



Medicaid Abortion Coverage in Arizona

Fabiola Carrión

The Medicaid population in Arizona

Arizona's Medicaid agency, known as the Arizona Health Care Cost Containment System (AHCCCS), serves almost two million individuals.¹ In 2017, twenty-one percent of women aged 19-64 years in Arizona were enrolled in the State's Medicaid program.² Thirty-five percent of Arizona Medicaid enrollees were White, seven percent were Black, forty-one percent were Latinx, and seventeen percent were of another race/ethnicity.³ As of July 2018, ninety-three percent of Arizona Medicaid enrollees were enrolled in managed care plans.⁴ In 2018, AHCCCS contracted with eleven plans throughout the state.⁵

What is the Hyde Amendment?

Since 1976, an annual appropriations bill rider known as the Hyde Amendment has restricted federal funding for abortion services. As a legislative rider, the language of the Hyde Amendment has sometimes differed, but the intent has always remained the same: to restrict public funding and access to abortions. Four years after its first passage, the U.S. Supreme Court upheld the Hyde Amendment's restrictions on federal funding. It concluded that states are not obliged to "pay for those medical services for which federal reimbursement is unavailable."⁶ Nonetheless, states may use their own funding resources to cover abortions past these circumstances.⁷ Since 1993, the Hyde Amendment has prohibited federal funding

¹ See Medicaid.gov, *Medicaid Enrollment Data Collected through MBES* (updated June 2017), <https://www.medicaid.gov/medicaid/program-information/downloads/cms-64-enrollment-report-oct-dec-2015.pdf>.

² See Kaiser Family Found., *State Health Facts: Arizona* (last updated 2017), <http://kff.org/other/state-indicator/nonelderly-adult-women/?state=AZ>.

³ *Id.*

⁴ See Kaiser Family Found., *State Health Facts: Share of Medicaid Population Covered under Different Delivery Systems* (as of July 2015), <http://kff.org/medicaid/state-indicator/share-of-medicaid-population-covered-under-different-delivery-systems/>.

⁵ See Kaiser Family Found., *State Health Facts: Total Medicaid MCOs* (last update Sept. 2018), <http://kff.org/other/state-indicator/total-medicaid-mcos/>.

⁶ *Harris v. McRae*, 448 U.S. 297, 315-21, 326 (1980).

⁷ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 507(c) (2018).

for abortion except for pregnancies that are the result of rape or incest, or in cases of life endangerment.⁸

What is covered under the life endangerment exception in Arizona?

Under the Hyde Amendment, state Medicaid programs must cover an abortion if a physician finds and certifies in writing to the state Medicaid agency that, based on the physician's professional opinion, the life of the pregnant individual would be endangered if the fetus were carried to term.⁹

As required, Arizona's Medicaid program covers abortions in cases of life endangerment.¹⁰ Arizona's Medicaid policy almost mirrors the language found in the Hyde Amendment; it establishes that a pregnant enrollee is entitled to a Medicaid-covered abortion when that enrollee "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 member in danger of death unless the pregnancy is terminated."¹¹ Unlike other states, a physician is not required to seek a second opinion to determine whether a condition is life threatening.¹²

What is covered under the rape and incest exception in Arizona?

State Medicaid programs must cover abortions where the pregnancy results from rape or incest.¹³ Definitions of rape and incest are left to the states.¹⁴ Arizona law defines rape - classified as sexual assault - as intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without their consent.¹⁵ Sexual conduct with a minor is a felony and occurs when a person intentionally or knowingly engages in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.¹⁶ According to Arizona law, incest is sexual intercourse between persons who are 18 years old or older and

⁸ Depart. of Labor, Health & Hum. Services, Education & Related Agencies Appropriation Act, 1994, Pub. L. 103-112, 103rd Cong. § 509 (1993).

⁹ *Id.* See also, Letter from Sally K. Richardson, Dir., Ctr. for Medicaid & State Ops. (Feb. 12, 1998); Health Care Financing Admin. to State Medicaid Dirs. (Dec. 28, 1993).

¹⁰ Az. Health Care Cost Containment System, *Medical Policy Manual – Maternity Care Services*, at § 410-16, <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/400/410.pdf>.

¹¹ *Id.*

¹² *Id.*; See also, Medicaid Standard State Plan, Attachment 3.1-A 17, 23 (approved Dec. 26, 2006), <https://healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/StandardPlan.pdf>

<http://www.healthandwelfare.idaho.gov/Portals/0/Medical/MedicaidCHIP/StandardPlan.pdf> (requiring more than one physician to certify that an abortion is necessary to save the life of a woman).

¹³ *Id.*; See also Letter from Sally K. Richardson, Dir., Ctr. for Medicaid & State Ops., Health Care Financing Admin., to State Medicaid Dirs. (Dec. 28, 1993) (Feb. 12, 1998).

¹⁴ See Letter from Sally K. Richardson, Dir., Ctr. for Medicaid & State Ops., Health Care Financing Admin., to State Medicaid Dirs. (Dec. 28, 1993) ("The definition of rape and incest should be determined in accordance with each State's own law.").

