



# Beyond the Law: The Challenge of Marketplace Coverage of Abortions

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Abortion Coverage

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## About the National Health Law Program

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The National Health Law Program (NHeLP), founded in 1969, protects and advances the health rights of low-income and underserved individuals and families. We advocate, educate and litigate at the federal and state levels to advance health and civil rights in the United States. We strive to give a voice to low-income individuals and families in federal and state policy making, promote the rights of patients, and advocate for a health care system that will ensure all people have access to quality and comprehensive health care. NHeLP mainstreams reproductive health in our vision of a comprehensive system of coverage and care, and we consistently identify and implement strategies that have a significant impact on access to quality reproductive health services delivered with dignity and where cost is never a barrier.

# Beyond the Law: The Challenge of Marketplace Coverage of Abortions

## Table of Contents

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Introduction.....	4
Legal Background .....	5
Analysis.....	8
Recommendations .....	16
Endnotes.....	17

# Introduction<sup>1</sup>

Note: Use of the term “women” throughout this report is intended to be an inclusive definition of women to encompass transwomen, genderqueer women, and gender nonconforming individuals who may identify as female.

Abortion is a common medical procedure. One in four women in the U.S. will have at least one abortion in their lifetime.<sup>2</sup> The negative health and well-being impacts of abortion restrictions are well documented.<sup>3</sup> Studies also show that when a low-income woman cannot access a wanted abortion, she is four times more likely to fall into poverty than a person who is able to pay for that care.<sup>4</sup> An abortion at ten weeks gestation costs \$500 on average, rising significantly later in pregnancy. For low- and middle-income women, this prohibitive amount will force them deeper into poverty. Women who are forced to continue a pregnancy are also more likely to experience serious complications like eclampsia and death in the final stages of their pregnancy, as well as suffer anxiety and loss of self-esteem after giving birth.<sup>5</sup>

The National Health Law Program (NHeLP) examined the ways in which qualified health plans in the Marketplaces describe in publicly available documents if and how they cover abortion services. Research demonstrates that even when there are no bans on abortion coverage, insured individuals do not always know about abortion coverage in their insurance plans.<sup>6</sup> The goal of this research was to assess how individuals learn about abortion coverage in Marketplace insurance plans, particularly if they receive accurate information in order to benefit from this coverage.

## Key findings include:

1. Many Marketplace plans fail to acknowledge that all abortions are basic health care services, and create inappropriate, undefined, and confusing labels of abortions such as “elective,” “therapeutic,” or “medically necessary.”
2. Even when there are no legal restrictions, a number of states do not host Marketplace plans that cover abortions. This cohort includes states that limit Medicaid coverage in accordance with the narrow circumstances of the Hyde Amendment – cases of rape, incest, and life endangerment – as well as states that fund abortions past these circumstances in their Medicaid programs.
3. Some marketplace plans limit the number of abortions that an enrollee can receive. Some limit the number of abortions per plan year, while others set lifetime limits.

# Legal Background

The Patient Protection and Affordable Care Act (Affordable Care Act or “ACA”) provided for millions of individuals who did not qualify for Medicaid or who did not have other forms of health insurance coverage the ability to purchase and enroll in the health insurance Marketplaces, also known as the exchanges. The ACA established two types of assistance for individuals seeking to purchase plans through the Marketplaces. The first type of assistance, called the premium tax credit, works to reduce enrollees’ monthly payments for insurance coverage. The second type of financial assistance, the cost-sharing subsidy, aims to minimize enrollees’ out-of-pocket costs when they seek services from a provider or have a hospital stay.<sup>7</sup>

The Affordable Care Act created the following Marketplace structures:

- (1) State-based Marketplaces (SBM): fully state-based exchanges, where states are responsible for performing all Marketplace functions like enrollment and information-sharing (for example, California);
- (2) Federally-facilitated Marketplaces (FFM): the U.S. Department of Health and Human Services (HHS) performs all Marketplace functions with enrollment through healthcare.gov (for example, New Jersey); and
- (3) State Partnership Marketplaces (SPM): states conduct plan management and may administer in-person consumer assistance, but HHS performs the remaining Marketplace functions through the federal website (for example, New Hampshire).<sup>8</sup>

