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Testimony for the House Health and Government Operations Committee
March 8, 2011

HB 778 – Family Planning Works Act

SUPPORT

The ACLU of Maryland strongly supports HB 778, which would expand eligibility for family planning services in the Medicaid program to all women whose family incomes are at or below 250% of federal poverty guidelines (FPG).

The current law makes family planning services available only to pregnant women whose income is at or below 250% of the poverty level. This law, in effect, favors pregnancy over any other type of reproductive status, as it only provides medical assistance to women who are or have been pregnant. This bill would extend crucial reproductive services to all women in Maryland whose income is at or below 250% of the poverty level.

Public Policy

Md. Code Ann., Health-Gen. Art., § 15-103 provides for medical and other health care services to indigent individuals. According to *Kindley v. Governor of Maryland*, 289 Md. 620 (1981), the statute providing medical care for indigent individuals

> was enacted to alleviate some of the hardships of poverty by providing medical care to those who could not afford it . . . These hardships include not only the discomfort of heightened severity or duration of an untreated condition, but the sociological and economic problems which flow directly from inadequate medical care. In addition, the legislature may well regard medical care of a preventive and planning nature as important as providing curative treatment for existing illness. The importance of such services was explicitly recognized by Congress when it amended the Medicaid program to include "family planning services" among the types of care which the participating states are now required to fund . . . . In sum,

> defining medical care narrowly is inconsistent with reasonable statutory construction.

Id. at 626-27 (internal citations omitted).

The current statute recognizes the importance of providing family planning services, and the fiscal note of this bill reflects that public policy. According to the fiscal note, "approximately 25,000 women are enrolled in the Medicaid Family Planning Program," and that "[e]xpansion of family planning services to uninsured women with incomes between 116% and 250% FPG will result in savings to the Medicaid program due to an anticipated reduction in the number of Medicaid births, pregnancy and labor complications, low birth weight babies, infant mortality, and sexually transmitted diseases."

Equal Protection

While the Due Process Clause of the United States Constitution does not impose affirmative obligations on a state to provide social services, when a state does choose to provide those services, it must provide them on a non-discriminatory basis.[1] While affluent women will always be able to obtain family planning services as a result of their income, low-income women are excluded from the benefits of family planning services. This bill recognizes that discrimination against low-income women is socially and fiscally irresponsible.

There is a clear link between poverty and unintended pregnancies.[2] Today, poor women are four times as likely to experience an unintended pregnancy as are more affluent women.[3] When faced with an unintended pregnancy, a low-income woman is more likely than an affluent woman to continue the pregnancy; in fact, poor women are five times as likely as more affluent women to have an unintended birth. Because a greater proportion of women of color are also impoverished, unintended pregnancies also disproportionately impact communities of color, reflecting the particular difficulties that many women in minority communities face in accessing high-quality contraceptive services and in using their chosen method of birth control consistently and effectively over long periods of time.[4]

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[1] *Deshaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 196, 210 (1989); *See also* U.S.C.A. Const. Amend. 14.

[2] Jennifer J. Frost, Adam Sonfield and Rachel Benson Gold, *Estimating the Impact of Expanding Medicaid Eligibility for Family Planning Services* (Aug. 2006), *available at* http://www.guttmacher.org/pubs/2006/08/16/or28.pdf (hereinafter "Frost Report").

[3] *Id*.

[4] Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture* (Summer, 2008), *available at* http://www.guttmacher.org/pubs/gpr/11/3/gpr110302.html (hereinafter "Cohen Report"). As of 2002, 15% of black women at risk of unintended pregnancy (i.e., those who are sexually active, fertile and not wanting to be pregnant) were not practicing contraception, compared with 12% and 9% of their Hispanic and white counterparts, respectively. These figures—and the disparities among them—are significant given that, nationally, half of all unintended pregnancies result from the small proportion of women who are at risk but not using contraceptives. *Id*.

Lowering Abortion Rates

Of the unintended pregnancies averted due to family planning services, approximately 40% would have resulted in abortion and 48% in birth.[5] By providing these family planning services and supplies, it would reduce the number of unintended pregnancies by 23%, and by 39% among low-income women, and would reduce the number of abortions by 23%.[6]

According to a 2008 Guttmacher Institute study, while abortion rates declined among more affluent women from 1994 to 2001, they rose among poor women.[7] Poor women in the United States are more than three times as likely to have an abortion as are women with higher incomes.[8] The issue is how we can prevent unintended pregnancies. The medical consensus has consistently been to facilitate better access to family planning services.

Cost Savings to the State

According to the bill's fiscal note, Medicaid pays for approximately 23,000 births annually. The average cost of a Medicaid birth (including prenatal care, delivery, and hospital newborn care) is $19,000. For every 100 unplanned pregnancies prevented through expanded family planning services, Medicaid could save $1.9 million.

This state must support all of their low-income women residents in order to prevent unintended and unhealthy pregnancies. The cost-savings of preventing an unintended pregnancy is clear, and it is our societal responsibility to provide accessible reproductive health care to all of our low-income Maryland women. We urge a favorable report on HB 778.

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[5] Frost Report, *available at* http://www.guttmacher.org/pubs/2006/08/16/or28.pdf. These numbers are based on the actual national distribution of unintended pregnancy outcomes among women with incomes below 200% of poverty in 2001. The remainder of the pregnancies would have resulted in spontaneous pregnancy losses. *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id*.