¹⁵ Az. Revised Stats. § 13-1406.

¹⁶ Az. Revised Stats. § 13-1405.

who are related as parents or grandparents and children or grandchildren, brothers and sisters of whole or half-blood, uncles and aunts and nephews and nieces, and first cousins.¹⁷

Does a pregnant enrollee have to report the rape or incest to authorities in order to receive a Medicaid covered abortion?

Federal policy permits states to impose reporting or documentation requirements on Medicaid enrollees or Medicaid providers to confirm that a pregnancy was the result of rape or incest.¹⁸ However, any state-imposed requirement must be reasonable and “may not serve to deny or impede coverage for abortions.”¹⁹ States must waive any reporting or documentation requirements and consider the abortion procedure reimbursable by Medicaid if the “treating physician certifies that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the [reporting] requirements.”²⁰

While Arizona requires reporting rape or incest to authorities for Medicaid coverage of abortion, it waives this requirement when the treating physician certifies that the patient was unable to comply with this requirement for physical or psychological reasons. Arizona requires an attending physician to submit a signed “Certificate of Necessity for Pregnancy Termination Form” (known as Attachment C) certifying that *one* of the following conditions is met (See Appendix 1 below for a copy of the required form):

- The pregnancy is a result of rape or incest and documentation is submitted certifying that the crime was reported to a law enforcement agency, the Department of Child Safety, or a social services agency, *or*
- That in the physician’s professional judgment, the patient was physically or psychologically incapable of reporting the crime. If so, a report requirement is waived, and the patient is eligible for a Medicaid-covered abortion without having to report the rape or incest.²¹

Does Arizona’s Medicaid program cover abortions under any other circumstances?

Yes. Arizona covers abortions with state funds when the abortion is “medically necessary according to the medical judgment of a licensed physician.”²² Under these circumstances, the physician must attest that continuing the pregnancy could reasonably be expected to pose a serious physical or behavioral health problem for the pregnant enrollee by:

1. Creating a serious physical behavioral health problem for the pregnant enrollee;
2. Seriously impairing a bodily function of the pregnant enrollee;

¹⁷ Az. Revised Stats. § 13-3608.

¹⁸ Letter from Sally K. Richardson, Dir., Ctr. for Medicaid & State Ops., Health Care Financing Admin., to State Medicaid Dirs. (Feb. 12, 1998).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Az. Health Care Cost Containment System, *supra* note 10, at §410-15.

²² Az. Health Care Cost Containment System, *supra* note 10, at §410-15.

3. Causing dysfunction of a bodily organ or part of the pregnant enrollee;
4. Exacerbating a health problem of the pregnant enrollee; or
5. Preventing the pregnant enrollee from obtaining treatment for a health problem.²³

In *Simat Corporation v. AHCCCS*, the Arizona Supreme Court held unenforceable a state statute which provided that AHCCCS would not fund abortions unless necessary to save the life of the pregnant person.²⁴ The Court held that the State must also fund abortions necessary to save the health of the pregnant individual. However, the court stopped short of holding that AHCCCS must fund all abortions to the same extent it funds other pregnancy-related services.²⁵

What does an abortion provider need to do in order to receive reimbursements from AHCCCS?

The provider must first receive prior authorization from the enrollee's managed care plan or AHCCCS, unless there is a medical emergency.²⁶ In order to obtain prior authorization, the provider must fill out the "Certificate of Necessity for Pregnancy Termination" form, the "AHCCCS Verification of Diagnosis by Contractor for Pregnancy Termination" request (known as Attachment D) along with the lab, radiology, consultation or other testing results that support the justification or necessity for the abortion. Once the managed care plan or AHCCCS receive Attachments C and D, they should "expeditiously authorize" the abortion if the documentation meets the criteria for abortion coverage.²⁷

To receive reimbursement, the attending physician must send a copy of the completed and previously approved "Certificate of Necessity for Pregnancy Termination" form.²⁸ The provider should also send a copy of the completed "AHCCCS Verification of Diagnosis by Contractor for Pregnancy Termination" request, and a copy of the official incident report in the case of rape or incest, unless the physician certifies in his or her professional opinion the enrollee was unable for physical or psychological reasons to comply with the requirement to report the rape and/or incest to the authorities. In addition, the provider should send a copy of documentation confirming that the abortion occurred as well as a copy of the clinical information supporting the justification or necessity for the abortion. In the case of medication abortion, the provider must indicate the following: the duration of pregnancy in days, the date the IUD was removed if the enrollee had one, the date mifepristone was given, and the date misoprostol was given.²⁹

²³ Az. Health Care Cost Containment System, *supra* note 10, at §410-15.

²⁴ *Simat Corp. v. AHCCCS*, 56 P.3d 28 (2002).

²⁵ *Id.*

²⁶ Az. Health Care Cost Containment System, *supra* note 10, at §410-16.