The Affordable Care Act requires health insurance Marketplace plans to offer four basic levels of coverage: Bronze, Silver, Gold, and Platinum. These categories, called “metal levels” or “tiers,” differ in how much the enrollee must pay out of pocket. Each metal level may include different types of plans and provider networks like health maintenance organizations (HMOs) and preferred provider organizations (PPOs). The chart below explains how these metal levels work:

Plan Type “Metal Level”	Premium Rate (How Much the Plan Pays)	Cost-Sharing Requirements (For Deductibles, Co-pays & Coinsurance)
<b>Platinum</b>	90 percent	10 percent
<b>Gold</b>	80 percent	20 percent
<b>Silver</b>	70 percent	30 percent
<b>Bronze</b>	60 percent	40 percent

Outside of these options is the catastrophic plan, which is only available for low-income individuals who are younger than 30 years old, or for individuals who receive hardship or affordability exemptions when the Marketplace or employer-based insurance is unaffordable. These plans involve high deductibles and a very low monthly premium; however, the enrollee cannot use a premium tax credit.<sup>9</sup>

Marketplace plans must cover at least ten Essential Health Benefits (EHBs). Among these EHBs are preventive services, which include family planning services, as well as maternity care, but do not include abortion care.<sup>10</sup> In fact, federal regulations explicitly provide that a health plan does not fail to meet the EHBs just because they do not cover abortion.<sup>11</sup> Moreover, the Affordable Care Act reaffirmed that states may ban or require abortion coverage in private and Marketplace plans.<sup>12</sup> Following this reminder, more than half of states (twenty-six) moved to restrict abortion coverage in the Marketplaces.<sup>13</sup> Thus, twenty-four states and the District of Columbia allow abortion funding in the Marketplaces. Six states – New York, California, Washington, Illinois, Maine, and Oregon – currently require abortion coverage in virtually all their plans, including the Marketplaces.<sup>14</sup> If a state does not opt to ban abortion in the Marketplaces, an insurer can choose whether to provide coverage for abortion services and the breadth of that coverage.

### **For this report’s purposes, we differentiate between insurers and plans.**

“Insurer” means the insurance company, which offers different health insurance plans according to the metal tiers that are described in the Affordable Care Act. For example, Blue Cross Blue Shield or Kaiser Permanente are insurers.

[“Health plan,” “Plan” or “Qualified health plan”](#): means the particular health insurance plan that an individual purchases for themselves and their family. A plan must cover Essential Health Benefits, follow established limits on cost-sharing, and meet the requirements under the Affordable Care Act. For example, Blue Cross Blue Shield Gold Plan 123 and Blue Cross Blue Shield Platinum Plan 345 are two separate health plans that are part of the insurer Blue Cross Blue Shield.

[Multi-state plan](#): is a type of plan offered in the Marketplaces. Despite the name, multi-state plans do not necessarily cover services in multiple states. The name “Multi-State Plan” means only that Office of Personnel Management governs these plans. These have similar requirements as other Marketplace plans in that they must offer the ten Essential Health Benefits, and offer at least one plan at the “silver” level and one at the “gold” level. However, one important distinction is that states must offer at least one multi-state plan that does not include “elective abortion services.”

[Summary of Benefits and Coverage](#): A summary that allows enrollees to determine and compare costs and coverage between health plans. Plan shoppers can compare options based on price, benefits, and other features.

The Affordable Care Act includes other notable provisions that affect abortion coverage. Section 1303 of the ACA sets forth “special rules” regulating abortion coverage in the Marketplaces.<sup>15</sup> Enrollees cannot use federal subsidy funds, like premiums or cost-sharing, to pay for abortions, except in the narrow cases of life endangerment, rape, or incest (also known as “exempted abortions”).<sup>16</sup> Furthermore, Marketplace insurers must segregate premiums in two separate accounts: one account for payment for all services for which federal funding is available, including exempted abortions, and a second account for payment for all other abortion services. Marketplace insurers must collect these payments on behalf of everyone enrolled in the plan without regard to the enrollee’s age, sex, or family status.<sup>17</sup> Payments for non-abortion services (and exempted abortions) are used exclusively to pay for those services, and all payments for abortion services are placed in a different account that is used exclusively to pay for them. In determining the premium allocated to abortion services, the plan may not estimate the cost of the abortion coverage at less than one dollar per month per enrollee, irrespective of the actual cost.<sup>18</sup> Lastly, and quite importantly, the ACA requires that Marketplace plans provide information on abortion coverage in all Summaries of Benefits and Coverage at the time of enrollment.<sup>19</sup>



