



## Abortion Coverage Under Medicaid

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### Introduction

Federal Medicaid funding for abortion is severely constrained, but not completely unavailable. Thirty-four states and the District of Columbia only meet the minimum federal requirement and provide abortions in cases of life endangerment, rape, and incest.<sup>1</sup> This fact sheet provides an overview of the scope of federal Medicaid coverage of abortion and related services, and the process for obtaining coverage in the states in which funding is limited by the Hyde Amendment.

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<sup>1</sup> Four of these states (Iowa, Mississippi, Virginia, West Virginia) also provide state funds for abortions in cases of fetal impairment. Indiana and Wisconsin also provide state funds for abortions that are necessary to prevent grave, long-lasting damage to the woman's physical health. Sixteen states provide state funding for abortions beyond the federal restrictions either voluntarily or by court order. South Dakota does not comply with the Hyde Amendment, and only covers abortions that endanger a pregnant person's life. *See generally*, Guttmacher Institute, *State Funding of Abortion Under Medicaid as of March 1, 2022* (2022), <https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicare> (last visited Mar. 22, 2022).



## What are the Hyde Amendment exceptions?

The Hyde Amendment requires federal funding of abortion when a pregnancy is the result of rape or incest, or when it is necessary to save the pregnant person's life.<sup>4</sup> The current version of the Hyde Amendment establishes that federal funding is available when a patient

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.<sup>5</sup>

The Centers for Medicare and Medicaid Services (CMS) – a federal agency with the U.S. Department of Health and Human Services – clarified that abortions falling within the Hyde exceptions “should be considered to fall within the scope of services that are medically necessary,” and that participating states are required to cover such abortions in their state Medicaid programs.<sup>6</sup>

When any of these circumstances arise, most states require that a provider fill out a specific form in order to process Medicaid reimbursement for the abortion. Some states simply require a provider letter or written statement outlining the justification for the request.<sup>7</sup> In addition, states may, but are not obliged to, require that the rape or incest survivor report to government authorities.

## How does the application of the life endangerment exception work?

Under the life endangerment provision, physicians must determine and certify in writing to the state Medicaid agency that based on their professional judgment, the life of the patient would be endangered if the pregnancy were carried to term.<sup>8</sup> Some states require that the provider

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<sup>4</sup> *Id.* §§ 506-507.

<sup>5</sup> *Id.* § 507(a)(2).

<sup>6</sup> Health Care Financing Admin., Dear State Medicaid Director Letter [hereinafter Dear State Medicaid Director Letter] (Feb. 12, 1998), <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/smd021298.pdf>.

<sup>7</sup> These states are Idaho, Indiana, Louisiana, Nebraska, New Mexico, North Carolina, North Dakota, and Rhode Island. The District of Columbia also requires a written statement.

<sup>8</sup> See Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 614.

detail the medical justification for the abortion and attach any pertinent information including laboratory tests, radiological evaluations, consultations, etc.<sup>9</sup> (See Appendix).

### **How does the application of the rape and incest exceptions work?**

Federal funding, including Medicaid, must cover abortions when the pregnancy resulted from rape or incest, as defined by the state's criminal code.<sup>10</sup> Federal policy permits but does not require documentation or certification for abortions that fall under the rape or incest exceptions.

### ***Are there reporting requirements for the rape and incest exceptions?***

States may, but are not required to, impose reasonable reporting or documentation requirements on Medicaid enrollees and Medicaid providers to confirm that a pregnancy was the result of rape or incest.<sup>11</sup> This requirement may involve reporting the rape or incest to a law enforcement agency, child protective services, or other government agency. Fifteen states that only fund Hyde abortions require Medicaid enrollees to report the rape that caused the pregnancy in order to receive Medicaid coverage.<sup>12</sup>

### ***Are there waivers or exceptions to these reporting requirements?***

In accordance with federal policy, all rape reporting requirements must be reasonable and "may not serve to deny or impede coverage for abortions."<sup>13</sup> States must waive any reporting or documentation requirements and consider the procedure reimbursable 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."<sup>14</sup> With the exception

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<sup>9</sup> These states are Arizona, Arkansas, Colorado, Delaware, Iowa, Missouri, North Carolina, South Carolina, Tennessee. Arizona requires "all documentation of medical necessity" but does not specify in the provider manual what that constitutes. Montana does not require additional documents, but instructs providers to attach additional documents "as needed." Michigan, Nevada, Virginia and Wisconsin ask for details, but do not ask for any attachments.

