American College of Obstetricians and Gynecologists
Hawai'i, Guam & American Samoa Section

TO: House Committee on Consumer Protection & Commerce
Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

DATE: Thursday, April 15, 2021

FROM: Hawai'i Section, ACOG
Reni Soon, MD, MPH, FACOG, Chair

Re: SCR 191
Position: SUPPORT

The Hawai'i Section of the American College of Obstetricians and Gynecologists (ACOG HI), which represents over 200 of the state's obstetrician-gynecologists, supports SCR 191 which would urge the United States Department of Health and Human Services to review and revise its policies related to sterilization waiting periods for Medicaid recipients. This consent form for permanent contraception must be signed by any patient covered under Medicaid insurance, and requires that a patient sign this form at least 30 days prior to their procedure. Patients covered under commercial insurance do not have this same waiting period requirement. This creates differential access, based on income, to a basic and highly effective form of contraception.

We recognize that the purpose of this form, created in 1976, was to address the egregious policies and practices of coercive sterilization that targeted Black, Latinx and Indigenous communities, immigrants, people with low-income, and people with disabilities. This form, with its required 30-day waiting period, was designed to enforce practices necessary to obtain true informed consent.

In practice, however, this form has created a system where people with Medicaid are often denied their desired form of contraception – a barrier that people with commercial insurance do not face. People with Medicaid often struggle to access healthcare and may not be able to have the same healthcare provider or go to the same clinic for over 30 days. As obstetricians, we have cared for many women who have not been able to access consistent prenatal care, and desire a permanent contraception procedure immediately after their delivery, but cannot have this procedure because of this 30-day waiting period required only because of their low-income status. Even misplacing this form, which can easily happen somewhere along the line from when it was signed in a community clinic to being faxed to the hospital, results in this procedure not being performed. Many of these patients don't get their procedure and return months later with an unintended pregnancy. In one study, nearly half of women with unfulfilled sterilization requests became pregnant again within a year.[1] Another one-year cost analysis estimated that revising this form

[1] Thurman, AR & Janecek, T. One-year follow-up of women with unfulfilled postpartum sterilization requests. Obstetrics and Gynecology, 2010; 116:1071-1077.

would avert 29,000 unintended pregnancies annually and lead to a cost savings of $215 million each year.[2]

By applying this 30-day waiting period to people with low-income, this form codifies discrimination and perpetuates inequities in healthcare. It is past time that HHS, in partnership with maternal health and reproductive justice advocates, reviews and revises this policy.

Mahalo for hearing this resolution and for this opportunity to testify.

[2] Borrero S. et al. Potential unintended pregnancies averted and cost savings associated with a revised Medicaid sterilization policy. Contraception, 2013; 88:691-696.

SCR-191
Submitted on: 4/13/2021 8:30:00 PM
Testimony for CPC on 4/15/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melanie Maykin	Individual	Support	No

Comments:

April 14, 2021

To:

Committee On Consumer Protection & Commerce

Re: SCR 191

My name is Dr. Melanie Maykin, and I'm an obstetrician-gynecologist at the University of Hawaii currently undergoing additional training in Maternal-Fetal Medicine, a subspecialty devoted to caring for high-risk pregnancies. I am writing this testimony in **strong support of SCR 191** which urges the United States Department of Health and Human Services to amend its dated (minimally changed since the 1970s) and discriminatory regulations in regard to postpartum sterilizations. Specifically, most Medicaid-insured people must sign the mandated Medicaid Title XIX form at least 30 days in advance but not more than 180 days in order to obtain a postpartum sterilization procedure. These same consent parameters are not applied to people with private insurance, which creates differential access to a safe and effective form of permanent contraception.

During my residency at San Francisco's safety net public hospital, where almost all patients were insured by Medicaid or uninsured, I cared for numerous women who had desired postpartum sterilization, but were unable to have the procedure performed due to issues with the consent form. Performing informed consent 30 days prior to birth, an already very unpredictable event, assumes that patients have the privilege of continuity in their health care – that they are able to see the same provider or group who knows them well. This is just not the reality for many low-income patients. Even if the consent form was signed in an appropriate timeframe, there was much room for error in getting a copy of this form from the small community clinic with paper charts to the hospital with disjointed electronic medical record systems prior to the woman showing up in labor. There were numerous times I had to explain that I could not perform the desired sterilization because the form was not filed even though I was certain one was signed or because the waiting period had not elapsed. Conversely, a privately-insured patient could decide the same day that she wanted a postpartum sterilization and was not subjected to the aforementioned consent regulations.