# Analysis

## Research Methodology

From the Fall of 2017 to Spring of 2018, the National Health Law Program (NHeLP) reviewed Marketplace plans' documents in states that do not prohibit or limit abortion coverage. This analysis is based only on publicly available information, principally the plans' Summaries of Benefits and Evidence of Coverage. NHeLP mainly chose these documents because Marketplaces plans are required to make them accessible to potential and current enrollees who want to compare coverage and cost information.<sup>20</sup> This report includes the links to these documents to the extent they were available at the time of research, although some of these links may no longer be open. Our search included findings of plans primarily from 2018 and 2017, with preference to the former if that information was available. As an attempt to emulate the experience of individuals shopping for plans that cover abortion, this report is a snapshot of limited findings during a certain period and under certain conditions. We intentionally did not call any state Departments of Health or Insurance; neither did we contact Marketplace insurers for further inquiry, as our goal was to understand what information is available to enrollees and shoppers. During the course of this research, NHeLP also found various Member Handbooks, Member Policy Memos, Schedules of Benefits, Disclosure Forms, and other plan documents, and we analyzed them to the extent that they discussed abortion coverage. NHeLP examined Marketplace plans' documents to identify:

- A. Clarity regarding the extent of abortion coverage;
- B. Terminology used to describe abortion;
- C. Plans' decisions to cover abortion absent legal limitations;
- D. Cost-sharing provisions and how they compare with other comparable services;
- E. Abortion coverage limited to narrow circumstances that are similar to the Hyde Amendment; and
- F. Other types of plan limits on abortion coverage

Research also examined insurers' publicly available pharmaceutical formularies. The search terms for each formulary involved looking for the generic or brand name associated with medication abortion like Mifepristone or Mifeprex. NHeLP also looked at related research conducted by the Kaiser Family Foundation and the Guttmacher Institute.<sup>21</sup> In addition to the insurers' websites, NHeLP visited the federal Marketplace site ([www.healthcare.gov](http://www.healthcare.gov)) as well as the states' Marketplace websites when these were available.



## Discussion

### A. Lack of clarity regarding the breadth of abortion coverage

Marketplace plans are required to have a Summary of Benefits and Evidence of Coverage (SBC) that is available to enrollees and individuals seeking coverage.<sup>22</sup> This document generally lists services, cost-sharing requirements, coverage limitations, and other important information. It categorizes health services either as “Common Medical Events” or as “Other Services Covered.” The latter is a catchall term for services such as acupuncture or chiropractic that may or may not be covered, or may be covered under significant limitations. The “Other Services Covered” category omits cost-sharing information or simply states the possible existence of limitations without specific details, and instructs enrollees to contact their plans for further information. For example, Maryland’s [CareFirst Blue Cross Blue Shield](#) merely lists abortion as “Other Covered Services,” where “limitations may apply.”

Health services like family planning or pregnancy care are usually placed under “Common Medical Events.” Abortion is a common health care procedure, yet Marketplace plans’ SBCs most often place abortion under “Other Covered Services.” The Summaries of Benefits and Coverage never define or describe abortion services, nor the scope of those limitations. Examples are found in Marketplace plan SBCs like Oregon’s [BridgeSpan](#) and [Kaiser Permanente](#), as well as the District of Columbia’s [CareFirst Blue Choice](#).

**Health plans use confusing and inconsistent terminology about abortion coverage**

The National Health Law Program also observed some inconsistencies among the same-tiered plan documents. For instance, a Marketplace plan’s Summary of Benefits may note that it covers abortion, whereas the same plan’s Evidence of Coverage document establishes that it does not cover abortion or only covers it under very limited circumstances.

### B. Terminology used to describe abortion is inconsistent and confusing

Abortion is a health care service, making it medically necessary to anyone who requests it.<sup>23</sup> Hence, any categorizations that construe that abortions could be “elective” and/or “therapeutic” are inappropriate and misleading. The National Health Law Program’s research found that insurers often make these incorrect distinctions and that their definitions of these concepts differ significantly. The consequence is that shoppers and enrollees may likely not know when and how their Marketplace plans cover abortions.