<sup>10</sup> See Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 507. See also Dear State Medicaid Director Letter, *supra* note 6.

<sup>11</sup> See CMS, Dear State Medicaid Director Letter, *supra* note 6.

<sup>12</sup> Arizona, Maryland, Massachusetts, and Montana also have reporting requirements, but those states cover abortions beyond Hyde with state funding.

<sup>13</sup> See CMS, Dear State Medicaid Director Letter, *supra* note 6.

<sup>14</sup> See CMS, Dear State Medicaid Director Letter, *supra* note 6.

of six states, all states that have reporting requirements also have instituted waivers (See Appendix).

### *How do providers apply for a reporting waiver?*

Most states' reimbursement forms include an option to waive the reporting requirement and offer providers the opportunity to attest that in their opinion the patient was unable to comply with this reporting.

### **Can patients get coverage for other reproductive health services even though their state Medicaid programs only cover Hyde abortions?**

While federal funding is not available for non-Hyde abortions and abortion-related services, federal reimbursement is available for services, tests, and procedures that normally would have been performed for a pregnant person, even if the patient eventually sought abortion services. The extent of coverage depends on whether the state Medicaid plan covers these ancillary services and whether these services are affiliated with the non-covered abortion.<sup>15</sup>

Some of these services include:

- tests to identify sexually transmitted infections (such as chlamydia, gonorrhea, and syphilis);
- laboratory tests routinely performed on a pregnant patient, such as pregnancy tests, pap smears, and urinalysis;
- family planning

In addition, federal funding is available for treating any medical problems resulting from a medically unsupervised abortion (i.e., where someone other than a physician, such as the patient, has induced the abortion), or an ectopic (tubal) pregnancy, which must always be removed. Depending on the circumstances, ectopic pregnancies are treated with medication (methotrexate), laparoscopic surgery, or abdominal surgery.<sup>16</sup> However, no federal funding is available for post-partum services related to induced abortions.<sup>17</sup>

Lastly, CMS confirms the hospital or clinic must be able to distinguish between costs attributable to an abortion versus those attributable to a family planning service (and cites sterilization as an example).<sup>18</sup> It establishes,

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<sup>15</sup> CMS, STATE MEDICAID MANUAL § 4432(B).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* §4421(A)(2).

<sup>18</sup> *Id.* §4432(B).

When multiple procedures are performed during a single hospital stay or clinic visit, you must distinguish between costs attributable to an abortion or other procedure matched at the [Federal Medical Assistance Percentage], and those attributable to a family planning service.

Therefore, it is clear that a family planning service, such as contraceptive counseling or device insertion, can be covered by Medicaid when performed during a single hospital or clinic visit if the services are distinguished.

**APPENDIX: How Each State Covers Abortion**

State	Fund Abortions Beyond Hyde	Form or Written Statement Required	Law Enforcement Report Required for Rape/Incest	Waiver to Reporting Requirement
Alabama	No	<a href="#">Form for life endangerment only</a> Written Statement for rape/incest (policy in <a href="#">Section 28.6.7</a> )	No	N/A
Alaska	Yes	<a href="#">Form</a>	No	N/A
Arizona	No <sup>19</sup>	<a href="#">Form</a>	Yes	Yes
Arkansas	No	<a href="#">Form (DMS-2698)</a>	Yes	Yes
California	Yes	No	No	N/A
Colorado	No	Form ( <a href="#">sexual assault/incest form</a> , <a href="#">life endangerment form</a> )	No	N/A
Connecticut	Yes	<a href="#">Form</a> (only under rape, incest, and life endangerment)	No	N/A
Delaware	No	<a href="#">Form for life endangerment (in Appendix M)</a> Written statement for rape/incest (policy in <a href="#">Section 2.7.2</a> )	Yes <sup>20</sup>	Yes
District of	No	Written Statement	No	N/A

