http://www.chcf.org/documents/policy/SchoolBasedClinics.pdf* (September 3, 2008).

Obstacles to Change. Reform-minded legislators must be prepared, however, to overcome certain obstacles. Poorer parents often have no choice but to enroll in a government program such as Medicaid or SCHIP, and so are at the mercy of the health care establishment that sets the rules for the program. Because the government provides their health care, it determines the requirements to remain eligible—and the result is that it removes the right of the parent to make many of the key moral decisions that are only the parents' responsibility. Parents' only practical alternative is to accept those rules or not have any health insurance at all. If parents had the ability to choose from a variety of health care options, they could walk away from a situation in which they were not happy and seek better treatment elsewhere.

Most people receive their health insurance through the government or their employer, and do not have the personal power to change insurance companies except at a very high cost. As a result, insurance companies, hospitals, and doctors are not required to be as responsive to the demands of the patients as are suppliers of other goods and services in a normally functioning competitive economy. If more Americans controlled their own health insurance, and could easily switch insurance companies whenever a better health plan became available, the entire health care sector of the economy would become much friendlier to consumers and patients. Greater personal control over health care dollars, including where to purchase health insurance and from whom, would lead to a health care system far more responsive to people's needs than it is today—including their wish to have their deeply held moral views respected in the financing and delivery of care.

Key Principles of Sound Reform. Any reform that gives parents control over the health care decisions for their families should be based on four principles:[17]

1. Individual patients, not employers or government bureaucrats, should be able to choose their health insurance coverage for themselves and their families.
2. Each person must be able to change insurance companies easily, without requiring an employment change or suffering major tax or regulatory penalties as in effect today.
3. Each person should have a variety of insurance plans from which to choose, including health plans that reflect different life situations and respect individual values.
4. Americans should be given ownership of their health insurance coverage so that an unaccountable third party does not have control over its contents and quality—and the values it embodies.

Parental Values. Parents have the right to pass on their moral values to their children. That right is often disregarded in the regular course of financing and delivering medical services.

The disconnect between personal values, particularly traditional moral beliefs, and the reigning ethos is no more clearly demonstrated than in today's government-controlled health care programs. In these programs, the ethos governing health care reflects the values of the bureaucrats, professional organizations, industry lobbyists, and the administrators of big hospitals that embody the health care establishment.

Generally speaking, the representatives of these groups share a commitment to allowing children to receive sexual and mental health services without their parents' knowledge, consent, or involvement. While they may publicly warn legislators not to impose traditional moral values in the formulation or execution of public policy, they see no contradiction in the forcible imposition of their own moral perspectives throughout the health care system in every state in the country, overriding state laws and the protection of parents' rights. They can do this because the government programs that they control and influence are, practically speaking, the only health care options for many people.

17. For a more detailed discussion of the principles of health care reform, see Edmund F. Haislmaier, "Health Care Reform: Design Principles for a Patient-Centered, Consumer-Based Market," Heritage Foundation *Backgrounder* No. 2128, April 23, 2008, at *http://www.heritage.org/Research/HealthCare/bg2128.cfm.*

Only Fundamental Health Care Reform Will Restore Parents' Rights

The experience with Medicaid, SCHIP, Title X, and other government-funded health insurance programs illustrates the adage, "He who pays the piper, calls the tune." If someone other than the patient controls how the doctor is paid, someone other than the patient controls the moral decisions embodied in the financing and delivery of care.

For this reason, broad health care reform cannot simply tinker with the current system in which employers and the government officials retain the key levers of control. A federally administered national health insurance plan, based on a set of moral values determined by "experts," would be particularly threatening to parents, families, and all those who do not share the moral values of the health care establishment or of the reigning political party.

Parents have the primary responsibility for the welfare of their children, and policymakers must respect their right to make decisions for their children. A central goal of any health care reform, therefore, must be to allow parents to own and control their family's health insurance. This would allow them to make key moral decisions that affect their children, restoring them to the role that is naturally and rightfully theirs.

—Daniel Patrick Moloney, Ph.D., is a seminarian for the Catholic Archdiocese of Boston, and former Senior Policy Analyst in the Richard and Helen DeVos Center for Religion and Civil Society at The Heritage Foundation.