Only on a few occasions were the terms “medically necessary abortions” or “therapeutic abortions” mentioned, and those terms were rarely defined. When definitions were provided, these were inconsistent across Marketplace plans. A plan may define “therapeutic abortion” when the health of the pregnant individual is at risk, and another plan may associate “therapeutic abortions” with those that occur in circumstances of rape and incest. Such is the case with West Virginia’s CareSource, whose [2018 Evidence of Coverage document](#) states that the plan only covers “therapeutic abortion,” defined as “an abortion performed to save the life or health of a mother, or as a result of incest or rape.” [Oscar Insurance](#) in New York also calls abortions in cases of rape, incest, or fetal impairment “therapeutic” or “medically necessary” abortions, using these terms interchangeably. In contrast, New York’s [CareConnect Insurance](#), establishes that its plan covers “therapeutic,” “medically necessary,” as well as “elective” abortions, but only defines the second by specifying that it involves coverage in cases of rape, incest, and fetal impairment. According to CareConnect, “medically necessary” abortions are those that take place in cases of rape, incest, and fetal impairment, and these are different from therapeutic abortions. As a third and last example, Colorado’s [Denver Health Medical Plan](#) calls abortions that fall under the cases of life endangerment, rape, and incest “non-elective abortions.”

**Even when there are no legal restrictions, a number of states’ plans are not covering abortions**

Marketplace plans mostly employed phrases that included the word “pregnancy” when they covered abortions. When the plan covers abortion, Marketplaces plans most commonly use the term “termination of pregnancy.” They also use terms like “interruption of pregnancy” and “voluntary termination of pregnancy.” In contrast, the term “abortion” appeared in policy documents when the service was not covered; hence, many Marketplace plans stigmatize the term “abortion” as a service that they do not cover.

### **C. Even in the absence of legal limitations, some plans still do not cover abortion**

Even when there are no legal restrictions, a number of states’ Marketplace plans do not provide abortion coverage. Out of the twenty-four states that do not prohibit abortion coverage, eighteen of them (seventy-five percent) and the District of Columbia host at least one Marketplace insurer that covers abortion past the circumstances of rape, incest, or life endangerment.<sup>24</sup> Most of these states only host one or two Marketplace insurers.<sup>25</sup> Not one of the

Marketplace plans in Minnesota, Nevada, Wyoming, Iowa, West Virginia, and Delaware indicated whether they covered abortions beyond the circumstances of rape, incest, or life endangerment.<sup>26</sup> Other studies have interpreted the silence behind coverage likely to mean that these plans do not cover abortions.<sup>27</sup> This group includes states where state Medicaid programs cover abortion past the circumstances of life, incest, and rape exceptions, as well as states that limit themselves to Medicaid funding of abortions under the Hyde Amendment.<sup>28</sup> For example, in Minnesota, Marketplace plans do not cover abortion services, but explicitly instruct their enrollees to consider public funding when seeking abortion services.

**When there are no state restrictions, health plans should be able to cover abortions**

**D. Abortion coverage is often limited to narrow circumstances, sometimes surpassing the restrictions found in the Hyde Amendment**

Without any mandate to do so, some Marketplace plans limit abortion coverage by incorporating the parameters or even the exact language found in federal public funding restrictions. When there are no legal limits, health plans should be able to cover abortions. The ACA restrictions only pertain to federal subsidies, which are limited to abortions that endanger the life of a pregnant individual or for pregnancies resulting from rape or incest. However, several Marketplace plans choose to mirror these restrictions.<sup>29</sup> For example, Delaware’s [HighMark Blue Cross Blue Shield](#) does not cover abortion services “except where a pregnancy is the result of rape or incest, or for a pregnancy which, as certified by a physician, places the life of the woman in danger unless an abortion is performed.”

