

Reproductive Health in the Trump Era: Implications of Recent Federal and Judicial Action

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Today's web briefing will be recorded. You can find an archived recording and a PDF of the presentation on our website:

<https://www.kff.org/womens-health-policy/event/web-briefing-for-journalists-reproductive-health-in-the-trump-era/>

The nation has been focused on *Roe v. Wade*, but state and federal policies are also poised to restrict access to abortion and contraceptives in the following ways:

- Regulations to exempt employers with religious and/or moral objections to contraception
- How insurers bill and consumers pay for abortion coverage under ACA marketplace plans
- The future of the Title X family planning program
- State Medicaid programs and Planned Parenthood

Contraceptive Coverage: Balancing women's entitlement to contraceptive coverage with employer beliefs

What Type of Employer Qualifies for an Exemption or Accommodation?

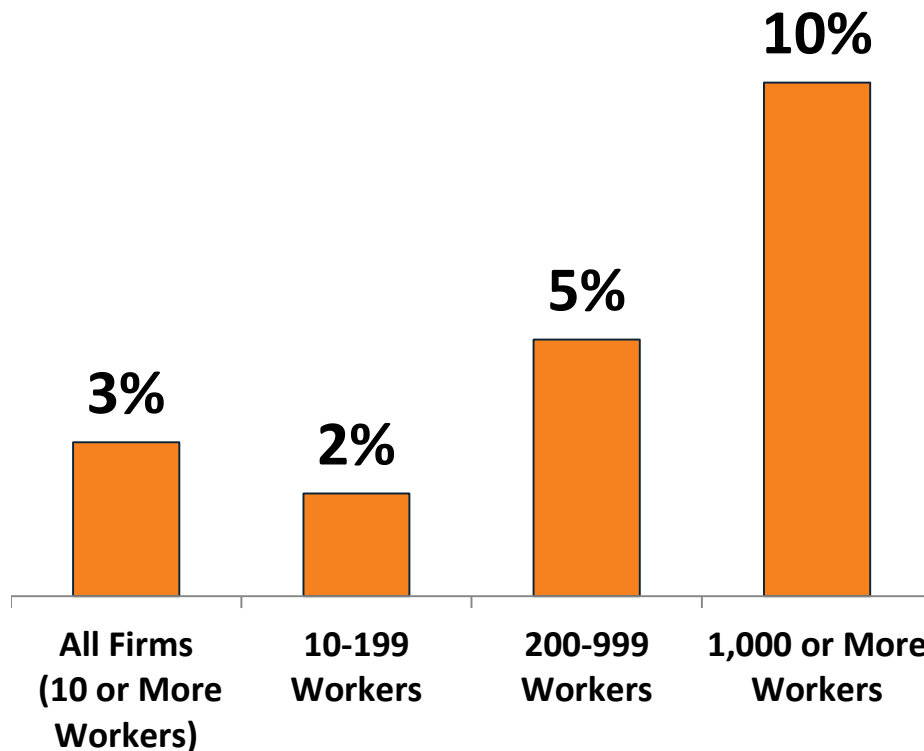
	OBAMA-ERA REGULATION	TRUMP-ERA REGULATION
Exemption <ul style="list-style-type: none">• Employer excludes coverage• Women workers/dependents pay own contraceptive costs	<ul style="list-style-type: none">• Houses of worship• Grandfathered plans	<ul style="list-style-type: none">• All employers and institutions of higher education with religious and/or moral objections• Grandfathered plans
Accommodation <ul style="list-style-type: none">• Employer does not pay for coverage but insurer/TPA pays cost of coverage• Women workers/dependents covered	<ul style="list-style-type: none">• Religiously-affiliated nonprofits• Closely-held corporations	<ul style="list-style-type: none">• Optional for any employer eligible for an exemption

What's next?

