THE BIDEN-HARRIS ADMINISTRATION SHOULD ADVOCATE FOR MEDICAID COVERAGE OF IVF

BY ROSE HOLDEN VACANTI GILROY*

President-Elect Joe Biden's "Agenda for Women," promises to "expand access to health care and tackle health inequities."[1] In order to follow through on this promise, the incoming Biden-Harris administration should encourage states to expand Medicaid to cover in vitro fertilization (IVF). IVF enables people experiencing infertility, LGBTQ+ individuals, and single people to have the children they desire.[2] However, the procedure is expensive, costing between $12,000 and $17,000 per round.[3] Studies show that most individuals average three to six rounds to become pregnant, which means that, for some, IVF can cost over $100,000.[4] Therefore, IVF is prohibitively expensive for many Americans, especially those who receive their healthcare through Medicaid. In order to ensure that *all* Americans are able to access the healthcare they need in order to create their desired families, the Biden-Harris administration should encourage states to expand Medicaid coverage to include IVF, making access to fertility treatment more equitable.

Although no states have expanded Medicaid to cover IVF,[5] the Biden-Harris administration should look to New York's 2019 IVF and Fertility Preservation Law — which mandates insurance plans cover IVF[6] — as a framework for expanding coverage because the legislation explicitly prohibits discrimination due to disability, sexual orientation, gender identity, age, and sex. [7] The law went into effect on January 1, 2020, and requires insurance policies for more than 100 employees to cover three cycles of IVF treatment.[8] While this legislation falls short in that it does not expand coverage to Medicaid recipients, the Biden-Harris administration should encourage states to pass laws that similarly enable diverse populations — and not only heterosexual couples — to create the families they desire. New York is also the only state that covers fertility treatment under its

---

[1] THE BIDEN AGENDA FOR WOMEN, https://joebiden.com/womens-agenda/# (last visited Nov. 24, 2020).

[2] Gabriela Weigel et al., *Coverage and Use of Fertility Services in the U.S.*, KAISER FAM. FOUND. (Sept. 15, 2020), https://www.kff.org/womens-health-policy/issue-brief/coverage-and-use-of-fertility-services-in-the-u-s/.

[3] Amy Klein, *I.V.F. is Expensive. Here's How to Bring Down the Cost*, N.Y. TIMES (April 18, 2020), https://www.nytimes.com/article/ivf-treatment-costs-guide.html.

[4] *Id.*

[5] Weigel, *supra* note 2.

[6] *See* Chanel Dubofsky, *Your Guide to Fertility Insurance Coverage by State*, A MOD. FERTILITY BLOG (Dec. 3, 2019), https://modernfertility.com/blog/your-guide-to-fertility-insurance-coverage-by-state/. Currently, seventeen states mandate that private insurance plans provide fertility coverage, although many of these states do not include IVF in the coverage. *See id.*

[7] *Id.*

[8] *IVF and Fertility Preservation Law Q&A Guidance*, N.Y. STATE DEP'T OF FIN. SERV. (2019), https://www.dfs.ny.gov/apps_and_licensing/health_insurers/ivf_fertility_preservation_law_qa_guidance.

Medicaid plan, although this treatment only includes three cycles of fertility drugs and not IVF.[9]

Additionally, the California State Legislature is currently considering a bill that could serve as an effective blueprint for the Biden-Harris administration.[10] If passed, the legislation would mandate that every health care plan and insurance policy in California, *including* Medi-Cal (California's Medicaid program) provide coverage for IVF, as well as other infertility treatments.[11] This legislation would make California the first state to provide Medicaid coverage of IVF and could serve as a helpful guide to other states as they implement similar policies.[12] Critically, the bill would revise the definition of infertility to include "a person's inability to reproduce either as an individual or with their partner," and would delete the exemption that allows religiously affiliated employers to opt out of offering health care plans that cover fertility treatments.[13] Considering the comprehensive scope of the proposed California legislation, the Biden-Harris administration should use it's inclusive language as a model when working with states to implement Medicaid coverage of IVF.

While working with states individually is the most effective way to begin expanding Medicaid coverage of IVF, eventually, the Biden-Harris administration should advocate for Medicaid coverage of IVF at the federal level. In May 2019, Senator Cory Booker (D-NJ) introduced the Access to Infertility Treatment and Care Act.[14] The Biden-Harris administration should support Senator Booker's expansive legislation, which mandates Medicaid coverage of IVF and takes into consideration both reproductive justice and access to IVF for the LGBTQ+ community. Due to the Republican-controlled Senate, the bill has not moved out of committee since being introduced nearly two years ago.

The Biden-Harris administration must recognize that access to IVF is a reproductive justice issue. Black women in particular are effectively barred from using IVF due to lack of Medicaid coverage for the treatment. Thirty percent of Black women receive Medicaid coverage, which is double the percentage of white women.[15] However, research shows that "Black non-Hispanic women of reproductive age are eighty-percent more likely to report infertility,[16] but twenty-

---

[9] Weigel, *supra* note 2.
[10] *See* Health Care Coverage: Treatment for Infertility, A.B. 2781, 2019-2020 Reg. Sess. (Cal. 2020).
[11] *See id.*
[12] Weigel, *supra* note 2.
[13] *See* A.B. 2781.
[14] S. 1461, 116th Cong. (2019).
[15] Weigel, *supra* note 2.
[16] Studies suggest that Black women are more likely to experience infertility than women from any other racial or ethnic group. This is because Black women often lack access to the reproductive healthcare necessary to treat and prevent sexually transmitted infections, fibroids, and ovarian volume—all conditions that Black women experience at disproportionate rates that cause infertility. Melissa F. Wellons et al., *Racial differences in self-reported infertility and risk factors for infertility in a cohort of black and white women: The CARDIA Women's Study*, 90 AM. SOC'Y FOR REPROD. MED. 1640, 1643 (2008).

