

Promoting Equal Access to Obstetric Care

The Need for Action

Obstetric epidurals¹¹⁴ are a key component of pain management for many women during labor and childbirth.¹¹⁵ Yet, some providers have questioned or denied the right of low-income women and women with limited English abilities to obtain epidurals during labor.

- In the American Academy of Anesthesiologists newsletter, one doctor commented: “Poor people can’t expect to drive a Rolls-Royce or to eat at a fine French restaurant, so why should they expect to receive the Cadillac of analgesics for free?”¹¹⁶
- A hospital in South Carolina has banned epidurals for women who do not speak English. According to the hospital’s medical director for anesthesia services, the policy was implemented because “we have to be able to communicate with the patient” in order to administer an epidural safely. Yet, the hospital also failed to provide translation services.¹¹⁷

Under federal law, providers may not charge Medicaid patients for covered pregnancy-related care, including epidurals.¹¹⁸ However, to avoid low Medicaid reimbursement rates, doctors across the country have denied epidurals to low-income women unless they pay cash in advance for the procedure.¹¹⁹

- In one instance, Ozzie Chavez of California was denied an epidural because she could not pay the \$400 in cash while in active labor, even though she was on Medicaid and offered to pay by check, credit card or money telegram. The case spurred a class-

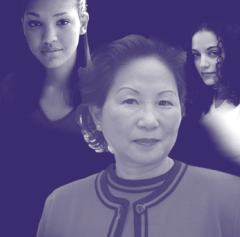
action suit against several California hospitals where the practice was rampant; the suit was settled out of court.¹²⁰

- Evidence indicates that women on Medicaid are less than half as likely as privately insured women to receive an epidural during vaginal delivery.¹²¹

Women should not be denied appropriate pain management services during labor based on financial circumstances or language proficiency. Such denials violate Medicaid requirements,¹²² jeopardize women’s health and breach professional standards of care.¹²³ Medical providers who do deny appropriate pain management services to women during labor should be held accountable for their actions, and Medicaid reimbursement rates for obstetric epidurals should be made comparable to those of private insurance plans to remove the financial incentive doctors have to discriminate against women in active labor.

The proactive policy options in this section focus on preventing discrimination in obstetric care. The primary goals of these policies are to:

- (1) ensure that women in labor receive appropriate pain management services;
- (2) prevent medical providers from discriminating against women in labor; and
- (3) remove the financial incentive that medical providers have to deny women in labor appropriate care.



Developing Your Plan of Action

Before deciding on an appropriate plan of action to ensure that all women in labor receive the medical care they need, you should gather information on the issue in your state. Questions to ask include:

- Are all Medicaid-eligible women and women with limited English proficiency in your state receiving equal access to pain management services during labor? Do health care facilities in your state have adequate procedures for informing patients, staff and contractors about non-discrimination policies?

*If not, consider **Option 1**.*

- Can medical professionals who deny pregnant women in childbirth appropriate pain management services based on language or Medicaid status be charged with unprofessional conduct in your state?

*If not, consider **Option 2**.*

- Are Medicaid reimbursement rates for epidurals and other obstetric services in line with private insurance reimbursement rates in your state?

*If not, consider **Option 3**.*

GATHERING FACTS

The following organizations and resources can assist you in gathering information on obstetric care policies in your state:

The **American College of Obstetricians and Gynecologists**, <http://www.acog.org>, and the **American Medical Association**, <http://www.ama-assn.org>, provide information on professional standards of care for medical providers;

The **American Society of Anesthesiologists** (ASA) has worked with its state counterparts to identify which states have low Medicaid reimbursement rates for epidurals and to lobby legislators for fair and appropriate policy changes. As part of this effort, ASA has collected state data on Medicaid reimbursement rates for epidurals compared to private insurance and managed care reimbursement rates. For more information, contact ASA at (847) 825-5586 or <http://www.asahq.org>; and

The **Centers for Medicare & Medicaid Services** website can provide information on Medicaid coverage generally, including coverage for labor and delivery services, <http://cms.hhs.gov>.

Proactive Policy Options

OPTION 1

PROVIDE APPROPRIATE PAIN MANAGEMENT SERVICES FOR WOMEN IN LABOR

BACKGROUND

Under federal law, a hospital that accepts a Medicaid patient for treatment must ensure that the patient receives all medically necessary services, including epidurals during childbirth.¹²⁴ Moreover, Medicaid providers are prohibited from charging patients for pregnancy-related care.¹²⁵ Nevertheless, some women on Medicaid have been unlawfully denied pain-relieving epidurals during childbirth unless they pay cash in advance for the procedure.¹²⁶ This proactive policy option addresses the discrimination faced by pregnant women who are denied appropriate pain management care in labor. It requires health care facilities that provide labor and delivery care to adopt a written policy statement against discrimination in obstetric care and to adequately communicate the policy to patients and health care providers.¹²⁷

ACTION

Require that health care facilities provide all pregnant women with the pain management services to which they are entitled.

