

# WebMemo



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## How the House Stimulus Bill Undercuts Parental Authority

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Buried in the economic stimulus legislation is a provision further undercutting parental authority and expanding control of taxpayer dollars by family planning clinics. No doubt these provisions are embodied in the economic stimulus package because their congressional sponsors believe that they would not be enacted if considered separately on their own merits.

**Expanding Eligibility.** Section 5004, “State Eligibility Option for Family Planning Services,” would make Medicaid into a virtual money-machine for family planning clinics. The federal government already provides a 90 percent match rate for family planning services in Medicaid. States therefore have little at stake in Congress’s oversight and accountability of Medicaid. Under Section 5004, eligibility and benefits can be expanded in several ways:

- Contrary to current law, the income of parents or even a spouse may not be counted in determining eligibility. A state would have the option to “consider only the income of the applicant or recipient.” In other words, a child in a family at any income level may be eligible for free family planning services.
- A child would be able to receive benefits through a “presumptive eligibility period” and beyond without parental knowledge that he or she applied for Medicaid.
- Typically, Medicaid eligibility is restricted to individuals in a family with a dependent child. Section 5004 creates a new eligibility group that would include college students, adults without children, and even adults in a household that has

significant income but little or no income for the applicant. Moreover, applicants would not have to prove their citizenship before their “presumptive eligibility” is determined.

- Benefits are not limited to “family planning services and supplies.” Section 5004 expands benefits at state option to include “medical diagnosis and treatment services that are provided in conjunction with a family planning service in a family planning setting.” This is a massive loophole. Providers would quickly learn that all they have to do is ask certain questions to qualify as “a family planning service in a family planning setting.” For instance, all a provider has to do is ask a patient, “Are you sexually active?” and that encounter automatically meets the new, broad test, thereby triggering Medicaid payment for other services as well, paid for with a 90 percent match rate from the federal government. While family planning clinics are clearly intended to become the sites for delivering services, there is nothing to prevent other types of providers (such as a hospital outpatient department, which has access to an even broader array of tests and treatments) from doing the same. Since states have little of their own funds at stake, they would have

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incentive to raise reimbursement rates to clinics and steer individuals to them. The provision of additional benefits would also create new inequities. Individuals who are not pregnant will qualify for all the new benefits. All the while, expectant mothers, by definition, are not intended to be eligible for this coverage.

- Since family planning services can include services to achieve pregnancy, it will be up to the Obama Administration to interpret the language as to whether the expansion of benefits would include expensive fertility treatment. Fertility drugs are not currently covered by Medicaid, but as a new benefit to be defined by the states, it is not clear whether these restrictions would still apply. Without a doubt, special interest groups would pressure the states to expand such benefits, given the 90 percent match rate. If allowed, this would create another new inequity. The newly eligible individuals at higher income levels could receive fertility services while lower-income individuals served through regular Medicaid would not.
- Debate over family planning coverage reveals a deep ideological division among the proponents. In general, congressional leaders have strongly insisted that all children covered by Medicaid receive the comprehensive benefits of Early Periodic Screening Diagnosis and Treatment (EPSDT) services. It seems inconsistent to maintain that a “family planning only” benefit is appropriate for some children while a benefit package that includes hospitalization, physician services, dental care, and prescription drugs—but not EPSDT—is insufficient to merit public funding.
- Providers will be empowered to give at least two months of benefits under the “presumptive eligibility” provisions. Benefits could be extended further through additional presumptive eligibility periods. Typically, presumptive eligibility has been reserved to public entities. This provision will give the power to private clinics to provide easy access to so-called “emergency contraceptives” and be reimbursed with taxpayer dollars.
- The Obama Administration will interpret whether the payment language (“[n]otwithstand-

ing any other provision of law”) may be used as a backdoor means of overturning Hyde Amendment restrictions on federal funding of abortions.

**More Loopholes.** Section 5004 will also reverse current law in respect to state benefit flexibility. Since the enactment of the Deficit Reduction Act of 2005, states have had the authority to offer “benchmark plans” and were allowed by federal law to provide coverage that does not include family planning services. Some religious organizations believe low-income families should be able to participate in a health benefit program that does not include contraceptives or sterilization. In a statement on reauthorization of the State Children’s Health Insurance Program (SCHIP), for example, the Catholic Medical Association recommends that “at a minimum, state and federal regulations should permit parents to have access to SCHIP funds to enable them to choose health insurance coverage that does not conflict with their values and that does not separate funding mechanisms from parental oversight.”<sup>1</sup> Under Section 5004, that choice would not be available to parents of children on Medicaid.

Finally, the legislation provides a special “safe harbor” protection to the state of California. Under procedures dating back to the Clinton Administration, California created an eligibility process that bypasses the county welfare agencies. As a result, California is allowed to provide coverage to individuals—including immigrant populations—who are not eligible for Medicaid. The Bush Administration attempted to bring California into conformance with standard eligibility procedures. Section 5004 would allow California to continue to use the same procedures that have been abused in the past.

**A Hidden Agenda?** A radical social agenda does not belong in the economic stimulus package. At a minimum, congressional sponsors should be required to present it for a full debate with the potential for amendments in the House of Representatives and the Senate. It should not be buried in the economic stimulus package.

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1. Press release, “Statement on SCHIP Reauthorization,” Catholic Medical Association, January 15, 2009, at [http://www.galen.org/fileuploads/CMA\\_Statement\\_SCHIP.pdf](http://www.galen.org/fileuploads/CMA_Statement_SCHIP.pdf) (January 22, 2009).