The Protection of Confidentiality: Policy Development Lessons from Several States

Sandra Silva, MM, Altarum Institute, Rockville, MD | sandra.silva@altarum.org

ALTARUM INSTITUTE
SYSTEMS RESEARCH FOR BETTER HEALTH

URBAN INSTITUTE

Research Team

ALTARUM INSTITUTE
Jennifer Rogers, MPH
Julia Fantacone, MPP
Sarah Lifsey, MPP
Sandra Silva, MM
Halima Ahmadi-Montecalvo, PhD, MPH

URBAN INSTITUTE
Sarah Benatar, PhD
Brigette Courtot, MPH
Morgan Cheeks
Ian Hill, MA
Jane Wishner, JD
Jenny Markell

Study Description

Altarum and Urban Institutes conducted the study, *Addressing the Impact of the Affordable Care Act (ACA) on Title X Family Planning Services*, to gain an understanding of Title X providers' abilities to contract with and bill Medicaid and other health plans for services rendered while maintaining confidentiality. This poster describes lessons learned from states that have passed legislation and policies strengthening confidentiality protections.

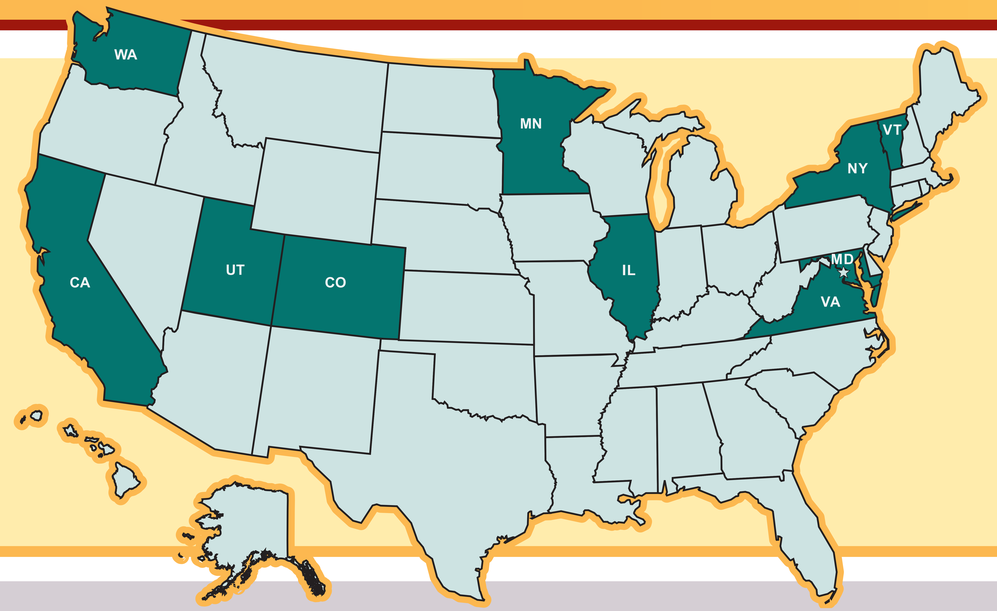
Background

Many individuals—such as adolescents, young adults, and intimate partner violence survivors—seek out Title X-funded health centers because of the confidential, sensitive services they provide regardless of their ability to pay. **Confidentiality is part of Title X regulations, which stipulate that funded health centers must provide confidential services to *all* individuals**. Implementation of the ACA in conjunction with Medicaid expansion in some states increased the number of individuals covered by Medicaid or commercial health plans, expanding access to care. However, billing these third party payers can result in the generation of explanation of benefits (EOBs) and other communications to the policy holder that can potentially compromise confidentiality for covered dependents. Some choose not to bill their insurance in order to maintain confidentiality for their family planning services. Addressing this issue is important to ensuring continued access to services while allowing the health centers to minimize uncompensated care.

Methods

This qualitative case study involved conducting key-informant interviews with a broad range of stakeholders such Title X grantees and providers, state Medicaid and Insurance officials, and health plans.

The research team conducted 189 interviews during in-person and virtual site visits with 10 states, including California, Colorado, Illinois, Maryland, Minnesota, New York, Utah, Vermont, Virginia, and Washington.



Conclusion

Since passage of the ACA, some states have been alerted to the potential confidentiality breaches that may result from billing insurers, through monitoring third party billing data and anecdotal evidence. Policymakers in several states have implemented stronger confidentiality protections for family planning and other sensitive services, such as mental and behavioral health. Developing or passing these policies with assistance of multi-sector coalitions or collaborative groups with mental health, substance abuse, veteran, and other non-reproductive health stakeholders appears to be an important facilitator.

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Emerging Practices and Lessons Learned

Emerging Practice	Method	State of
EOB redirection legislation for covered dependents	Legislation	California, Maryland, Washington
Medicaid policy to withhold EOBs globally or by diagnosis code for sensitive services	Policy	Illinois, Maryland, Colorado, New York, Minnesota, Washington, Utah, Vermont
Legislation mandating confidential communications for minors	Legislation	Minnesota

LESSONS LEARNED

Conduct necessary education to inform potential stakeholders about the need to address confidentiality issues.

- The CO Division of Insurance engaged multiple stakeholders representing behavioral health, mental health, intimate partner violence, disability, and substance abuse, in a collaborative to share their perspectives of confidentiality issues.
- The IL Medicaid agency brought together key stakeholders such as public health and health plans on a quarterly or annual basis and had speakers present on confidentiality issues, barriers to confidentiality, and gaps in services.

Frame confidentiality concerns in a way that resonates with legislators or intended audience.

- IL stakeholders partnered with mental health care, substance abuse providers, and veterans groups to expand the broad base of support because, for example, veterans in IL may have mental and behavioral health care needs and can stay on parents' insurance until age 30.
- The MD Confidential Communications Bill was passed with victims of domestic violence in mind and covered mental and behavioral health services as well as family planning and reproductive health services.

Including stakeholders beyond family planning when drafting policy language could increase buy-in and proactively address concerns that may impact passage and implementation.

- The CO Division of Insurance convened an array of stakeholders to address the confidentiality concerns raised by the provider community including state agencies, provider groups, billing and claims specialists, and consumer groups.
- IL stakeholders modified legislative language related to withholding EOBs in response to concerns from the provider community that initial policy language would impact providers' relationships with insurers. Legislation was passed by partnering with veterans groups and mental health and substance abuse providers, allowing the coalition to garner a more diverse base of support than if the focus had been solely on family planning services.
- MD stakeholders worked with health insurance carriers to draft its confidential communications bill and held the language to the existing HIPAA protections to quell insurer fears that the bill could have a broader effect. During implementation of the bill, both advocates for client confidentiality and health insurance carriers gave input.

Coalitions can also enhance implementation of stronger confidentiality protections.

- Implementation of a WA state statute that allows suppression of EOBs for those with private insurance has been slow mostly because individuals are unaware of the statute or consider the process burdensome. The state is working with a coalition of stakeholders including family planning organizations, children's health advocates, and pediatricians and will engage health plans and more provider groups as they get further along the rule making process.