Similarly, [Health Care Services Corporation \(HCSC, BlueCross BlueShield of Illinois\)](#) establishes in its Summary of Benefits’ “Outpatient Surgery” and “Excluded Services” sections that abortions are not covered, “except where a pregnancy is the result of rape or incest, or for a pregnancy which, as certified by a physician, places the woman in danger of death unless an abortion is performed.” The same language can be found in New Mexico’s Blue Cross and Blue Shield [2017 Summary of Benefits and Coverage](#). Also, Montana Health’s CO-OP 2018 Insurance Policy’s [Exclusions and Limitations Section I](#) provides that abortion coverage is limited to cases when “the life of the woman is endangered for reasons caused by or arising from the pregnancy or when the pregnancy is the result of an act of rape or incest.” In New Jersey, [Amerihealth’s on-exchange plan](#) establishes that “abortions will be covered at the federal definition; abortions are covered in the case of rape or incest, or for a pregnancy which, as certified by a physician, places the woman in danger of death unless an abortion is performed.”

Some of the limits in abortion coverage in the Marketplaces are more restrictive than the exceptions found in the Hyde Amendment. A few plans only allow abortion coverage when the pregnant individual's life is in danger, but not in cases of rape or incest. For example, Illinois' [Health Alliance Medical HMO Individual Plan](#) establishes that, "Services, drugs or supplies related to abortions, except when the life of the mother would be endangered if the fetus was carried to term or when the fetus has a condition incompatible with life outside the uterus, are not covered." Its section on infertility services also indicates, "Health Alliance will cover abortions that are Medically Necessary for the life of the mother," and nothing else. In Iowa, Medica's [Summary of Benefits and Coverage](#) lists "elective, induced abortions" in the section on Excluded Services, "except as medically necessary to protect the life of the mother." In other words, it only covers the life endangerment exception.

Some insurers place Hyde-like restrictions in some of their plans, but not in others. These limits mostly vary according to metal levels. For instance, Neighborhood Health Plan of Rhode Island's ["Innovation" Bronze Plan](#) covers abortion, subject to a deductible and thirty percent coinsurance. In contrast, the same insurer's ["Economy" Bronze plan](#) does not cover abortions. Its [Summary of Benefits and Coverage for its Neighborhood Economy Plan](#) only covers abortions in "cases of rape, incest, or when the life of the mother is endangered." The distinctions among tier plans is important because it means that those with higher tier plans get abortion coverage, while those with lower tier plans do not have access to these services. Those who can afford higher premiums receive abortion coverage in Marketplace plans.

**Some insurers  
put Hyde-like  
restrictions in  
some of their  
plans**

#### **E. Cost-sharing provisions for abortion are generally not comparable to other similar services**

The National Health Law Program also analyzed the cost-sharing provisions of abortion coverage, and examined how they related to other services. How abortion is characterized and how it takes place has implications for cost-sharing. Generally, cost-sharing is lowest for primary care, higher for surgical centers, and highest for inpatient services. Only twenty-five percent of the randomly selected plans that cover abortions shared some information on cost-sharing for abortion.

Among these few plans is Hawaii's HMSA, which indicates the copayment percentage for participating and nonparticipating abortion providers. HMSA's [Guide to Benefits Platinum PPO](#) covers abortion with a copayment of ten percent for participating providers, and thirty percent for nonparticipating providers. Under this plan, abortions are treated like other health services related to "maternity care," which include routine prenatal visits, delivery, and postpartum visits. California's Chinese Community Health Plan (CCHP)'s [Platinum 90 plan](#) charges a \$250 copay, which is the same as for an inpatient hospital visit.

Approximately 20 percent of the plans that covered abortions noted the difference between medication, aspiration, and surgical abortions, but failed to adjust cost-sharing provisions accordingly. For example, [Blue Cross Blue Shield of Massachusetts](#) establishes that it covers abortions when they involve "admissions for inpatient medical and surgical care," or when they involve a "surgery as an outpatient." As such, all abortions are considered surgical interventions where the cost-sharing may be higher than with provider-administered medication. Also in Massachusetts, [Boston Medical Center HealthNet Plan](#) defines abortion as a voluntary termination of pregnancy and lists it under the category of "outpatient surgery," which likely incurs higher costs than medication abortion in a less acute setting.