As a Maternal-Fetal Medicine fellow, I have cared for women with high-risk medical conditions whose desired postpartum sterilizations went unfulfilled because the acuity of their complications precluded satisfying the waiting period criteria. They have then returned with unintended pregnancies that have significant medical, social, and economic impact on them and their families as well as the health care system as a whole.

The federal regulations on postpartum sterilizations that are solely applied to Medicaid-insured patients serve as barriers to reproductive health care access and propagate inequities in health outcomes for low-income women and women of color. These groups already suffer from increased rates of maternal mortality and we must do everything we can to give them access to the high-quality care they deserve. Thank you for the opportunity to testify in support for this bill.

Sincerely,

Melanie Maykin, MD

SCR-191
Submitted on: 4/13/2021 9:45:58 PM
Testimony for CPC on 4/15/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Theresa Myers	Individual	Support	No

Comments:

As a practicing OB/GYN in Hawai'i, I am writing to support SCR191. Sterilization waiting periods for Medicaid patients were created with good intentions, but in practice have led to disparate impacts and substandard healthcare for Medicaid patients. This disproportionately impacts women of color and their families.

In my work, I have taken care of many patients who were negatively impacted by this requirement. I remember admitting a woman early in her pregnancy who was going in to preterm labor. She had wanted a surgical sterilization after this pregnancy, but since she went in to labor at 7 months her paperwork hadn't been done yet. In the midst of admitting her to the hospital, consenting her for an emergency C-section, and calling the Neonatal ICU team to discuss survival odds for her preterm infant, I had to tell her that we wouldn't be able to do her sterilization. Knowing that we would have been able to easily do that for her if she had just had private insurance was very difficult, and highlighted the inequities of our system.

I urge you to pass this resolution to help us better care for all women and to provide equal care to everyone regardless of insurance.

Sincerly,

Theresa Myers, MD

To: House Committee on Consumer Protection & Commerce
Re: SCR 191

My name is Dr. Courtney Kerestes, and I'm an obstetrician-gynecologist with specialty training in Complex Family Planning. I am writing this testimony in **strong support of SCR 191** which urges the United States Department of Health and Human Services to amend its dated (minimally changed since the 1970s) and discriminatory regulations in regard to postpartum sterilizations. Specifically, most Medicaid-insured people must sign the mandated Medicaid Title XIX form at least 30 days in advance but not more than 180 days in order to obtain a postpartum sterilization procedure. These same consent parameters are not applied to people with private insurance, which creates differential access to a safe and effective form of permanent contraception.

Over the course of my career, I have encountered numerous situations where patients who had Medicaid insurance were unable to undergo sterilization since they had not signed the appropriate consent 30 days before delivery. Labor is a highly unpredictable event so requiring this timing is unrealistic. The people most harmed by this waiting period are the most vulnerable, low-income patients, who may not have been able to make it to regular prenatal visits due to financial and time constraints. They therefore are not able to sign the form in advance and cannot get their desired method of effective contraception after delivery. Each time I have had to explain to a patient why we cannot complete their desired sterilization, I find myself apologizing for this system, that does not make sense for their needs. This form sets up a hierarchy, where privately insured patients can get whichever type of contraception they desire and Medicaid insured patients take on the burden of this extra requirement.

The intent of this regulation was well meaning, aiming to ensure people are making this decision for themselves without coercion. However, in practice, just signing a form in advance does not provide protection if the patient does not understand it. The current form is not understandable to the average patients. The valuable part is having a discussion to confirm the patient is sure about their decision and knows it is permanent – but simply signing a form, whether or not it is 30 days in advance, does not guarantee this conversation has happened. The form becomes a barrier to people who want sterilization to getting it, without providing benefit to them. This resolution provides an opportunity to rework the regulation of this complex issue, prioritizing truly informed consent for people desiring sterilization while eliminating unnecessary logistical barriers.