<sup>19</sup> While the Arizona provider manual ([p. 12](#)) claims AHCCCS covers medically necessary abortions (as required by court order), the state Medicaid program does not pay for medically necessary abortions (see Guttmacher Institute, *State Funding of Abortion Under Medicaid as of March 1, 2022* (2022), <https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicaid> (last visited March 22, 2022); Kaiser Family Foundation, *State Funding of Abortions Under Medicaid* (2021), (last visited April 22, 2022). Providers have the right to submit claims for covered services and are legally entitled to reimbursement – if you are being denied reimbursement please contact the National Health Law Program for assistance pursuing an appeal.

<sup>20</sup> While Delaware’s policy includes a waiver, it does not use the language recommended by HHS guidance and instead uses the subjective standard of “just cause” which the DMAP will consider on a case-by-case basis

Columbia		( <a href="#">policy here</a> )		
Florida	No	<a href="#">Form</a>	No	N/A
Georgia	No	<a href="#">Form (DMA-311 on p. 116)</a>	No	N/A
Hawaii	Yes	No	No	N/A
Idaho	No	Written Statement ( <a href="#">policy on p. 16</a> )	Yes	Yes
Illinois	Yes	<a href="#">Form (HFS 2390)</a>	No	N/A
Indiana	No <sup>21</sup>	Written Statement ( <a href="#">policy on p. 19</a> )	No	No
Iowa	No <sup>22</sup>	<a href="#">Form (Form 470-0836)</a>	Yes	No
Kansas	No	<a href="#">Form</a> <sup>23</sup>	No	N/A
Kentucky	No	<a href="#">Form for life endangerment (MAP-235 on p. 26)</a> <sup>24</sup>	No	N/A
Louisiana	No	Written Statement ( <a href="#">policy here</a> )	Yes	Yes
Maine	Yes	No	No	N/A
Maryland	Yes	<a href="#">Form (MDH 521)</a>	Yes	No
Massachusetts	Yes	<a href="#">Form (CPA-2)</a>	Yes	No
Michigan	No	<a href="#">Form (MSA-4240)</a>	No <sup>25</sup>	Yes

<sup>21</sup> An Indiana Supreme Court ruling (*Humphreys v. Clinic for Women, Inc.*, 796 N.E.2d 247, Sep. 2003) requires the state Medicaid program to cover abortions necessary to prevent grave, long-lasting physical harm to the patient. However, none of the State's materials indicate that such abortions are covered.

<sup>22</sup> Iowa also covers a narrow exception for fetal impairment, which is included on the State's certification form.

<sup>23</sup> Kansas's forms are available on the provider portal found [here](#).

<sup>24</sup> Over 90 percent of Medicaid beneficiaries in Kentucky are in a managed care program. At the time of publication, we found significant differences in the abortion coverage policies between managed care organizations. [WellCare](#), [Anthem](#) and [CareSource](#) had policies including coverage for abortions for cases of rape, incest, and life endangerment. [United Healthcare](#) explicitly only covers cases of life endangerment while [Humana](#) and [Molina Healthcare](#) policies only said that abortions "performed out-of-compliance with federal and Kentucky laws and judicial opinions" are not a covered service.

<sup>25</sup> While Michigan's certification form inquires whether or not cases of rape or incest have been reported, the form clarifies that a report is not required for reimbursement.

