

NHeLP's Reproductive Health Data  
and Insurance Accountability Project

the **DATA**  
PROJECT



**NHeLP**  
NATIONAL HEALTH LAW PROGRAM

**WOMEN'S  
LAW PROJECT**  
Safeguarding Rights, Creating Opportunities

## Unlocking Abortion Coverage in the Keystone State

Pennsylvania Medical Assistance, Pennsylvania's Medicaid program, provides public health coverage to low-income people who meet certain eligibility criteria. While coverage of abortion care under Medical Assistance is unfortunately limited, federal and state laws and policies require Medical Assistance to cover abortions in cases of rape, incest, and life endangerment. This guide addresses the rules governing coverage and payment for these abortion services.

### **Does Pennsylvania Medical Assistance cover abortions?**

Medical Assistance provides limited abortion coverage. Federal law and policies require state Medicaid programs, including Medical Assistance, to cover abortions when the pregnancy is due to rape or incest, or when the pregnancy threatens the life of the woman. Pennsylvania laws and policies likewise require Medical Assistance to cover abortions in cases of rape, incest, or life endangerment.

### **When does a pregnancy threaten the life of a woman?**

A pregnancy threatens the life of a woman when a primary care provider or treating physician determines that due to a condition, illness, or injury, an abortion is necessary to avert the death of the woman. [According to Pennsylvania Medical Assistance Bulletin 99-06-15](#), a life endangering condition includes any physical condition or any psychological condition (e.g., threatened suicide) that could put the woman at risk of death.

### **Who determines whether a condition is life threatening?**

The Pennsylvania Department of Human Services (DHS)—the state agency responsible for administering Medical Assistance—has made clear that physicians determine, based on their professional judgment, whether an abortion is necessary to avert the death of a woman. A woman's primary care provider or treating physician, including the physician providing abortion services, may use his or her professional judgment to determine when a condition is life threatening.

### **Is a physician required to seek a second opinion to determine whether a condition is life threatening?**

No. The state [clearly prohibits](#) Medical Assistance and managed care plans from conditioning payment for abortion care on the woman undergoing any additional assessments, such as meetings with a psychiatrist or specialist, to certify her life threatening condition.

### **What is rape?**

Medical Assistance must cover abortions where the pregnancy resulted from rape. Federal law allows the state to define rape for purposes of abortion coverage. In Pennsylvania, rape is any sexual intercourse:

- By physical force (e.g., hitting, kicking, using a weapon)

- By threatening to hurt the woman
- When the woman is drugged or unconscious
- When the woman is younger than 13
- When the woman is younger than 16 and her partner is not her husband and is 4 or more years older (based on the age of partners regardless of consent; known as statutory sexual assault, formerly statutory rape)

### **What is incest?**

Medical Assistance must also cover abortions where the pregnancy resulted from incest. Incest may occur between people of any age, with or without force. State law defines incest as sexual intercourse with a parent, grandparent, brother (of whole or half blood), uncle, or nephew.

### **Does a woman have to report the rape or incest to a government agency as defined below to receive a Medical Assistance covered abortion?**

Yes, unless a physician determines that in his or her professional judgment the woman was physically or psychologically unable to report the crime. If a physician makes this determination, Medical Assistance must waive the requirement to report and cover her abortion.

### **Who decides whether a woman is incapable of reporting the rape or incest?**

A woman's primary care physician or treating physician, including the physician providing abortion services, may waive the requirement that she report her rape or incest to a government agency. Medical Assistance does not impose any further requirements, such as additional documentation or consultations with specialists, beyond the physician certification.

### **To whom and when does the woman have to report if a physician does not waive the requirement?**

If a physician does not determine that a woman was incapable of reporting her rape or incest, the woman must report the rape or incest to a law enforcement agency, or child protective services agency in the case of incest, for Medical Assistance to cover the abortion. The woman must report the crime prior to the performance of the abortion to the appropriate agency responsible for investigating the crime. A woman's physician must indicate on the "Physician Certification for an Abortion" (MA-3) form that a report has been made. Pennsylvania does not require the woman to produce additional documentation of the crime such as a copy of the police report. Although it is possible that some managed care plans might seek to impose a requirement that a copy of the police report be submitted, Medical Assistance prohibits any requirements that could have the effect of delaying or denying abortion care.

