Washington Case Study:

A State Campaign to Expand Essential Reproductive Health Services to Undocumented Immigrants

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INTRODUCTION

Approximately 10.5 million undocumented immigrants currently reside in the United States, representing 3.2 percent of the total U.S. population. Although they may have lived in the U.S. for years and have been contributing to the economy, undocumented immigrants are barred from accessing federally-funded public health insurance programs, like Medicaid, and from buying coverage in the Affordable Care Act (ACA) Marketplaces.[1] As a result, the uninsured rate of undocumented immigrants is nearly five times higher than that of citizens. In 2019, an estimated one-half of undocumented adults and one-third of undocumented children were uninsured.

Undocumented immigrants have few options for affordable health care. Many undocumented immigrants cannot afford to pay full price for individual insurance coverage nor have employer coverage. Therefore, they often must rely on no-fee or low-fee care provided at community health centers and varying hospital financial assistance programs to help pay for hospital care. Additionally, since 2016, due to the confusion, fear and panic among immigrants as a result of the attempted changes to the public charge regulations, as well as threats of detention and deportation, many undocumented immigrants have gone entirely without health care coverage to avoid running afoul of immigration authorities. These concerns have persisted in the midst of the COVID-19 pandemic as lack of health insurance and fear of deportation have left many undocumented patients unable or unwilling to seek care during this crisis. Furthermore, the COVID-19 pandemic has taken a disproportionate toll on noncitizen immigrants who are more concentrated in construction and service industries, with jobs that cannot be performed virtually and have been more likely to experience cutbacks during the height of the pandemic than other industries, leading to widespread personal financial hardship.

Despite the challenging coverage and access environment, and in recognition of the significant contribution of undocumented communities, several states and localities have forged ahead with state-funded innovative solutions for this population – working to ensure that their health care needs are met.

This case study highlights an initiative from Washington State using state-only funds to provide essential reproductive health services to uninsured and certain insured residents in the state, regardless of their immigration status.

[1] With the exception of emergency Medicaid benefits, the Personal Responsibility and Work Reconciliation Act of 1996 (also known as welfare reform) greatly restricted undocumented immigrants and others from enrolling in Medicare, Medicaid, and the Children's Health Insurance Program. The Affordable Care Act of 2010 (ACA) prohibited undocumented immigrants (including Deferred Action for Childhood Arrivals (DACA) recipients) from enrolling in state and federal marketplaces, preventing them from receiving federal financial assistance (i.e. premium tax credits and cost-sharing subsidies) and even from purchasing qualified health plans at full price.

SUMMARY OF WASHINGTON STATE'S INITIATIVE

The Washington Family Planning Only Program (FPO), which provides essential reproductive health services[2] to the state's uninsured residents, was renewed by the Centers for Medicare & Medicaid Services (CMS) in 2018 under the authority of section 1115(a) of the Social Security Act. Due to federal restrictions, certain immigrants (including undocumented immigrants and immigrants who are subject to the five-year waiting period) were not eligible for the program.

Fortunately, in May 2019, as a result of strong advocacy efforts, the state of Washington approved a two-year budget to expand this program to uninsured residents with income under 260% FPL, regardless of their immigration status. Approximately 240,000 people (three percent of the total state population) are eligible for this initiative. Enrollment started on January 1, 2020 and over 2,300 people enrolled in 2021. An improved FAQ document and application process led to improved approval rates throughout 2021.

CAMPAIGN ROADMAP

The path to victory in Washington State was based on advocates' understanding of intricate state-level politics to structure a campaign that would progressively and incrementally provide coverage to people regardless of their immigration status. The campaign utilized the strategies described below to successfully implement this change in Washington.

Leveraging state-level favorable political climate

Before we dive into the specifics of the campaign, it is important to understand the political environment at the state and national levels that impacted health care policy decisions.

Washington State had had a Democratic majority in both chambers, and had held the governorship, since the party won a special election in November 2017. When Democrats deepened their majority in both chambers in the 2018 election, they brought in a new group of legislators who had run on health care and reproductive rights and many of whom had immigrant backgrounds. In addition, Governor Jay Inslee, a Democrat and a presidential candidate, had a proven track record of protecting women's reproductive rights and supporting immigrant-inclusive policies.