STRATEGY GUIDE

- **FIRST**, determine whether discrimination in obstetric care is an issue in your state.
 - > *Does your state have any laws to address discrimination in obstetric care and, if so, is*

the public is aware of these laws? Contact your state attorney general or human rights commission for more information on relevant anti-discrimination laws in your state.

- > *Also contact your state medical board to determine whether any official complaints have been filed against doctors for failing to provide appropriate pain medication during labor.*
- > *In addition, talk to health advocates in your community to find out whether there have been any anecdotal reports of such discrimination. If so, recruit women who have been denied appropriate pain management services during labor to be advocates and spokespersons for your campaign.*
- **IF SO**, create an effective policy campaign to prevent discrimination against women in active labor based on their language abilities or financial circumstances.
 - > *Refer to **Section 1** of this kit to identify key elements of a proactive policy campaign.*
 - > *Use the **Model Legislation** in this section as a guide for your policy campaign.*
 - > *Try to work with the hospital community early in your campaign to educate them on the importance of such provisions. While you may not garner their support, you might convince them to remain neutral on the issue.*



In tight budget years, this option will be desirable because the enforcement cost to the state will likely be minimal.



MODEL LEGISLATION

ENSURE APPROPRIATE PAIN MANAGEMENT SERVICES FOR WOMEN IN LABOR

- A. No health care facility may promulgate policies or implement practices that establish differing standards of obstetrical care for patients in active labor based upon a patient's language, source of payment or ability to pay for medical services.
- B. Any facility that provides obstetrical care shall provide the state [hospital licensing board] with a written policy statement regarding Section A and:
1. Shall post written notices of this policy, including a telephone number to call to report a policy violation, in the obstetrical admitting areas of the hospital. Notices posted pursuant to this section shall be provided at the fourth grade reading level and shall be written in the threshold languages of the hospital's service area.
 2. Shall provide a written copy of the policy, including the number to call to report a policy violation, to all patients seeking labor and delivery services. Policy statements pursuant to this section shall be provided at the fourth grade reading level and shall be in the threshold languages of the hospital's service area.
 3. Shall provide a written copy of the policy to all health care providers that are affiliated with the facility, including contractors.
 4. For patients of limited English proficiency (LEP) that do not speak a threshold language, the facility shall provide oral interpretation by an appropriate adult [non-family member] of the nondiscrimination policy.
5. For purposes of this Act, a "threshold language" is defined as a primary language of a population group that has limited English language proficiency (LEP) if:
- a. With respect to an area that is a county (or equivalent area), the number of such individuals is at least 3000;
 - b. With respect to residents of a single Zip Code area, the number of such individuals is at least 1000; or
 - c. With respect to residents of a two-contiguous-Zip Code area, the number of such individuals is at least 1500.
- C. In addition to any other remedies, the state [hospital licensing board] shall respond to complaints and shall periodically determine whether facilities are complying with this Act. If the state [hospital licensing board] determines that a facility is not in compliance with this Act, the [board] shall:
1. Impose a \$2500 fine for failure to comply with this Act. For every 30 days that a facility is not in compliance with Section B, an additional fine of \$2500 shall be imposed.
 2. Impose a \$5000 fine per woman who is discriminated against in the provision of obstetric care in violation of Section A.
- D. Nothing in this Act shall limit any other remedy, right of action or penalty that is available to the state or to a private person.

THINKING BIG: A POLICY CAMPAIGN TO STOP ALL DISCRIMINATION IN OBSTETRIC CARE

Depending on what your research yields, the goals of your campaign and the political circumstances in your state, you might consider advocating for legislation that guarantees women a broader right to be free from discrimination in obstetric care. For example:

MODEL LEGISLATION

PREVENT DISCRIMINATION IN OBSTETRIC CARE

The provision of obstetric care shall not be based upon, or affected by, a person's race, ethnicity, religion, national origin, language, age, disability, sexual orientation or preexisting medical condition, except to the extent that such a circumstance is medically significant to the provision of appropriate medical care to the patient.

- This model legislation expands on **Option 1** by prohibiting discrimination in obstetric care generally. It also highlights the importance of culturally competent health care by providing for an exception in cases where different treatment based on one of the enumerated categories is medically appropriate.
- Keep in mind that many states have anti-discrimination laws on the books that may encompass discrimination in obstetric care. If so, consider advocating before your state human rights commission or attorney general to ensure that such laws are adequately enforced.



If enacted, this policy option would have some enforcement costs to the state, but for the most part is neutral with respect to state finances.



OPTION 2

HOLD MEDICAL PROFESSIONALS ACCOUNTABLE FOR INAPPROPRIATELY DENYING PAIN MANAGEMENT SERVICES TO WOMEN IN LABOR

BACKGROUND

Evidence indicates that medical providers, concerned about the low Medicaid reimbursement rates for obstetric epidurals, have denied appropriate pain management care to women in active labor.¹²⁸ Although medical providers should be adequately compensated for their services, the fact that Medicaid reimbursement rates are not in line with that of private insurance does not justify a medical provider's decision to withhold appropriate pain management care. This policy option puts medical providers on notice that inappropriately withholding pain management care violates professional standards of care and may subject them to disciplinary action. Sanctions for unprofessional conduct differ by state and may include fines, probation and license suspension or revocation.