### **How does a physician request Medical Assistance payment for an abortion in cases of rape or incest?**

A physician must certify that the pregnancy is due to rape or incest on the "Physician Certification for an Abortion" (MA-3) form, available at [http://www.dhs.state.pa.us/cs/groups/webcontent/documents/form/s\\_002553.pdf](http://www.dhs.state.pa.us/cs/groups/webcontent/documents/form/s_002553.pdf).

The patient must also certify she is a survivor of rape or incest on the "Recipient Statement Form" (MA-368), available at [http://www.dhs.pa.gov/cs/groups/webcontent/documents/form/s\\_002605.pdf](http://www.dhs.pa.gov/cs/groups/webcontent/documents/form/s_002605.pdf).

DHS guidance clarifying payment and certification requirements for abortion coverage may be accessed at [http://www.dhs.pa.gov/cs/groups/webcontent/documents/bulletin/admin/d\\_005563.pdf](http://www.dhs.pa.gov/cs/groups/webcontent/documents/bulletin/admin/d_005563.pdf)

### **How does a physician request Medical Assistance payment for an abortion when a condition is life threatening?**

A physician must certify an abortion is necessary due to a life threatening condition on the DHS "Physician Certification for an Abortion" (MA-3) form.

You may access the MA-3 form at [http://www.dhs.state.pa.us/cs/groups/webcontent/documents/form/s\\_002553.pdf](http://www.dhs.state.pa.us/cs/groups/webcontent/documents/form/s_002553.pdf).

If the basis of the abortion is a life threatening condition, the physician must also document the condition in the patient's medical records. Medical Assistance does not require a physician to submit these supporting medical records.

Some managed care plans may require documentation of the life threatening condition. However, DHS prohibits requirements "that could have the effect of delaying or denying abortion coverage authorized under state or federal law." [http://www.dhs.pa.gov/cs/groups/webcontent/documents/bulletin/admin/d\\_005563.pdf](http://www.dhs.pa.gov/cs/groups/webcontent/documents/bulletin/admin/d_005563.pdf)

### **Does a woman need to make more than one appointment to have the "Physician Certification for an Abortion" form signed?**

Generally no, she may have this form signed at the same appointment she receives abortion care. Pennsylvania requires a 24-hour delay between counseling and an abortion; however, the counseling can be delivered by a doctor by telephone to avoid requiring the woman to make more than one visit.

### **Where should the physician submit the "Physician Certification for an Abortion" and "Recipient Statement"?**

If the patient is enrolled in a managed care plan, submit these forms to her plan with the billing claim. If the patient receives services on a fee-for-service basis, submit these forms to the Department of Human Services with the billing claim.

### **Is prior authorization allowed for surgical abortions?**

Pennsylvania prohibits managed care plans and DHS from requiring prior authorization for surgical abortions—whether services are provided on a fee-for-service basis or through a managed care plan. The prohibition applies unless the managed care plan receives permission from DHS to require prior authorization. The plan’s handbook must disclose any prior authorization requirement.

### **Is prior authorization allowed for medication abortions?**

Pennsylvania does not expressly prohibit or require prior authorization for a medication abortion. Although it is possible that some managed care plans might seek to impose such a requirement, Medical Assistance prohibits any requirements that could have the effect of delaying or denying abortion care. The plan’s handbook must disclose any such prior authorization requirement.

### **When should a provider receive a decision on a prior authorization request?**

If a plan requires prior authorization, a decision on that request, or notification that further documentation is required, must be given orally within 2 business days and in writing within 21 days. Any requests that do not receive a written decision within 21 days are automatically granted. While the law allows a review process to take 21 days, this may be too long for a time sensitive service such as an abortion. DHS prohibits requirements “that could have the effect of delaying or denying abortion coverage authorized under state or federal law.”