- Final Regulations will be published in Federal Register on November 15, 2018 and take effect 60 days after publication (1/14/2018).
- Current stay is based on Interim Final Rules. Challenged by 8 states (CA, PA, WA, MA, DE, MD, NY & VA) and advocates (NWLC & Americans United for Separation of Church & State, ACLU and CRR).
- Grounds of litigation: Regulations violated the Administrative Procedure Act (APA)
- Now that public has been able to comment and Administration has responded – APA claims may go away.
- BUT: Students and states are likely to challenge final regulations on other grounds.

Will employers seek an exemption?

Share of Nonprofits Offering Health Insurance Notifying Insurer of Objection to Contraceptive Coverage, by Size, 2015



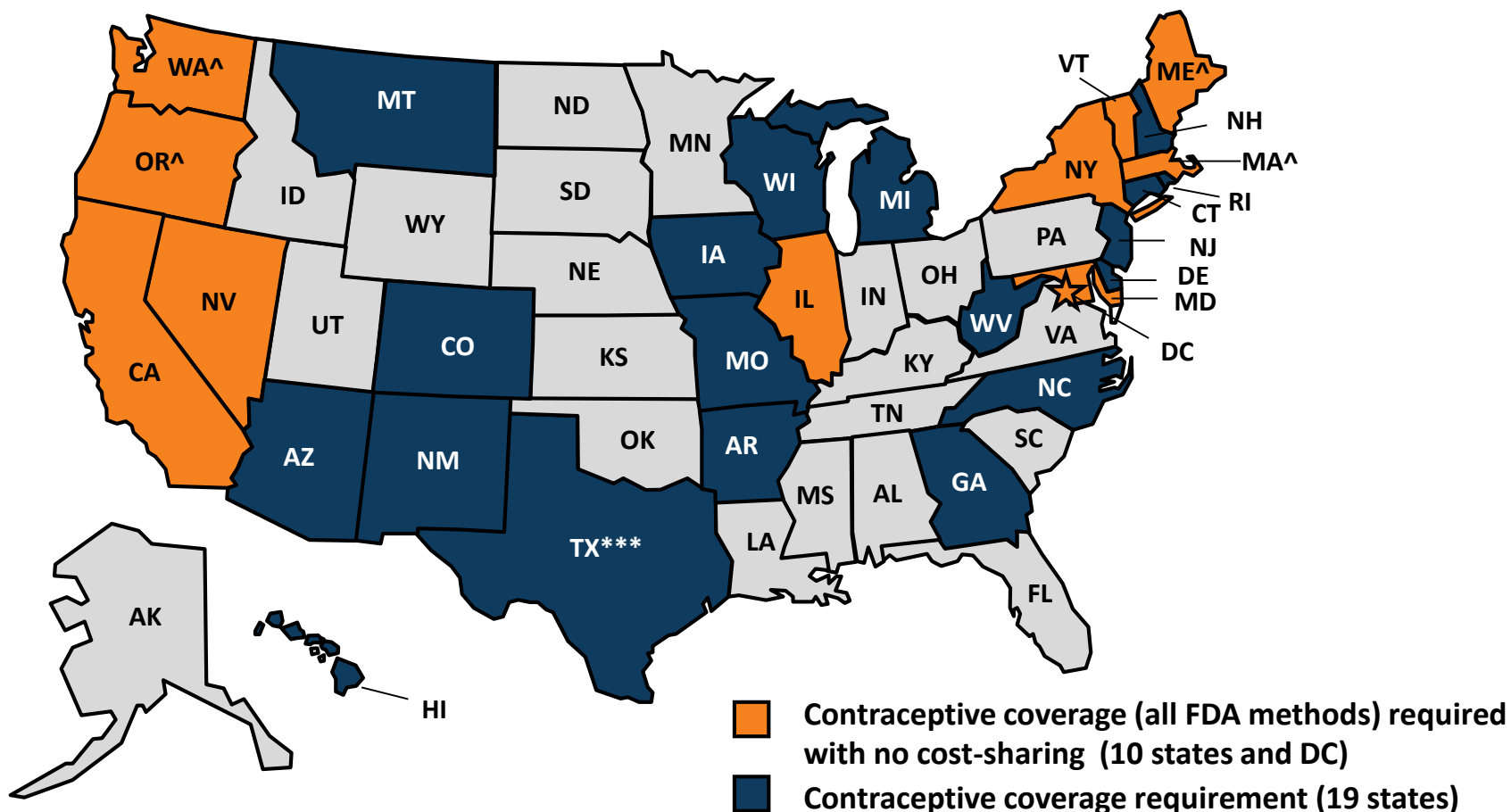
- Difference between **exemption** and **accommodation** is the difference between **coverage** and **no coverage** for workers.
- HHS estimates costs **per woman is \$534/year**, and the number of women affected is **unknown**.
- The numbers of employers and the impact on women is **unknown**.
- What will employers do?