**Marketplace plans in some states place limits on the number of abortions a participant can receive**

In contrast, Maine's Harvard Pilgrim Health Care, Inc. HMO clearly indicates that cost-sharing for abortion will depend on where the service is provided. For example, Harvard Pilgrim's [Schedule of Benefits and Coverage](#) directs the reader to check the section on "Surgery-Outpatient" if a service is provided in an outpatient surgical center. For services provided in a physician's office, the document instructs readers to see "Office based treatments and procedures" and for inpatient hospital care, they should visit "Hospital - Inpatient Services." [Harvard Pilgrim's Plan](#) in New Hampshire also lists "voluntary termination of pregnancy" among the services that are covered, and explains that member cost-sharing will "depend upon where the service is provided, as listed in this Schedule of Benefits."

When plans do not account for the difference between abortion types and where the service is provided, an enrollee may lose the opportunity to receive timely abortion services with lower cost-sharing requirements. In this sense, the enrollee may be forced to delay receiving abortion care in order to meet the cost-sharing requirements.

## F. Plans limit abortion coverage in additional ways

Some marketplace plans place limits on the number of abortions that a participant can receive. Some plans limit abortion per plan year and per enrollee, while others place restrictions per the member's lifetime. In New York, [CareConnect Insurance Company](#) limits abortions to one procedure, per enrollee, per plan year or benefit period. Also in New York, [Univera Health Care Silver Plan](#) states that it covers "elective abortions" for "one procedure per member, per plan year," while "medically necessary" abortions do not have any such limitations. Similarly, New York's [Healthfirst](#) and [MetroPlus Health Plan](#) do not impose limits in coverage for "medically necessary abortions [,] including abortions in cases of rape, incest or fetal malformation," while "elective abortions" can only be covered per enrollee once per calendar year. Moreover, "medically necessary" abortions under these plans are also covered without cost-sharing; in contrast, "elective abortions" have cost-sharing requirements.

Most Marketplace plans impose additional barriers by requiring prior authorization for abortion. In Vermont, for example, MVP Health Plan's [State Contract](#) covers abortion services, but requires prior authorization. The plan also states that patients must "pay the Cost Shared listed on [their] Schedule for each surgery," giving the impression that all abortions are surgical in nature. Similarly, [Lifewise Health Plan of Washington](#) considers abortion ("termination of pregnancy") a surgery service that requires prior authorization. Some insurers like [Neighborhood Health Plan of Rhode Island](#) do not require prior authorization unless the abortion is provided in an inpatient setting or outpatient hospital. Lastly, most formularies indicate that mifepristone requires prior authorization. This can be found in Health Plan of Nevada's [4-Tier Large Group Plan Preferred Drug List](#) and BlueCross BlueShield of New Mexico's [Health Insurance Exchange 5 Tier Drug List](#).

**Most Marketplace plans impose additional barriers by requiring prior authorization for abortion**



### ***\*A note on multi-state plans***

The Affordable Care Act requires that every state host at least one multi-state plan (MSP) that does not cover abortion.<sup>30</sup> However, not all states have MSPs, and most of those who do only host one multi-state plan. While the majority of MSPs cover abortions only under the incest, rape, and life endangerment exceptions, some MSPs – which on a few occasions are the only insurers that operate in the state – cover abortion beyond these circumstances.

Blue Cross Blue Shield (BCBS) is the most popular MSP, and one that consistently does not publish its Summary of Benefits and Coverage. In the few instances where these documents are publicly available, BCBS does not cover abortions beyond the circumstances of life endangerment, rape, or incest. A 2014 Guttmacher Institute study confirms that consumers who want to learn more about covered and excluded services when visiting the Summary of Benefits and Coverage are directed to generic BCBS websites.<sup>31</sup> This lack of transparency is of particular concern, since BCBS is often the only insurer participating in several states. Enrollees in those states are left in the dark when it comes to their plans' abortion coverage.

## **Data Limitations**

The National Health Law Program's research focuses on 2018 and 2017 plans. Nonetheless, not all of the plans updated their information at the time of the April 2018 review. We therefore included information from previous years to the extent it was available. The study intentionally does not include information that is only available to current enrollees, but is not publicly available. In addition, the number of plans per insurer varied widely – from three plans to sixty-five. As such, we selected plans on a random basis when the insurer hosted several plans. Lastly and notably, much of the information previously found on the healthcare.gov or the Office of Personnel Management sites is no longer available online. Further research is clearly needed to understand consumers' and providers' experiences dealing with abortion coverage in Marketplace plans.



