ZIKA VIRUS, REPRODUCTIVE HEALTHCARE, AND WORKPLACE POLICIES

Zika virus disease is a mosquito-borne and sexually transmitted illness that has been spreading in the Western hemisphere since 2015. It usually causes mild or no symptoms, but has been linked to serious health consequences, including microcephaly, in babies born to women who were infected with Zika virus during pregnancy.[1] In U.S. territories, including Puerto Rico, the U.S. Virgin Islands, and American Samoa, mosquitos are currently transmitting Zika virus locally.[2] The Centers for Disease Control and Prevention (CDC) have reported only travel-related and sexually transmitted cases within the continental United States,[3] but local, mosquito-borne spread of the virus within the United States is possible,[4] particularly as mosquito populations increase over the summer.

Federal, state, and local governments must take immediate action to help prevent and protect people against the spread of Zika virus. For example, the Center for Medicaid and CHIP Services has authorized states to cover insect repellent, window screens, protective clothing, and other preventative measures through their Medicaid Programs.[5] States should take advantage of and supplement these measures.

State polices that support women and their families as they make critical decisions regarding whether and when to have children are also critical to managing Zika risk. Women exposed to Zika virus, or women living or working in states at risk for transmission of Zika virus, may want to delay having children, making access to family planning services and abortion care especially important. Women who are pregnant or planning to become pregnant need health insurance coverage and concerns about health insurance coverage may be particularly salient for any woman at increased risk for having a child with a disability such as microcephaly. Pregnant women and women of childbearing age may be subject to discrimination at work based on their employers' perception of Zika-related risks. Finally, pregnant women at risk for occupational exposure to Zika virus may need temporary workplace accommodations to help reduce that risk.

States that have not already can and should implement these five key policies that will help support a woman's family planning decisions and healthy pregnancy:

- Expand the state Medicaid program to cover those with incomes up to 138% of the federal poverty level;
- Offer supplemental expanded Medicaid coverage of family planning services to increase access to birth control and related services;
- Cover abortion in the state Medicaid program beyond what can be paid for with federal funding (cases of life endangerment, rape, or incest);
- Eliminate any restrictions on private insurance coverage of abortion; and,
- Enact laws explicitly requiring workplace accommodations for medical needs related to pregnancy.

These policies will help ensure that women and their partners in areas at risk for Zika virus transmission have the resources they need to plan their families and have healthy pregnancies.

Zika Virus and Health Care Access

Access to health care—including reproductive health care—is crucial for people in areas at risk for Zika virus. Health insurance coverage makes it more likely that women will be able to use the birth control method that works best for them. Regular appointments with health care providers, including pre-conception planning and prenatal care, are important for women to have healthy pregnancies. Health care providers also play a crucial role in educating patients about Zika virus and providing counseling to help women plan for healthy pregnancies and protect themselves against transmission of the virus.

Unfortunately, many states have refused to expand their Medicaid program as was intended under the Affordable Care Act, leaving many people without health insurance coverage or affordable health care. The Affordable Care Act provides funding for states to expand Medicaid coverage to people with incomes below 138% of the federal poverty level, and offers premium tax credits to people with incomes between 100% and 400% of the federal poverty level to help them purchase coverage on the health insurance marketplaces. But nineteen states have not expanded their Medicaid programs, leaving people who do not qualify for traditional Medicaid but fall below the income threshold for subsidies in the marketplaces in a coverage gap. Women and people of color make up a disproportionate share of the people who fall into this coverage gap.[6] States can and should do better, and expand Medicaid to cover all eligible individuals. Increased access to comprehensive health coverage helps women and their partners plan their families, have healthy pregnancies, and raise healthy families.

In areas at risk for Zika virus, there is new urgency to ensuring that women and their partners who decide not to have children or to delay having children have access to the form of birth control that works best for them. Coverage of birth control without out-of-pocket costs, as required by Medicaid and the Affordable Care Act, helps remove barriers to birth control that can prevent women from using it correctly and consistently. Without coverage, the cost barrier to birth control can be significant, particularly for the most effective forms like intrauterine devices (IUDs) and implants, which have high upfront costs. Indeed, these methods can cost nearly a month's salary for women working at the minimum wage.[7]

Despite the coverage provided by Medicaid and required under the Affordable Care Act, birth control coverage gaps remain, particularly among women living in states that have not expanded Medicaid under the ACA. Twenty-eight states have expanded eligibility criteria for coverage of family planning services under Medicaid, which is one important measure in filling this gap.[8] This expanded coverage helps people access family planning and related services, enables more women to access the most effective birth control methods, and facilitates patient-provider relationships before pregnancy, which can improve birth outcomes.[9] Women with this coverage often receive counseling on sexually transmitted infections, birth control, and options counseling in the event of an unintended pregnancy, which will be crucial for individuals in areas at risk for infection by Zika virus. States that do not have this expanded family planning coverage make it more difficult for women to access and afford birth control.