Note: 76% of all nonprofits and 98% of nonprofits with 199 or more workers offered health insurance.

SOURCE: [Data Note: Are Nonprofits Requesting an Accommodation for Contraceptive Coverage?](#) based on Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2015.

Employers Exempt from Federal Law May Not Be Exempt from State Law

State laws only apply to fully insured plans -- 61% of covered workers insured by self-insured plans



NOTES: ^ME, OR, and WA laws go into effect January 2019.

SOURCE: Kaiser Family Foundation. [State Requirements for Insurance Coverage of Contraceptives](#). State Health Facts, as of March 21, 2018.

*** Texas Insurance Code Section [1369.004](#)

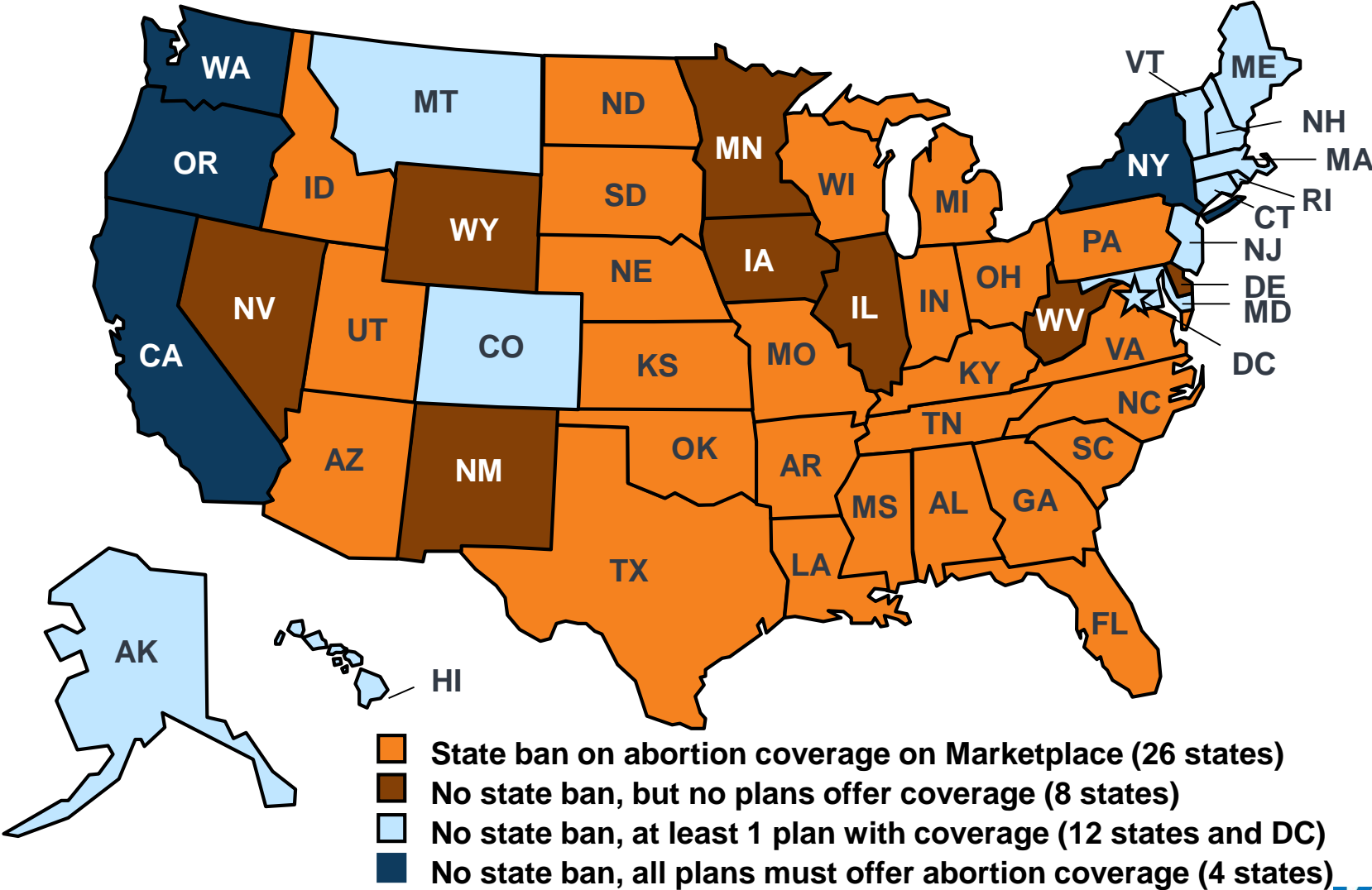
ACA and Abortion Coverage

- **The Hyde Amendment limits the use of federal funds (including tax credits and subsidies) to abortion coverage only in the cases of rape, incest, and life endangerment.**
- **Abortion is explicitly banned as an Essential Health Benefit.**
- **ACA Statute has specific provisions that address abortion coverage:**
 - States can ban coverage in ACA Marketplaces.
 - If there is a Marketplace plan with abortion coverage, the Marketplace must also offer at least one plan that limits abortion coverage to Hyde exceptions.
 - Plans that offer abortion coverage beyond Hyde exceptions must segregate premium payments for coverage of abortion.
 - Abortion coverage must be separate from all benefits and cannot cost less than \$1.00 PPM.

Proposed ACA Abortion Coverage Regulations

- Proposed regulation would require plans to “*send a separate bill in a separate mailing with separate postage.*”
- HHS estimates impact on 75 issuers offering 1,111 plans, affecting 1.3 million policyholders (at a cost of \$30,888,000).
