Permanent Contraception and the Federal Consent Process: Barriers to Access

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Since the US Supreme Court overturned *Roe v Wade*, legislative efforts to limit reproductive rights both nationally and in Wisconsin have increased. In response, a significant number of women have sought permanent contraception via sterilization. With increased demand, it is apparent that inequity in access to reproductive care exists and is worsened by the federal sterilization requirements.[1] In this commentary, we discuss key aspects of the policy that promote inequity for patients who seek the procedure.

Permanent contraception has a dark past in the United States. The first eugenics-based law allowing forced sterilization for institutionalized people was passed in Indiana in 1907, followed by the passage of laws in 29 additional states over the next 30 years, including Wisconsin in 1913. Approximately 60 000 institutionalized, poor, and/or minority people were forcibly sterilized in the United States before World War II. This continued throughout the 1950s, with over 200 procedures per year in the Midwest. In 1976, the Department of Health, Education, and Welfare enacted a policy mandating an informed consent process for permanent contraception and a 72-hour waiting period; this was increased to 30 days in 1978. The waiting period was meant to act as protection against government-sanctioned and funded forced sterilization. Despite these protections, government-sanctioned sterilizations continue today, and 31 states including Washington, DC have active laws that allow forced sterilization.[2]

> One study suggested that annual unfulfilled requests for permanent contraception methods exceeded 62 000 procedures per year. This results in an estimated cost of $215 million annually attributed to 19 000 unintended births and 10 000 abortions.

Current Requirements

The current Medicaid requirements for permanent contraception in Wisconsin include the following: the person is at least 21 years of age and mentally competent; they have been provided counseling by a clinician using a medical interpreter if the patient's primary spoken language is different than the consenting clinician or the language of the consent form; and the hand-written signature of the patient, clinician, and medical interpreter are included on the Medicaid Sterilization Consent form. The consent must be completed at least 30 days before the estimated date of delivery for those seeking postpartum permanent contraception or the procedure date. The consent form is active for 180 days. A 72-hour exception to the 30-day waiting period exists on the federal level for "emergency abdominal surgery" or "preterm delivery." In these exceptional cases, the Medicaid Sterilization Consent form must have been completed and signed at least 72 hours prior to the emergency surgery or preterm delivery and at least 30 days prior to the estimated date of delivery.[3] The above requirements are applicable only to those with Medicaid insurance. The consent form in is available in 2 languages: English and Spanish.

Barriers to Permanent Contraception

Readability, Health Literacy, and Form Completion

A study of the understandability of the Medicaid Sterilization Consent found that it is written at a 9th grade reading level, higher than that of many Americans.[4,5] Average Americans are considered to have a 7th to 8th grade reading level. The American Medical Association (AMA)

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recommends that patient information be written at a 6th grade level, making the Medicaid Sterilization Consent form difficult for those with low health literacy who likely experience disproportionate barriers to health care access.

Arbitrary Timelines

The 30-day waiting period for people insured with Medicaid causes harm and furthers inequity. No waiting period exists for those with privately funded health insurance. The mandatory 30-day waiting period imposes a paternalistic, arbitrary timeline, as there is no evidence to support the 30-day timeframe to optimize decision-making and minimize regret. Regret is disproportionally emphasized, another paternalistic feature enforced by the waiting period. Regret is experienced by approximately 2% to 3% of women following permanent sterilization.[6] In fact, many people seeking permanent contraception already have reflected and have made the decision prior to approaching their clinician or completing the consent process, and the mandatory waiting period may cause undue anxiety and self-doubt.[6,7] Despite increases in use of telemedicine and delays of elective procedures during the COVID-19 pandemic, timeline requirements for the Medicaid Sterilization Consent form have not been updated.