# Recommendations

As our nation seeks to close the gap on health insurance coverage, it is critical that all plans provide comprehensive reproductive health coverage and inform shoppers and enrollees of abortion coverage. The Affordable Care Act already requires that information about abortion coverage be available – whether it is included or excluded – through the Summary of Benefits and Evidence of Coverage at the time of enrollment. However, our research indicates that many of these documents are not publicly available, and individuals shopping for plans do not have an accurate picture of the breadth of reproductive health care coverage, or lack thereof, in the Marketplace plans they will choose.

NHeLP recommends the following measures:

1. States should require that all plans cover all abortions, like in Oregon, Washington, New York, Maine, Illinois, and California. At least one Marketplace insurer in every region of the State should cover abortion without restrictions in all metal levels. States should also continuously work with plans to make sure they offer the most comprehensive abortion coverage possible.
2. Marketplace plans should be clear that all abortions are covered, and must eliminate restrictions such as time limits, language from the Hyde Amendment, or artificial distinctions like “elective” or “therapeutic.”
3. State and federal laws, regulations, and policies should clarify and require that the Summary of Benefits and Coverage as well as other plan documents are accurate, informative, and helpful sources for current and potential enrollees in Marketplace plans.
4. Marketplace plans should list abortion in its list of “Common Medical Events,” and not isolate it in the “Other Covered Services” section of plan documents.
5. Plan documents should distinguish between medication, aspiration, and surgical abortions, as well as inpatient versus outpatient care, and assign cost-sharing requirements based on the type of abortion and the settings in which they take place.
6. The Office of Personnel Management should require that multi-state plans reveal whether or not they cover abortions, their cost-sharing provisions, and any other information that would be helpful to enrollees or potential enrollees understand how their plans cover abortion services.

# Endnotes

- 1 Use of the term “women” throughout this report is intended to be an inclusive definition of women to encompass transwomen, genderqueer women, and gender nonconforming individuals who may identify as female.
- 2 See Rachel Jones & Jenna Jerman, *Population group abortion rates and lifetime incidence of abortion: United States, 2008–2014*, AM. J. OF PUB. HEALTH (2017).
- 3 See Kaiser Fam. Found., *Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans* (Jan. 20, 2016), <https://www.kff.org/womens-health-policy/issue-brief/coverage-for-abortion-services-in-medicaid-Marketplace-plans-and-private-plans/>; See, also, Guttmacher Inst., *Restrictions on Private Insurance Coverage of Abortion: A Danger to Abortion Access and Better U.S. Health Coverage* (June 6, 2018), <https://www.guttmacher.org/gpr/2018/06/restrictions-private-insurance-coverage-abortion-danger-abortion-access-and-better-us>. See also, Guttmacher Inst., *Restricting Insurance Coverage of Abortion* (Sept. 1, 2018), <https://www.guttmacher.org/state-policy/explore/restricting-insurance-coverage-abortion>.
- 4 See Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, AM. J. OF PUB. HEALTH (2018), <https://www.ncbi.nlm.nih.gov/pubmed/29345993>.
- 5 See, e.g., The Am. C. of Obstetricians and Gynecologists, *Facts are Important: Abortion Care Later in Pregnancy is Important to Women’s Health* (Feb. 2019), [https://www.acog.org/-/media/Departments/Government-Relations-and-Outreach/Facts-Are-Important\\_Abortion-Care-Later-In-Pregnancy-February-2019-College.pdf?dmc=1&ts=20190416T1539370567](https://www.acog.org/-/media/Departments/Government-Relations-and-Outreach/Facts-Are-Important_Abortion-Care-Later-In-Pregnancy-February-2019-College.pdf?dmc=1&ts=20190416T1539370567)
- 6 See, e.g., Kinsey Hasstedt, *Abortion Coverage Under the Affordable Care Act: The Laws Tell Only Half the Story*, 17 GUTTMACHER POL’Y REV. 1 (Mar. 13, 2014) <https://www.guttmacher.org/gpr/2014/03/abortion-coverage-under-affordable-care-act-laws-tell-only-half-story>.
- 7 The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (Mar. 23, 2010) and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (Mar.30, 2010) (collectively the “Affordable Care Act (ACA)”).
- 8 *Id.* See also, Kaiser Fam. Found., *State Health Insurance Marketplace Types* (2018) <https://www.kff.org/health-reform/state-indicator/state-health-insurance-marketplace-types/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited May 2, 2019).