- Regulation states that the need to comply with the ACA statute as they interpret it, “*outweighs the estimated consumer burden.*”
- Impact:
 - Will sending consumers two bills and asking them to make two payments make it more confusing--especially for those who don't anticipate ever needing an abortion?
 - Will those who don't pay \$1 get dropped from full coverage?
 - Will making insurers send separate payments and bills make the enrollment process more administratively complex & burdensome?
 - Will it move more insurers to drop abortion coverage?

Availability of Abortion Coverage in Marketplace Plans, 2019



Title X is Major Source of Public Funding for Family Planning Services for Low-income Women

- **\$286.5 million** federal grant program for family planning
- Pays for **care, education and infrastructure**
- Grantees support **4,000 sites** (including FQHCs, Planned Parenthoods, and Health Departments) serving **4 million women**
- Provide clients with a broad range of contraceptive methods as recommended by the **National Quality Family Planning Guidelines (QFP)**

Proposed Trump Administration Regulations Would Take Title X in a Different Direction

Proposed regulations would:

- Effectively **disqualify Planned Parenthood and other abortion providers** by requiring clinics that provide abortion to fully separate services physically and financially.
- **Restrict clinicians' ability to counsel pregnant women and provide abortion referrals.**
- **Drop recommendation** that sites offer a **broad range of medically approved methods and requirement for non-directive pregnancy options counseling.**
- **Direct new funds to faith-based and other organizations** that only provide fertility awareness and abstinence as methods of family planning.
- **Impose cumbersome reporting requirements** potentially violating teens' confidentiality.