ACTION

Require the state to define unprofessional conduct to include the withholding of, or threat to withhold, appropriate pain management services from patients in active labor.

STRATEGY GUIDE

- **FIRST**, determine whether your state defines unprofessional conduct to include the withholding of, or threat to withhold, appropriate pain management services from patients in active labor.
 - > *Find out what actions on the part of medical providers constitute unprofessional conduct under your current state law. Contact your state medical board or recruit a volunteer attorney for assistance in answering this question.*
 - > *Also consider contacting your state medical board to determine whether any official complaints have been filed against doctors for failing to provide appropriate pain medication during labor.*
 - > *In addition, talk to low-income health advocates in your community to find out whether there have been any anecdotal reports of such discrimination. If so, recruit women who have been denied appropriate pain management services during labor to be advocates and spokespersons for your campaign.*
- **IF NOT**, consider developing an effective policy campaign to hold medical professionals accountable for denying pain management services to women in active labor.
 - > *Refer to **Section 1** of this kit to identify key elements of a proactive policy campaign.*
 - > *Use the **Model Legislation** in this section as a guide for your policy campaign.*

> Consider combining versions of this policy option and **Option 1** into one bill regulating both health care facilities and medical professionals, as some advocates have done.

> As you prepare your legislative strategy, consider possible campaign opponents. For example, state medical societies may not support this provision because they:

(1) either do not perceive discrimination in obstetric care to be an issue; or

(2) because they object to additional sanctions on medical providers.

However, if combined with **Option 3** in this section, which calls for a study of and increase in Medicaid reimbursement rates for obstetric epidurals, you may be able to neutralize this opposition.



This policy option may have some enforcement costs to the state, but for the most part it is neutral with respect to state finances.

MODEL LEGISLATION

ENSURE PROFESSIONAL CONDUCT IN OBSTETRIC CARE

It shall constitute unprofessional conduct within the meaning of the [Medical Practice Act] for a [medical professional] to deny or threaten to withhold pain management services from a woman in active labor based upon that patient's language, source of payment or ability to pay for medical services.



OPTION 3

PROMOTE COMPETITIVE MEDICAID REIMBURSEMENT RATES FOR OBSTETRIC EPIDURALS

BACKGROUND

Under federal law, states must provide Medicaid recipients with “equal access” to medical care and services at least to the extent such care and services are available to the general population.¹²⁹ In some states, however, Medicaid reimbursement rates for obstetric epidurals appear to be substantially lower than private rates, causing some providers to withhold medically appropriate care.¹³⁰ For instance:

- New York and Connecticut Medicaid pay \$55 to \$105, and \$64 respectively, for an epidural, while insurance companies in these states pay over \$800.¹³¹

If the Medicaid reimbursement rate for epidurals in your state is considerably less than what insurance companies pay, consider seeking a rate increase.

ACTION

Require the state to survey obstetric epidural reimbursement rates and, if necessary, increase Medicaid reimbursement rates so that they are competitive with those of private insurance plans.

STRATEGY GUIDE

- **FIRST**, determine whether Medicaid reimbursement rates for obstetric epidurals are lower than private rates.

> *Contact your state Medicaid agency for more information. Also refer to the resources listed in the **Gathering Facts** box in this section.*

- **IF SO**, determine:

(a) which state official is empowered to address Medicaid reimbursement rates; and

(b) whether a legislative campaign is necessary to prompt state action.

- **NEXT**, develop an effective policy strategy to:

(a) officially request action from the appropriate state official or agency; or

(b) enact legislation to obtain fair Medicaid reimbursement rates for obstetric epidurals and remove any financial incentive that providers might have to alter or withhold treatment from Medicaid patients.

> *Refer to **Section 1** of this kit for the key elements of a policy campaign.*

> *Use the **Model Legislation** in this section as a guide for your policy campaign.*

> *Whether your goal is to lobby the Medicaid rate-setting board for a reimbursement rate change or enact legislation, you likely can count on broad support from your state medical association or other representatives of the medical provider community. Forging these alliances early may help you in future policy efforts.*



This policy option will likely have some budgetary impact based on the costs of the survey and any reimbursement increase for obstetric care, but will lead to lasting improvements in the quality of obstetric care for Medicaid-eligible women.



MODEL LEGISLATION

ENSURE EQUAL ACCESS TO HEALTH CARE FOR MEDICAID RECIPIENTS

The state [Medicaid Reimbursement Board] shall survey the reimbursement rates for [all aspects of obstetric care/obstetric epidurals] for the ten largest insurance plans or provider organizations in the state. Based on this survey, the Board shall ensure that its reimbursement rates are at least equal to the median reimbursement rates, plus any co-payment or deductible, of the ten largest plans or provider organizations.