- 9 ACA § 1302(e). See also, HHS, Catastrophic health plans, <https://www.healthcare.gov/choose-a-plan/catastrophic-health-plans/> (last visited July 18, 2019). Short-term health plans are not included in this analysis because they are not featured in the Affordable Care Act, and are therefore not subject to its protections. Short-term health plans are limited duration policies that attempt to fill temporary gaps in coverage.
- 10 ACA § 1302(b)(1); 45 C.F.R. § 156.115(a)(4); 45 C.F.R. §147.130(a).
- 11 45 C.F.R. § 156.115(c).
- 12 ACA § 1303(c)(1): “[I]t should not be “construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding or procedural requirements on abortion.”
- 13 The states that prohibit abortion coverage in the Marketplaces are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. The states that restrict abortion coverage in private plans are Idaho, Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, North Dakota, Oklahoma, Texas, and Utah. Most of these states offer exemptions to these prohibitions if the pregnancy is the result of rape or incest, or if the pregnant individual’s life is at risk. Some states also include exceptions for fetal impairment or incompatibility with life. See Kaiser Fam. Found., *State Restriction of Health Insurance Coverage of Abortion* (2017), <https://www.kff.org/womens-health-policy/state-indicator/abortion-restriction/?currentTimeframe=0&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited May 3, 2019).
- 14 In 2019, Maine and Illinois enacted laws that mandated abortion coverage in private insurance and Medicaid.
- 15 ACA § 1303.
- 16 ACA § 1303(A)-(B).
- 17 ACA § 1303(b)(2)(C)(ii).
- 18 ACA § 1303(b)(2)(D)(ii).
- 19 ACA § 1303(b)(3)(A).
- 20 42 U.S.C. § 18023 (b)(3)(A).
- 21 See Jones & Jerman, *supra* note 1 at 1.
- 22 ACA § 1303(b)(2)(D)(ii); 42 U.S.C. § 18023 (b)(3)(A). See also, CMS, Summaries of Benefits and Coverage Sample, <https://www.cms.gov/CCIIO/Resources/Files/Downloads/sbc-sample.pdf>.

- 23 See, e.g., Am. Pub. Health Ass'n, *Abortion is a Personal Health Service*, Pol'y Number 7304 (Jan. 1, 1973), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/16/15/29/abortion-is-a-personal-health-service>. See also, The Nat'l Acad. of Sci., Engineering & Med., *The Safety and Quality of Abortion Care in the United States* (2018), <https://www.nap.edu/read/24950/chapter/1>.
- 24 These states are California, Colorado, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Montana, New Mexico, New Jersey, New Hampshire, New York, Oregon, Rhode Island, Vermont, Washington, as well as the District of Columbia.
- 25 These states are Connecticut (two), Hawaii (two), Maine (two), New Hampshire (two), New Jersey (two), Rhode Island (two), and Vermont (two).
- 26 See Annalisa Merelli, *Trumpcare would force insurers to stop offering abortion coverage on their Marketplace plans*, QUARTZ (2017), <https://qz.com/938610/trumpcare-would-force-insurance-companies-to-stop-offering-abortion-coverage-on-their-Marketplace-plans/> (last visited May 3, 2019).
- 27 See Alina Salganicoff et al., *Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans* (Jan. 2016), <http://files.kff.org/attachment/issue-brief-coverage-for-abortion-services-in-medicaid-marketplace-plans-and-private-plans>.
- 28 Text - H.R.3358 - 115th Congress (2017-2018): Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2018 (2017), <https://www.congress.gov/bill/115th-congress/house-bill/3358/text>.
- 29 *Id.* "(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.")
- 30 42 U.S.C. § 18054(a)(6). The Office of Personnel Management is the federal agency in charge of regulating MSPs, which include making sure that MSPs reveal whether and how they describe their scope of coverage.
- 31 See Guttmacher Inst., *Abortion Coverage Under the Affordable Care Act: Achieving Transparency and Truly Informed Consumer Choice*, <https://www.guttmacher.org/news-release/2014/abortion-coverage-under-affordable-care-act-achieving-transparency-and-truly> (last visited May 3, 2019).