Furthermore, in January 2019, the Governor's Interagency Council on Health Disparities (Council) released a report providing a literature review on disparities in access to reproductive health services and detailed recommendations for Washington's legislature to address them. Among their

[2] The Family Planning Only Program covers services for: Family planning education and risk reduction counseling; all FDA approved birth control methods; Education and supplies for natural family planning and abstinence; Permanent methods of birth control; Screening and treatment for sexually transmitted infections (STIs, STDs); Screening for cervical cancer and a well woman physical exam; Office visits related to a family planning problem when medically necessary. For more information, visit: https://www.hca.wa.gov/health-care-services-and-supports/apple-health-medicaid-coverage/family-planning-only#what-services-are-covered

recommendations, Council staff advised the legislature to dedicate additional state funds to provide essential family planning services to those facing coverage and access barriers identified in the report, and replace federal Title X funding with state funding in the event that Title X is cut at the federal level.[3]

Leveraging diverse stakeholders and coalition alliances

In January 2019, the Health Equity Reproductive Rights Organizations (HERRO) coalition,[4] a former statewide coalition of health advocacy organizations, reproductive justice and rights organizations and reproductive health care providers, helped draft reproductive-focused legislation.[5] The bill aimed to fill crucial gaps in coverage for immigrants, transgender and gender non-conforming individuals, and students.

Because of the inclusive nature of the bill, the Coalition for Inclusive Healthcare (CIHC), a broad coalition of nonprofits, community groups, and legal assistance providers who are working for gender affirming health care coverage by private insurers, state worker health insurers, and Medicaid closely collaborated in the effort. Organizations supporting immigrant communities, such as Planned Parenthood Raiz and OneAmerica, were also supportive of the campaign.

Each coalition member offered their expertise, contributing to the overall success of the campaign. For instance, NARAL Pro-Choice Washington and Planned Parenthood Votes Northwest & Hawai'i led communications and media efforts. Policy organizations (including Northwest Health Law Advocates (NoHLA), Legal Voice, ACLU of Washington and SIA Legal Team) joined forces to draft legislation, conduct in-depth analysis of and testify to the cost effectiveness of providing access to and coverage for essential reproductive health care services to those facing barriers.

Understanding the opposition to inform a campaign strategy

One of the challenges facing advocates attempting to expand publicly-funded health coverage is opponents who hold the view that health care and other social needs are privileges, not rights. In speaking with coalition partners, they shared that they faced challenges from conservative legislators who shared that they believed coverage for reproductive health care was not an investment but rather a drain on society. Policymakers opposing government involvement have targeted immigrants from developing countries (commonly immigrants of color), who are seen as lacking financial resources and

[3] The Title X program is the only federal grant program dedicated to providing individuals with comprehensive family planning and birth control services. In March 2019, the Trump administration finalized an overhaul of the federal regulations that govern the Title X program. The rule prohibited abortion referrals, imposed coercive counseling standards for pregnant patients, and imposed unnecessary and stringent requirements for the physical and financial separation of Title X–funded activities from a range of abortion-related activities—a set of provisions commonly referred to as the domestic gag rule. Due to historic barriers to health care, the majority of patients who get care through Title X are people of color and people with low-incomes. The domestic gag rule, in turn, created additional barriers to health care for communities of color, immigrants and for people with low-incomes.

[4] The Health Equity and Reproductive Rights Organizations (HERRO) Coalition brought together advocacy organizations and reproductive health care providers in Washington state to advance equity in sexual and reproductive rights, health, and justice. Through legislation, public policy, and social change, HERRO strives to guarantee meaningful access, safety, and self-determination for all. Members include AAUW, ACLU of Washington, the American College of Obstetricians and Gynecologists, Cedar River Clinics, Full Spectrum Doulas, Gender Justice League, Legal Voice, Midwives Association of Washington State, National Organization for Women (NOW)–Washington State Chapter, NARAL Pro-Choice Washington, Northwest Abortion Access Fund, Northwest Health Law Advocates, Planned Parenthood Votes Northwest & Hawaii, SIA Legal Team, Surge Reproductive Justice, and the Washington State Coalition Against Domestic Violence.

[5] HB 1612 / SB 5602

thus more likely to use government programs. Throughout U.S. history, opponents have exploited the intersection of immigration policy and health care policy to undermine both. During the Trump administration, federal policies further restricted immigrants currently residing in the U.S. and those seeking to enter the country, as well as escalating arrests and deportations. In the context of public benefits, the administration imposed more restrictions through the proposed "public charge" rule in order to make it harder for working-class immigrants who receive health and other benefits to gain permanent immigration status (or green cards).