Minnesota	Yes	<a href="#">Form (DHS-2327)</a>	No	N/A
Mississippi	No <sup>26</sup>	<a href="#">Form (MA-1034)</a>	No	N/A
Missouri	No	<a href="#">Form</a>	No	N/A
Montana	Yes	<a href="#">Form (MA-037)</a>	Yes	Yes
Nebraska	No	Written Statement for cases of life endangerment ( <a href="#">policy in Section 006.08</a> ) <sup>27</sup>	No	N/A
Nevada	No	Form ( <a href="#">FA-57 life endangerment form</a> , <a href="#">FA-54 rape form</a> , <a href="#">FA-55 incest form</a> )	No	N/A
New Hampshire	No	<a href="#">Form (Form 904)</a>	No <sup>28</sup>	N/A
New Jersey	Yes	Form (FD-179 <a href="#">policy here</a> )	No	N/A
New Mexico	Yes	Written Statement in cases of rape and incest (Section 8.325.7.11 <a href="#">policy here</a> )	Yes	Yes
New York	Yes	No	No	N/A
North Carolina	No	Written Statement ( <a href="#">policy here</a> )	No	N/A
North Dakota	No	Written Statement ( <a href="#">policy on p. 27</a> )	Yes	Yes
Ohio	No	<a href="#">Form (Form ODM 03197)</a>	Yes	Yes
Oklahoma	No	<a href="#">Form</a>	Yes	Yes
Oregon	Yes	No	No	N/A
Pennsylvania	No	<a href="#">Form (MA 3)</a>	Yes	Yes
Rhode Island	No	Written Statement	No <sup>29</sup>	N/A

<sup>26</sup> Mississippi allows public funds to be used for abortions in the case of fetal impairment, as explained by the provider manual ([Rule 5.4 on p. 43](#)).

<sup>27</sup> At the time of publication, we found contradictory information about abortion coverage in Nebraska Medicaid managed care plans. While both [WellCare](#) and [Healthy Blue](#) cover abortions for cases of rape, incest, and life endangerment, [United Healthcare](#) explicitly only covers cases of life endangerment.

<sup>28</sup> Please note that there is an option for the patient to include information on if they chose to report the case of rape or incest but it is not required.

<sup>29</sup> While the Rhode Island certification policy encourages providers to tell their patients about the importance of reporting their assault, NHeLP does not interpret this language requiring a report for reimbursement.

		( <a href="#">policy here</a> )		
South Carolina	No	<a href="#">Form</a>	Yes	Yes
South Dakota	No	No	South Dakota d/n cover rape or incest despite federal requirements	N/A
Tennessee	No	<a href="#">Form (TC0140)</a>	Yes	No
Texas	No	<a href="#">Form</a>	No <sup>30</sup>	N/A
Utah	No	<a href="#">Form (Abortion Acknowledgement and Certification Form, Payment Certification Form)</a>	Yes	Yes
Vermont	Yes	<a href="#">Form (DVHA 219A [Hyde abortions], DVHA 219B [non-Hyde abortions])</a> <sup>31</sup>	No	N/A
Virginia	No <sup>32</sup>	<a href="#">Form for life endangerment (MAP-3006)</a>	Yes	No
Washington	Yes	No	No	N/A
West Virginia	No <sup>33</sup>	<a href="#">Form</a>	Yes <sup>34</sup>	N/A
Wisconsin	No <sup>35</sup>	<a href="#">Form (F-01161)</a>	Yes	No
Wyoming	No	<a href="#">Form</a>	Yes	Yes

<sup>30</sup> While the Texas certification policy encourages providers to tell their patients about the importance of reporting their assault, NHeLP does not interpret this language requiring a report for reimbursement.

<sup>31</sup> Vermont maintains two separate certification forms - one for abortions for cases of rape, incest, or life endangerment (labeled as Hyde abortions) and a second form for abortions necessary for the patient’s well-being (labeled as non-Hyde abortions).

<sup>32</sup> In Virginia, the Department of Health covers abortions for cases of rape, incest, or fetal impairment, while the Department of Medical Assistance Services covers cases of life endangerment, as explained [here](#).

<sup>33</sup> West Virginia also covers a narrow exception for fetal impairment, which is included on the State’s certification form.

<sup>34</sup> While the certification form does not include this requirement, the State’s [provider manual](#) says the West Virginia Bureau for Medical Services will only reimburse providers “when the rape is reported to a law-enforcement agency.”

<sup>35</sup> Wisconsin also covers a narrow exception for “grave, long-lasting physical damage,” which is included on the State’s certification form.