### **What should a provider do if a request for prior authorization is denied?**

If a patient is enrolled in managed care or fee-for-service, a provider may request an expedited appeal to receive a final decision within 3 days. An expedited appeal is available if in the provider’s professional judgment the standard timeline would “risk the patient’s life, health, or ability to attain, maintain or regain maximum function.”

If the circumstances do not warrant an expedited appeal and the patient is enrolled in a managed care plan, her provider should file an appeal with the plan within 45 days of receiving notice of the denial and should receive a decision within 30 days of the appeal. While this would be an unreasonable delay for time sensitive services such as an abortion, filing an appeal may aid the provider when seeking reimbursement.

If a pending prior authorization decision is delaying or denying an abortion, or if you have received a denial of prior authorization, please contact the Women’s Law Project or Pennsylvania Health Law Project for immediate assistance. In extremely sensitive situations, the National Abortion Federation or Women’s Medical Fund may be able to provide support.



Similarly, if the patient receives services on a fee-for-service basis, her provider should file an appeal with the DHS within 30 days of receiving notice of the denial and should receive a decision within 90 days of the appeal.

The rules governing provider appeals to a managed care plan are available at <http://www.pacode.com/secure/data/028/chapter9/subchaptoc.html>.

The rules governing provider appeals to DHS are available at <http://www.pacode.com/secure/data/055/chapter41/chap41toc.html>.

### **What should a provider do if a claim for reimbursement is denied?**

If the patient is enrolled in managed care, the provider should file an appeal with the managed care plan within 45 days of receiving notice of the denial and should receive a decision within 30 days of the appeal. Similarly, if the patient receives services on a fee-for-service basis, her provider should file an appeal with the DHS within 30 days of receiving notice and should receive a decision within 90 days of the appeal.

## **RESOURCES**

### **National Health Law Program**

[www.healthlaw.org](http://www.healthlaw.org)

#### *Los Angeles Office*

310-204-6010

[nhelp@healthlaw.org](mailto:nhelp@healthlaw.org)

#### *Washington, DC Office*

202-289-7661

[nhelpdc@healthlaw.org](mailto:nhelpdc@healthlaw.org)

#### *North Carolina Office*

919-968-6308

[nhelpnc@healthlaw.org](mailto:nhelpnc@healthlaw.org)

### **Women's Law Project**

[www.womenslawproject.org](http://www.womenslawproject.org)

#### *Philadelphia Office*

215-928-9801

#### *Western Pennsylvania Office*

412-281-2892

### **Pennsylvania Health Law Project**

[www.phlp.org](http://www.phlp.org)

HelpLine: 800-274-3258

*Philadelphia, Pittsburgh, Harrisburg*

### **National Abortion Federation**

[www.prochoice.org](http://www.prochoice.org)

Hotline: 800-772-9100

### **Women's Medical Fund**

[www.womensmedicalfund.org](http://www.womensmedicalfund.org)

HelpLine: 215-564-6622

*The National Health Law Program (NHeLP) protects and advances the health rights of low-income and underserved individuals. Founded in 1969, NHeLP advocates, educates, and litigates at the federal and state levels. NHeLP promotes quality reproductive health coverage, access, and services within the larger context of comprehensive, fully integrated, quality care. To learn more, visit NHeLP's website at [www.healthlaw.org](http://www.healthlaw.org).*

*The Reproductive Health Data and Accountability Project (Data Project), led by the National Health Law Program (NHeLP), utilizes data regarding barriers to contraception and abortion care in private and public health insurance programs. The Data Project has partnered with providers, clinic administrators, and consumer advocates in over 30 states to implement legal and policy advocacy strategies to access barriers. To learn more or become a Data Project partner, contact NHeLP's Los Angeles office at 310-204-6010 or [nhelp@healthlaw.org](mailto:nhelp@healthlaw.org).*

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# At the Heart of the Work