Another challenge advocates faced was anti-choice sentiment. Despite contraception being available and popular since the 1960s, anti-choice activists have gained steam in their campaign to stigmatize and ban contraception, supported by a sympathetic Trump administration. Federal opponents undermined the national family planning program, the only federal program funded under Title X to ensure low-income people have access to essential reproductive health services, claiming incorrectly that family planning services would expand federal coverage for abortions.[6]

Given the political opposition at the national level, Washington state advocates focused on the state level, working closely with elected officials to develop a legislative agenda that guaranteed access to essential reproductive health services for all uninsured low-income residents regardless of their gender identity and immigration status.

Negotiating Compromises

The Washington state Senate passed its version of the bill (SB.5602) to eliminate the barriers to reproductive health services faced by young people, immigrants, rural residents, transgender and gender non-conforming people, and people of color. Undocumented immigrants were included as one of the beneficiary groups. However, the House rejected the Senate's version and proposed changes that did not extend the coverage to undocumented immigrants. It also removed gender-neutral language and anti-discrimination protections for LGBTQ residents. The House action was immediately met with outrage from reproductive health advocates. The coalition Health Equity and Reproductive Rights Organizations condemned the House and called on state Senate leaders to refute the changes.

In the end, the Family Planning Only (FPO) program expansion to all immigrants regardless of status was placed in the state budget rather than passing as a standalone bill. Including it in the budget made it more feasible to pass. It was considered an incremental win by removing the restriction based on status to make the family planning program immigrant inclusive. This program is now considered part of the state's base budget. The longer-term strategy is to achieve full parity of benefits regardless of immigration status.

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THE ROAD TO IMPLEMENTATION

Once the budget was passed, advocates turned their attention to ensuring the program was implemented in a welcoming and accessible way when launched in January 2020. The program was implemented through an emergency rule.

In Washington, program implementation through emergency rulemaking is a way to get programs up and running while the regular rulemaking process moves forward. The regular rulemaking process allows the public and interested stakeholders to provide input. This was important in the state-funded FPO program implementation because stakeholders could inform HCA of how the program was working and whether it was serving the populations the program is intended to serve.

Under the emergency rule, the program uptake was less than expected. It required that an applicant first obtain a Medicaid denial letter in order to become eligible for the FPO program. This resulted in nearly half of the applicants being denied FPO services because they had not obtained a Medicaid denial letter. Additionally, people were not comfortable with engaging with the Medicaid application process.[7] Acquiring a denial letter from Medicaid presented unique barriers for immigrants due to fears about security and public charge implications.

Through the regular rulemaking process the HCA heard from advocates, members of the public, health care providers, and other concerned stakeholders who provided comments in the regular rulemaking process and feedback during meetings and calls that the Medicaid denial requirement was a barrier to accessing the program for the population the program is intended to serve. The agency responded by revising the proposed rules. Instead of requiring a denial, the final rules permit state-funded FPO applicants to make an informed choice not to apply for Medicaid. To implement this change, the agency also revised the application to reflect the informed choice option, incorporating public comments on the application and cover sheet.

LESSONS LEARNED

Advocates working toward successful implementation of the FPO Program expansion learned two key lessons:

Strategic negotiation matters

To improve health coverage and access to services, incremental steps may be necessary. When the Washington state House and Senate bill versions differed, access to family planning services was at stake. Inclusion of a state-funded program in the budget, instead of moving forward with a standalone bill, allowed family planning services to be made available to state residents who previously did not have coverage for this care.

[7] When the program was taken out of statute and placed in the budget bill, the provision for robust outreach and education was not included.

Post passage follow-up is key to successful implementation

In order to properly design a program that truly works for the population it is intended to serve, it is important to center the experience and perspective of program users. From the beginning of the implementation process, advocates and community-based organizations serving immigrant communities met and discussed with HCA all of the factors at play that hinder immigrants from enrolling and accessing family planning services. Involvement at every level is critical. Stakeholders were involved not just in the rulemaking process but also in the operational details, reviewing the application form and process and all consumer-facing materials to ensure successful enrollment.

CONCLUSION

The state-funded FPO program became part of the base budget and it's in the 2021-23 biennial budget. Looking ahead, advocates continue to focus on coverage for immigrants. In 2021, advocates worked and successfully passed legislation to expand postpartum coverage from 60 days to 12 months, regardless of immigration status. In 2022, there is an active Health Equity for Immigrants Campaign that is pursuing parity of coverage with Medicaid and the State Marketplace.