Obtaining and Documenting Informed Consent for People Who Do Not Speak English

Patients who do not speak English face additional barriers, such as lack of access to forms in their preferred language and limited availability of in-person interpreter services. The requirement of a physical "wet" signature on the Medicaid Sterilization Consent form also creates a significant barrier. After COVID-19, the use of Video Interpreter Systems with remote interpreters expanded and is common in many clinical settings. Many interpreters are not at a central location and work remotely, which makes sending documents for signature challenging. This often requires additional time and staff. Incorrectly completed forms result in nonpayment for the procedure, disincentivizing clinicians and systems from offering it, and further limiting access. Clinicians and health systems may limit procedures to those languages for which interpreter services are easily available or may delay care to allow time to find interpretive services. Two-thirds of denials result from issues on Medicaid sterilization consent forms.[8] The most frequent are lack of a complete form, issues with signature date/times, and, in 66% of cases, form expiration.[9]

Medicaid Insurance Coverage

Women with Medicaid insurance are less likely than those with private insurance to obtain permanent contraception.[10] According to a recent study, only 50% to 60% of individuals with Medicaid insurance received a desired postpartum permanent contraception procedure before hospital discharge, compared to 60% to 80% of those with private insurance across races.[11] Women of color are more likely than non-Hispanic White and Asian women to have Medicaid and are more likely to have negative outcomes related to unmet contraception requests, including short-interval pregnancy.[10,12] Due to structural racism and barriers to health care, Black women experience greater adverse pregnancy outcomes, including preeclampsia, placental abruption, fetal growth restriction, and stillbirth compared to White women on Medicaid.[10] Obstacles cited for the lack of permanent contraception fulfillment include the 30-day waiting period and incomplete paperwork for Medicaid patients.[13] Studies suggest that women with unfulfilled postpartum contraception might have a pregnancy rate twice that of women without a permanent contraception request.[14] These unintended pregnancies may cause worsened outcomes for those already facing systemic racism and reproductive stratification.

Lack of contraceptive autonomy for women on Medicaid may be an indicator of systemic discrimination. Physicians, including obstetrician-gynecologists (OB-GYN) noted that low-income patients faced increased barriers to receiving their desired form of contraception due to difficulty of the consent forms enforced by Medicaid.[15] Bryne et al showed that when Medicaid consent processes were not a factor in permanent contraception procedures, almost 90% of requested procedures were carried out.[16]

Finally, a significant contributing barrier to immediate postpartum permanent contraception is the short duration of postpartum maternal Medicaid coverage. Despite the 180-day timeline of the Medicaid Sterilization Consent form, current Medicaid maternal coverage in Wisconsin extends only 60 days postpartum. If a person presents to their 4- to 6-week routine postpartum visit with a request for permanent contraception, their Medicaid coverage will expire. Even if the Medicaid Sterilization Consent form is signed immediately after giving birth, the uterus takes 6 to 8 weeks to return to pregravid size, which is a requirement of laparoscopic surgery. As of May 2024, Medicaid expansion to increase postpartum maternal coverage from 60 days to 1 year has passed and been enacted in 47 states. Wisconsin is 1 of only 3 states yet to enact the 12-month expansion; the bill (SB110) was passed by the Wisconsin state senate in September 2023, but it "failed to concur in pursuant to Senate Joint Resolution 1" in April 2024 and no action has been taken since.[17]

Economic Cost

Unintended pregnancy comes with significant economic cost. Literature suggests that unintended pregnancies may cost American taxpayers millions of dollars in direct costs. One study suggested that annual unfulfilled requests for permanent contraception methods exceeded 62 000 procedures per year. This results in an estimated cost of $215 million annually attributed to 19 000 unintended births and 10 000 abortions.[18]

Recommendations

We urge physicians, nurses, health care professionals, health systems, and policymakers to listen to patients who have experienced barriers to access.[14] The 30-day waiting period should be abolished and 180-day form expiration be extended, leaving room for health care decisions to be made in a shared decision-making model between patients and physicians. We encourage equity in care provision for those on Medicaid and private insurance. To do this, we recommend consent forms be written at a 6th grade reading level in multiple different languages. We recommend that all states pass legislation to extend postpartum Medicaid coverage. Finally, we encourage federal Medicaid policymakers to allow for electronic signatures for all parties – especially remote medical interpreters. Together we must advocate for change to increase equity and decrease barriers to health care.

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