Women also need access to abortion. Yet many states restrict coverage of abortion in both public and private insurance coverage. Although federal law bars states from using federal money to pay for abortion care through the Medicaid program, except in instances when the pregnancy is the result of rape or incest or endangers the life of the woman, states are free to use their own funds.[10] However, only seventeen states currently pay for all or most abortions for women covered by Medicaid.[11] In addition, twenty-five states have laws prohibiting insurance coverage of abortion in their state insurance marketplaces. In ten of those states, no private insurance plan—whether in the marketplace or not—is allowed to cover abortion as part of its comprehensive health plan.[12]

When women with low incomes have to pay for abortions out-of-pocket, they may have to postpone paying for other basic needs like food, rent, heating, and utilities in order to save the money needed for an abortion, harming these women and the family members who depend on their incomes. Raising the money to pay for an abortion can also take time, causing delays that further increases the costs and risks of abortion. And prohibitive costs can ultimately force some women to carry unwanted pregnancies to term.[13] States can help ensure that women have access to the health care they need by ensuring their state Medicaid programs cover abortion, and by not interfering with private insurance coverage of abortion.

The risks posed by Zika virus make even clearer what has always been so: when women lack access to reproductive health care, they and their families face significant dangers and costs. States that have not already done so should: expand their Medicaid programs to cover those who currently fall in the insurance coverage gap; expand their Medicaid family planning program to ensure that all people can access affordable family planning services; cover all abortions; and repeal bans on private insurance coverage of abortion.

Zika Virus, Pregnancy, and the Workplace

No woman should have to choose between her paycheck and a healthy pregnancy, and public policy can help ensure that women who face particular medical needs or risks as the result of pregnancy are not forced to do so. Federal law provides some important protections. The Pregnancy Discrimination Act (PDA) prevents an employer from taking an adverse employment action because of a woman's actual or potential pregnancy, including taking actions based on the employer's desire to avoid Zika virus exposure or transmission; for example, employers may not ask workers if they intend to become pregnant, unilaterally limit pregnant or female workers' job duties in order to protect fetal health, or compel a pregnant employee to go on unpaid leave for the duration of her pregnancy when she is willing and able to continue to do her job.

Some women, however, will need and request reasonable accommodations to address medical needs arising out of pregnancy, and accommodations can be especially important

in helping pregnant workers in Zika-affected areas avoid situations, such as outdoor work, which pose increased risks of Zika virus transmission. The PDA and the Americans with Disabilities Act (ADA) will each sometimes require employers to provide reasonable accommodations to pregnant workers who need it. A pregnant worker with medical needs may be able to obtain a reasonable accommodation under the PDA if the employer routinely accommodates non-pregnant workers with similar limitations. And workers with certain pregnancy-related conditions that rise to the level of a disability may be entitled to reasonable accommodations under the ADA, if the accommodations do not impose an undue hardship on the employer.[14]

Seventeen states and the District of Columbia have gone beyond these protections, enacting laws that explicitly grant pregnant employees the right to reasonable accommodations at work. But these state laws vary in the scope and nature of the accommodations provided and the circumstances in which they are available. Some state laws only cover workers who are employed by government entities or employers of a certain size. While some state laws require employers to reasonably accommodate workers in their existing jobs—allowing employees to continue their regular work—others only require employers to transfer pregnant workers to other jobs with different duties.[15]

Mosquito populations and the number of Zika-affected areas in the United States are expected to increase in the coming months. States should act quickly to implement protections to ensure that a pregnant worker is not forced to choose between her health and her family's economic security.

Conclusion

The potential risk posed by Zika virus highlights the need for policies that support women as they plan, raise and support their families. The availability of Medicaid, Medicaid family planning coverage, public and private insurance coverage of abortion, and workplace pregnancy accommodations can all affect a woman's ability to decide whether and when to start a family and her ability to protect her health during pregnancy—critical issues that for some will gain even greater urgency in light of the risk of exposure to Zika virus.