percent less likely to receive infertility services than their white counterparts."[17] Clearly, lack of access explains this disparity; since Black women rely on Medicaid coverage at double the rate of white women, Black women lack the insurance coverage, as well as the economic resources, necessary to access fertility treatments.[18] The fact that there is less disparity between Black and white women in the Military using IVF (the Military provides health insurance to all service members) is further proof that lack of coverage is a key reason why Black women use IVF at a far lower rate than white women.[19]

Moreover, the LGBTQ+ community relies on IVF, and other assisted reproductive technologies (ARTs), in order to have children, and thus, it is important that the Biden-Harris administration advocate for Medicaid coverage of IVF as a LGBTQ+ rights issue.[20] According to a 2017 study by the Center for American Progress, thirty-six percent of LGBTQ+ survey respondents qualify for Medicaid, and eighteen percent receive Medicaid coverage, meaning that approximately 1.8 million LGBTQ+ Americans are on Medicaid.[21] The exclusion of IVF from Medicaid coverage effectively bars members of the LGBTQ+ community who receive Medicaid from starting families.[22] Therefore, Medicaid expansions to cover IVF must *explicitly* include the LGBTQ+ community.[23]

For example, when states have insurance mandates covering fertility treatments, LGBTQ+ individuals are not able to benefit because they may not be utilizing the treatments due to diagnosed infertility — even though they require some sort of ART to have children. For this reason, activists suggest that infertility be considered a social condition, rather than just a medical category.[24] The definition of infertility as a medical inability to conceive from intercourse centers heterosexual couples, while ignoring the fact that for same-sex couples, the inability to become pregnant through intercourse is not a medical condition, but rather a biological reality. Medicaid must also explicitly cover IVF for trans individuals experiencing iatrogenic infertility due to gender-affirming procedures.[25]

Often, states argue that it would be prohibitively expensive to cover IVF under Medicaid. However, a 2008 study conducted by physicians and economists found that "lifetime net taxes paid from a child relative to the child's initial IVF

---

[17] Ada C. Dieke et al., *Disparities in Assisted Reproductive Technology Utilization by Race and Ethnicity*, 26 J. WOMEN'S HEALTH (LARCHMT) 605, 606 (2017).
[18] *Id.*
[19] *Id.*
[20] Weigel, *supra* note 2.
[21] Kellan Baker et al., *Why Repealing the Affordable Care Act Is Bad Medicine for LGBT Communities*, CTR. FOR AM. PROGRESS, (Mar. 22, 2017, 10:06 AM), https://www.americanprogress.org/issues/lgbtq-rights/news/2017/03/22/428970/repealing-affordable-care-act-bad-medicine-lgbt-communities/.
[22] Weigel, *supra* note 2.
[23] *Id.*
[24] David Kaufman, *The Fight for Fertility Equality*, N.Y. TIMES (July 22, 2020), https://www.nytimes.com/2020/07/22/style/lgbtq-fertility-surrogacy-coverage.html.
[25] Weigel, *supra* note 2.

investment represent a 700% net return to the government in discounted U.S. dollars from fully employed individuals."[26] Furthermore, New York estimated that insurance premiums would only rise by 0.5-1.1 percent due to the IVF coverage included in the IVF and Fertility Preservation Law.[27] Similarly, California predicts that covering IVF under Medi-Cal would only increase monthly premiums by one dollar.[28] It is hard to argue against the benefits of a 700 percent return in taxes for the government, or the minimal increases predicted in New York and California, so the Biden-Harris administration could counter arguments about IVF cost with this data, proving that economics are not a justification to bar Medicaid coverage for IVF.

Not only does the data show that expanding Medicaid coverage is not prohibitively expensive, but also studies reveal that when health care plans cover IVF, individuals use the procedure as higher rates. In the four states that mandate "comprehensive coverage" of IVF for individuals on private health insurance plans, use of ARTs is 1.5 percent higher than the national average.[29] Similarly, in European countries where the government covers the cost of IVF, usage rates are nearly four time higher than in the United States.[30] These statistics further underscore the fact that economic access effectively bars individuals from utilizing IVF.

By not covering IVF under Medicaid, the United States government perpetuates the idea that socioeconomic status should determine who can build the family they desire — a belief that is imbued in racism. Seventy-five million — or one in five — Americans used Medicaid in 2017, none of whom received insurance coverage for IVF.[31] A recent *New York Times* article on the cost of IVF suggested "starting a social media campaign" as one of the only viable means to pay for IVF, underscoring the dire need for government intervention.[32] Most Americans receiving IVF pay out-of-pocket for the procedure, which is nearly impossible for individuals who qualify for Medicaid.[33] The Biden-Harris administration needs to act on Day One to erode the economic barriers that keep Americans from building the families they desire.

---

[26] Mark P. Connelly et al, *Long-term economic benefits attributed to IVF-conceived children: a lifetime tax calculation*, 14 AM. J. OF MANAGED CARE 598 (2008).
[27] Weigel, *supra* note 2.
[28] *Id.*
[29] *Id.*
[30] Marianne P. Bitler & Lucie Schmidt, *Utilization of Infertility Treatments: The Effects of Insurance Mandates*, 49 DEMOGRAPHY 125, 139 (2012).
[31] Robin Rudowitz et al., *10 Things to Know about Medicaid: Setting the Facts Straight*, KAISER FAM. FOUND. (Mar. 6, 2019), https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid-setting-the-facts-straight/.
[32] Klein, *supra* note 2.
[33] Weigel, *supra* note 2.