The federal regulations on postpartum sterilizations that are solely applied to Medicaid-insured patients serve as barriers to reproductive health care access and propagate inequities in health outcomes for low-income women and women of color. These groups already suffer from increased rates of maternal mortality and we must do everything we can to give them access to the high-quality care they deserve. Thank you for the opportunity to testify in support for this resolution.

Sincerely,

Courtney Kerestes, MD

To: Committee on Consumer Protection and Commerce
Re: SCR 191

My name is Dr. Samantha Kaiser, and I'm an obstetrician-gynecologist in training at the University of Hawaii. I am writing in **strong support of SCR 191**, which urges the United States Department of Health and Human Services to amend dated and discriminatory regulations in regards to postpartum sterilizations.

Specifically, most Medicaid-insured people must sign the mandated Medicaid Title XIX form (sometimes called the DHS 1146 form here in Hawaii) at least 30 days in advance but not more than 180 days in order to undergo a postpartum sterilization procedure. These same consent parameters are not applied to people with private insurance, which creates differential access to a safe and effective form of permanent contraception.

The postpartum period is a uniquely convenient time for women to undergo permanent contraception, if that is what they desire. The procedure is slightly easier when performed at this time, due to the enlarged size of the recently-pregnant uterus. Additionally, many women who have access to public insurance during this time will lose their insurance after 6 weeks. If the procedure cannot be completed in the immediate postpartum period, however, it is medically recommended to wait at least 6 weeks to allow the body to fully heal from delivery. Thus it becomes unlikely that many women can afford this procedure outside of the immediate postpartum setting. Indeed, ACOG reports that about 50% of women who request postpartum sterilization do not ultimately undergo the procedure, and data suggest about 2/3 of these cases are due to problems with the federal consent forms.

Throughout my residency, I have cared for numerous women who had desired postpartum sterilization but were unable to undergo the procedure due to the timing requirements of the federal form. Performing informed consent 30 days prior to birth, an already very unpredictable event, assumes that patients have the privilege of continuity in their health care – that they are able to see the same provider or group who knows them well. This is just not the reality for many low-income patients. Furthermore, I care for many women with medically complex pregnancies; frequently these women are recommended to deliver prematurely. Unfortunately, these women are often the most medically fragile – if they return with an unplanned pregnancy, their wellbeing and that of their future child are often at increased risk. Data shows that about 47% of women who request postpartum sterilization but do not undergo it will return with an unplanned pregnancy **within one year**.

Even if the consent form was signed at a reasonable time, there is much room for error. Loss of a paper form is easy even for the most organized among us. Hospitals often have disjointed processes for scanning written documents into computer systems.

In contrast to all of these barriers, a privately-insured patient can simply decide the same day that she wants a postpartum sterilization and is not subjected to the aforementioned consent regulations.

It is worth noting that these regulations were put in place with good intentions. Historically, sterilization procedures were sometimes performed on poor women and women of color without adequate consent. These regulations were intended to prevent these racist practices, and for years they were effective. However, regulations on postpartum sterilizations that are solely applied to Medicaid-insured patients now serve only as barriers to reproductive health-care access. The federal regulations propagate inequities in health outcomes for low-income women and women of color, rather than protecting these

women. These groups already suffer from increased rates of maternal mortality and we must do everything we can to give them access to the high-quality care they deserve. Thank you for the opportunity to testify in support of this resolution.

Sincerely,
Samantha Kaiser, MD

SCR-191
Submitted on: 4/14/2021 10:12:43 AM
Testimony for CPC on 4/15/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Yang	Individual	Support	No

Comments:

My name is Dr. Nancy Yang, and I'm an obstetrician-gynecologist resident currently undergoing training at the University of Hawai'i. I am writing this testimony in strong support of SCR 191 which urges the United States Department of Health and Human Services to amend its discriminatory regulations in regard to postpartum sterilizations. Specifically, most Medicaid-insured people must sign the mandated Medicaid Title XIX form at least 30 days in advance but not more than 180 days in order to obtain a postpartum sterilization procedure. These same consent parameters are not applied to people with private insurance, which creates differential access to a safe and effective form of permanent contraception.