1 *See generally About Zika Virus Disease,* Ctrs. For Disease Control & Prevention (last updated June 3, 2016), http://www.cdc.gov/zika/about/index.html.

2 *Zika Virus Disease in the United States* 2015-16, Ctrs. For Disease Control & Prevention (last updated June 16, 2016), http://www.cdc.gov/zika/geo/united-states.html.

3 *Id.*

4 *See About Estimated Range of Aedes Aegypti and Aedes Albopictus in the United States, 2016 Maps,* Ctrs. For Disease Control & Prevention (last updated Apr. 26, 2016), http://www.cdc.gov/zika/vector/range.html.

5 Memorandum from Vicki Wachino, Director of Center for Medicaid and CHIP Services (June 1, 2016), *available at* https://www.medicaid.gov/federal-policy-guidance/downloads/cib060116.pdf.

6 Rachel Garfield & Anthony Damico, The Coverage Gap: Uninsured Poor Adults in States That Do Not Expand Medicaid - An Update (Jan. 2016), *available at* http://files.kff.org/attachment/issue-brief-the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-an-update-2.

7 Nat'l Women's Law Ctr., Reproductive Health is Part of the Economic Health of Women and their Families (May 2015), *available at* https://www.nwlc.org/sites/default/files/pdfs/reproductive_health_is_part_of_the_economic_health_of_women_5.29.15pdf.pdf.

8 *See* Guttmacher Inst., Medicaid Familiy Planning Eligibility and Expansions (Mar. 1, 2016), *available at* https://www.guttmacher.org/sites/default/files/pdfs/spibs/spib_SMFPE.pdf.

9 Guttmacher Inst., Estimating the Impact of Expanding Medicaid Eligibility for Family Planning Services: 2011 Update 4-5 (Jan. 2011), *available at* https://www.guttmacher.org/sites/default/files/report_pdf/medicaid-family-planning-2011.pdf.

10 *See* Nat'l Women's Law Ctr., The Hyde Amendment Creates an Unacceptable Barrier to Women Getting Abortions (July 2015), *available at* http://nwlc.org/wp-content/uploads/2015/08/the_hyde_amendment_creates_an_unacceptable_barrier.pdf.

11 Guttmacher Inst., State Funding of Abortion Under Medicaid (June 1, 2016), *available at* https://www.guttmacher.org/sites/default/files/state_policy_overview_files/spib_sfam.pdf.

12 Nat'l Women's Law Ctr., State Bans on Insurance Coverage of Abortion Endanger Women's Health and Take Health Benefits Away From Women (Feb. 2016), *available at* https://nwlc.org/wp-content/uploads/2016/02/State-Bans-on-Abortion-Covg-Factsheet-2.8.163.pdf.

13 Nat'l Women's Law Ctr., Moving Women and Families Forward: A State Roadmap to Economic Justice 13 (2016), *available at* http://nwlc.org/wp-content/uploads/2015/02/final_nwlc_2016_StateRoadmapv2.pdf.

14 *See* Nat'k Women's Law Ctr., Young V. Ups: What it Means for Pregnant Workers (Apr. 26, 2016), *available at* http://nwlc.org/wp-content/uploads/2016/04/Young-v.-UPS-What-It-Means-for-Pregnant-Workers-1.pdf; U.S. Equal Emp't Opportunity Comm'n, Legal Rights for Pregnant Workers Under Federal Law (June 14, 2016), *available at* https://www.eeoc.gov/eeoc/publications/pregnant_workers.cfm. Some pregnant workers—who work outdoors or in laboratories, for instance—may be entitled to additional protections, such as protective equipment, under the Occupational Safety and Health Act. *See* Ctrs. for Disease Control & Prevention & Occupational Safety & Health Admin., Fact Sheet: Interim Guidance for PRotecting Workers from Occupastional Exposure to Zika Virus (Apr. 2016), *available at* http://www.cdc.gov/niosh/topics/outdoor/mosquito-borne/pdfs/osha-niosh_fs-3855_zika_virus_04-2016.pdf#page=1.

15 *See generally* Nat'l Women's Law Ctr., Pregnancy Accommodations in the States (Apr. 2016), *available at* http://nwlc.org/wp-content/uploads/2016/04/Pregnancy-Accommodations-in-the-States-4.15.16.pdf.