These regulations mirror Reagan era rules that were challenged by family planning groups in a case that reached SCOTUS (*Rust v Sullivan*) but were upheld.

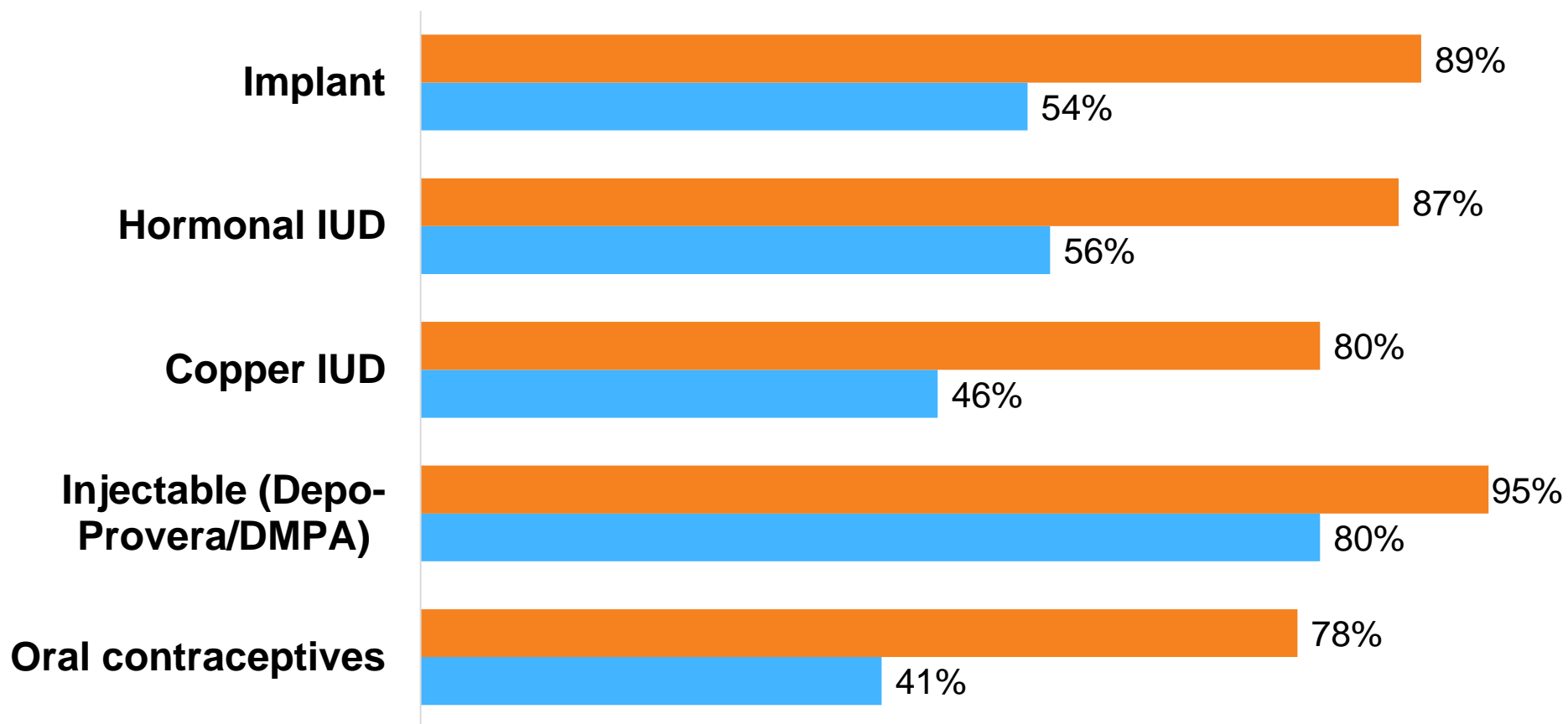
Implications of a New Title X Regulation