Title XIX is a barrier to access for my patients on Medicaid insurance. I recall one patient who was unable to obtain her postpartum sterilization procedure despite requesting it at the time of her cesarean delivery last year. By the time that she was scheduled for her tubal ligation, several months postpartum, she had a very early pregnancy that was not detected at the time of her procedure. She found out she was pregnant after the sterilization was complete, despite already deciding that she no longer desired childbearing, and had to undergo a repeat cesarean delivery. In other words, the existing Medicaid Title XIX regulation not long prevented this patient from exercising her rights to control her own reproductive health, it also forced her to undergo a major surgery (the cesarean section), which put her at risk of medical complications, and let to financial and social strain on her and her family for which she did not prepare. This unfortunate scenario would have been prevented had this patient been able to receive the immediate postpartum sterilization procedue she had wanted and requested.

My patient's story is not unique. As stated in the resolution, nearly 50% of women who have an unfulfilled request for postpartum sterilization become pregnant within 1 year. Women on Medicaid (more often than not low-income women of color) face unjust barriers to postpartum sterilization due to the antiquated process associated with this regulation: a paper form that may be lost or delayed in processing, the 180 to 30 day advanced consent that is not always realistic. Although these policies were created with the historic intent of protecting women of color from forced sterilization, which was and still is an important ethical issue, the good intentions have resulted in negative,

inequitable outcomes. There are better ways to protect vulnerable women from nonconsensual procedures than creating restrictions on their reproductive choices and access to care. I strongly support the Hawai'I senate to pass SCR 191 so that I and my fellow OBGYN providers can better provide the high-quality and timely health care our patients deserve.

Sincerely, Nancy Yang, MD

To:
Committee On Consumer Protection & Commerce
Re: SCR 191, Hearing Thursday April 15, 2021.

My name is Dr. Kevin Saiki. I am an obstetrician-gynecologist at the University of Hawaii currently undergoing my first year of additional training in Maternal-Fetal Medicine, a subspecialty devoted to caring for high-risk pregnancies. I am writing this testimony in **strong support of SCR 191** which urges the United States Department of Health and Human Services to amend its dated (minimally changed since the 1970s) and discriminatory regulations in regard to postpartum sterilizations. Specifically, most Medicaid-insured people must sign the mandated Medicaid HHS-687 form at least 30 days in advance but not more than 180 days in order to obtain a postpartum sterilization procedure. These same consent parameters are not applied to people with private insurance, which creates differential access to a safe and effective form of permanent contraception.

During my residency in Seattle, Washington, I also cared for numerous women who had desired postpartum sterilization, but were unable to have the procedure performed due to issues with the consent form. Oftentimes, our institution would accept patient transfers from outside institutions and because either paperwork had been lost or not reviewed, women who desired post-partum permanent contraception were told they could not undergo the procedure. We also served a largely disadvantaged and underserved population of women with pregnancy complications, many of whom had difficulty seeking consistent and appropriate prenatal care. For these women, performing informed consent 30 days prior to birth, an already very unpredictable event, assumes they have the privilege of continuity in their health care – that they are able to see the same provider or group who knows them well. This is just not the reality for many low-income patients. Even if the consent form was signed in an appropriate timeframe, there was much room for error in getting a copy of this form from the small community clinic with paper charts to the hospital with disjointed electronic medical record systems prior to the woman showing up in labor. Several times, I explained I could not perform the desired sterilization because the form was not filed, even though I was certain one was signed or because the waiting period had not elapsed. Conversely, a privately-insured patient could decide the same day that she wanted a postpartum sterilization and was not subjected to the aforementioned consent regulations.

As a first year Maternal-Fetal Medicine fellow, I have cared for women with high-risk medical conditions whose desired postpartum sterilizations went unfulfilled because the acuity of their complications precluded satisfying the waiting period criteria. They have then returned with unintended pregnancies that have significant medical, social, and economic impact on them and their families as well as the health care system as a whole.

Today I stand with several of my colleagues to tell you the federal regulations on postpartum sterilizations that are solely applied to Medicaid-insured patients serve as barriers to reproductive health care access and propagate inequities in health outcomes for low-income women and women of color. These groups already suffer from increased rates of maternal mortality and we must do everything we can to give them access to the high-quality care they deserve. Thank you for the opportunity to testify in support for this bill.

Sincerely,
Kevin Saiki, MD