²⁷ Az. Health Care Cost Containment System, *supra* note 10, at §410-16.

²⁸ In the event of a medical emergency, all documentation must be submitted within two working days after the date of the abortion. Az. Health Care Cost Containment System, *supra* note 10, at §410-17.

²⁹ Az. Health Care Cost Containment System, *supra* note 10, at §410-16.

Appendix 1



AHCCCS MEDICAL POLICY MANUAL
POLICY 410, ATTACHMENT C - AHCCCS CERTIFICATE OF
NECESSITY FOR PREGNANCY TERMINATION

AHCCCS MEMBER INFORMATION	
MEMBER NAME: _____ (First, Last, Middle) DATE OF BIRTH: _____	
ADDRESS: _____	
CONTRACTOR NAME: _____	
MEMBER AHCCCS ID#: _____	
FACILITY: _____ DATE OF SERVICE: _____ PROCEDURE CODE(S): _____	
JUSTIFICATION FOR PREGNANCY TERMINATION (CHECK ONE AND PROVIDE ADDITIONAL RATIONALE):	
<input type="checkbox"/> LIFE OF MOTHER ENDANGERED	
<input type="checkbox"/> INCEST <input type="checkbox"/> Police Report Attached Reported to authorities, pursuant to A.R.S. §13-3620 or A.R.S. §46-454 Yes _____ No _____ If yes, to what Agency _____ Report #: _____ Date Filed: _____ <input type="checkbox"/> I certify that in my professional opinion, the member was unable, for physical or psychological reasons, to comply with the requirements to report the rape and/or incest to the authorities.	
<input type="checkbox"/> RAPE <input type="checkbox"/> Police Report Attached Reported to authorities, pursuant to A.R.S. §13-3620 or A.R.S. §46-454 Yes _____ No _____ If yes, to what Agency? _____ Report #: _____ Date Filed: _____ <input type="checkbox"/> I certify that in my professional opinion, the member was unable, for physical or psychological reasons, to comply with the requirements to report the rape and/or incest to the authorities.	
<input type="checkbox"/> MEDICALLY NECESSARY (CHECK ONE) <input type="checkbox"/> Creating a serious physical or behavioral health problem for the pregnant member <input type="checkbox"/> Seriously impairing a bodily function of the pregnant member <input type="checkbox"/> Causing dysfunction of a bodily organ or part of the pregnant member <input type="checkbox"/> Exacerbating a health problem of the pregnant member <input type="checkbox"/> Preventing the pregnant member from obtaining treatment for a health problem	<p><u>COMPLETE ONLY WITH THE USE OF MIFEPRISTONE (MIFEPREX OR RU-486)</u></p> Duration of Pregnancy: _____ Days Date IUD Removed: _____ (if applicable) Date Mifepristone Given: _____ Date Misoprostol Given: _____ <input type="checkbox"/> Documentation of Confirmed Termination is Attached

Physician Signature: _____ Date: _____
 Physician's Printed Name: _____ Physician's Phone: _____ Fax: _____
 Prior Authorization Number: _____ Date: _____

Denial Reason: _____ Date: _____

Contractor Medical Director/AHCCCS Chief Medical Officer Signature: _____

Appendix 2



AHCCCS MEDICAL POLICY MANUAL
POLICY 410, ATTACHMENT D -
AHCCCS VERIFICATION OF DIAGNOSIS BY CONTRACTOR FOR A
PREGNANCY TERMINATION REQUEST

MEMBER NAME: _____ AHCCCS ID#: _____
DATE OF BIRTH: _____ CONTRACTOR NAME: _____

This page shall be submitted by the Contractor with the AHCCCS Certificate of Necessity for Pregnancy Termination along with the clinical information as specified below for each member included in the AHCCCS Monthly Pregnancy Termination Report.

The Contractor shall make every reasonable effort to contact the provider to confirm the qualifying diagnosis/condition within 24 hours of receiving the prior authorization request for a pregnancy termination. Except for circumstances beyond the control of the Contractor, a failure to confirm the diagnosis/condition within 24 hours may result in corrective actions and/or sanctions.

Requesting Provider is the provider confirming the qualifying diagnosis/condition:

- Laboratory Results
Diagnostic Testing Results
Written Provider Consultation Report

When Requesting Provider is NOT the provider confirming the qualifying diagnosis/condition, Contractor must contact and request documentation from the provider that determined the member had the qualifying diagnosis condition. Contractor requested and received the following:

- Laboratory Results
Diagnostic Testing Results
Written Provider Consultation Report

PROVIDER INFORMATION

NAME OF PROVIDER CONTACTED: _____
FACILITY/PRACTICE NAME: _____ TELEPHONE NUMBER: _____

ADDRESS: _____

An authorization decision must be made after contact is made with the provider that determined that the member had the qualifying diagnosis/condition and the supporting documentation has been received.

NAME OF HEALTH PLAN REPRESENTATIVE COMPLETING VERIFICATION

SIGNATURE _____ DATE _____