- Impact on access to care will vary by state and county:
 - The number of eligible and participating providers will shrink, in some states dramatically
 - Remaining providers may not have the capacity to increase patient load
 - Low-income women less likely to have access to clinics that offer the most effective treatment methods.
- Decades of progress to improve the quality of family planning care could be reversed.
- Expect new regulations to be finalized in the next few months, with a new grant cycle to start afterwards. (Funding announcement issued 11/07/2018, due 01/15/2019, with grants starting 04/01/2019)
- Family planning groups, attorneys general, and governors in several states poised to sue after regulations are finalized.

FQHCs Receiving Title X Family Planning Support More Likely to Offer Broad Range of Supplies

Percent of health centers reporting they offer:

■ Title X grantees ■ Non-Title X grantees



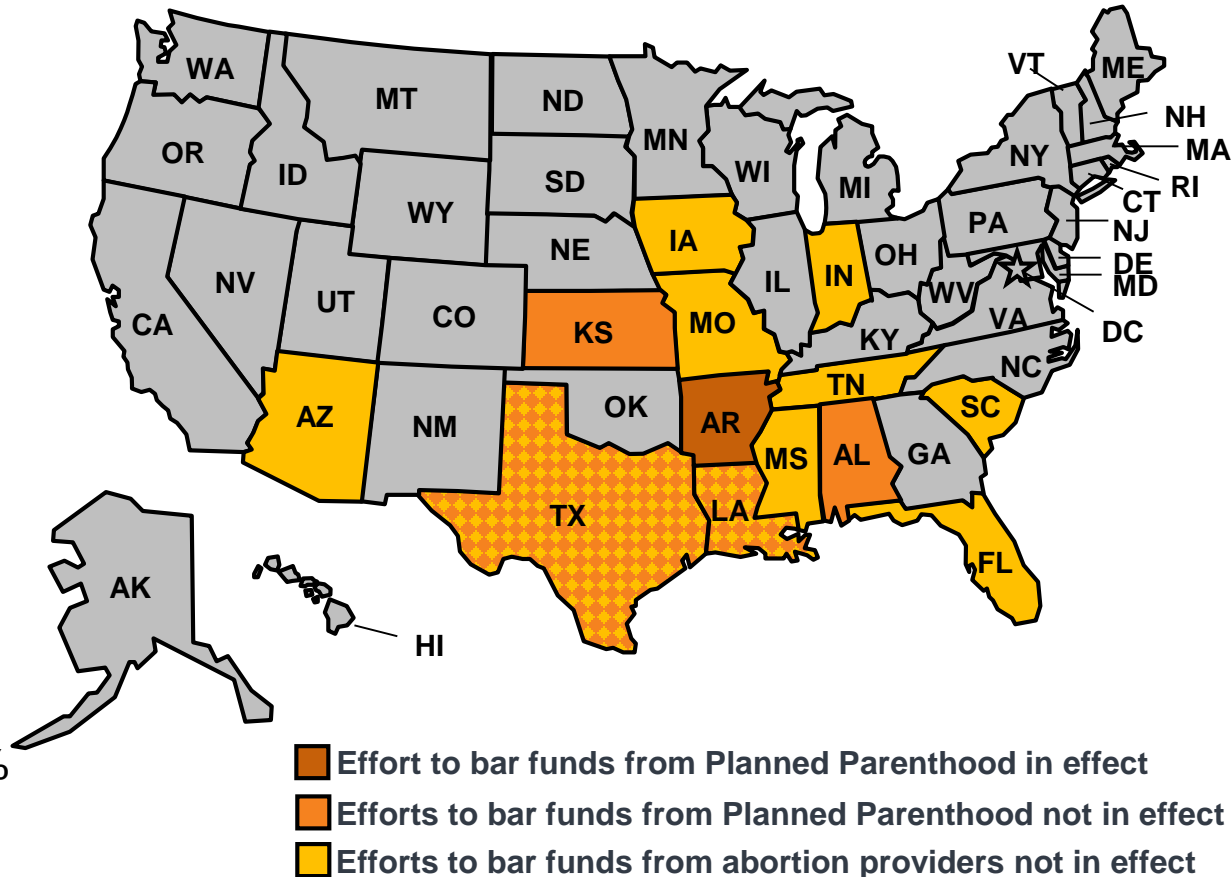
NOTE: Significant difference by Title X status ($p < 0.01$) for all services and supplies.
SOURCE: Survey of Family Planning Services in Community Health Centers, 2017

Medicaid Plays a Central Role Financing Family Planning Care for Low-Income Women

- Medicaid covers services through either:
 - Full scope program
 - Family planning-specific programs offered through a State Plan Amendment or a Waiver (25 States)
- Special protections for family planning under Medicaid:
 - Federal government picks up 90% of the costs of family planning services.
 - No cost-sharing is permitted.
 - Medicaid statute allows beneficiaries to seek family planning services from any qualified participating provider (free choice of provider).
 - BUT statute also says that state can set “*reasonable standards relating to the qualifications of providers.*”

Many States Have Tried to Block Planned Parenthood from Their Medicaid Programs

- States have tried to exclude Planned Parenthood from Medicaid in the past (notably Texas in 2011), but Obama Administration and courts have blocked these efforts.
- Trump Administration has signaled a willingness to allow states to exclude Planned Parenthood.
- TX, TN, SC seeking CMS approval to exclude abortion providers from their Medicaid waivers (thus qualifying for 90% match).
- If approved, paves the way for other states to follow suit.



NOTES: AL, AR, FL, and MS policy permanently enjoined by court order; policy not in place. KS, LA, and TX policies temporarily enjoined by court order; policy not in effect. SC, TX, and TN have pending waivers with CMS. IA, MO, and TX have state run Medicaid family programs that bar abortion providers.

SOURCE: Guttmacher Institute. [State Laws and Policies](#), [State Family Planning Funding Restrictions](#). As of November 1, 2018; Kaiser Family Foundation analysis of state legislation

Litigation: Freedom of Choice of Family Planning Provider

A Question of Standing: *Do Medicaid beneficiaries have a private right of action to challenge the merits of a state's disqualification of a provider?*

- In recent years, several states have passed laws or regulations that prohibit Planned Parenthood from their Medicaid programs (IN, AR, AZ, LA, and KS).
- Laws have been challenged by Planned Parenthood and patients and have been **blocked by courts in most circuits** (7th, 9th, 5th, 10th Circuits)
- **Except** in 8th Circuit (Arkansas), which ruled that patients do not have right to challenge exclusion of provider until law takes effect and challenged through administrative process
- **Two cases have been appealed to the Supreme Court** by the states (LA and KS)
 - awaiting Court's decision whether to take the cases

Timeline: Next few months will be key

- Contraceptive Coverage Exemptions
 - Effective 60 days after publication in Federal Register (1/15/2018)
- Abortion coverage
 - Comments due 1/8/2019
 - Implementation intended for plan year starting in January 2019
- Title X
 - Funding Applications due on 1/15/2018
 - Final Regulations anticipated 12/2018 – 1/2019
- Medicaid and Planned Parenthood
 - SCOTUS: Next Conference Schedule on Friday 11/16
 - CMS waiver approval for Texas and other states...?

For more background information:

- [State and Federal Contraceptive Coverage Requirements: Implications for Women and Employers](#)
- [Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans](#)
- [Proposed Changes to Title X: Implications for Women and Family Planning Providers](#)
- [Financing Family Planning Services for Low-income Women: The Role of Public Programs](#)

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