Beyond the Law: The Challenges of Marketplace Coverage of Abortion in 2024

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Introduction

With the passage of the Affordable Care Act (ACA) in 2010, millions of uninsured Americans gained the ability to purchase and enroll in a health insurance plan offered on the Marketplaces, also known as the exchanges. In addition to dramatically reducing the uninsured rate, the ACA tangibly improved coverage of sexual and reproductive health care services, including contraception, maternity care, and other services.

For people who do not qualify for Medicaid or are otherwise uninsured, the ACA Marketplaces can be a crucial lifeline for obtaining affordable health insurance. While the health law was a huge step forward in many ways, compromises made during the legislative process resulted in the inclusion of provisions that doubled down on abortion exceptionalism and further siloed and stigmatized abortion care in the broader health care system. The ACA explicitly allowed states to ban or mandate abortion coverage in private insurance as they saw fit, resulting in a patchwork of state laws that mean that whether or not an individual's plan covers abortion services varies greatly depending on where they live. This dynamic has been further exacerbated by the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which eliminated the constitutional right to abortion and declared that states should decide how to regulate abortion. This has created mass uncertainty around the legality of abortion, as the decision has resulted in a constantly shifting abortion access landscape as restrictions and bans go in and out of effect.[1]

This culture of confusion and uncertainty is further complicated by the generally low health insurance literacy rates in the United States. Survey data examining consumer experiences

[1] Grace Sparks et al., Kaiser Fam. Found, *KFF Health Tracking Poll: Early 2023 Update On Public Awareness On Abortion and Emergency Contraception* (Feb. 1, 2023), https://www.kff.org/womens-health-policy/poll-finding/kff-health-tracking-poll-early-2023/; Guttmacher Inst., Interactive Map: US Abortion Policies and Access After Roe https://states.guttmacher.org/policies/ (last visited 10/09/2024).

with health insurance paints a dire picture, as over sixty percent of adults with marketplace plans reported difficulty with understanding some part of their insurance, including nearly half (forty six percent) reporting it was "somewhat" or "very" difficult to understand what their health insurance will or will not cover and over forty percent finding it difficult to determine their out-of-pocket costs.[2] One 2022 survey of comprehension of basic health insurance terms found significant confusion, as more than three-quarters could not correctly define "coinsurance" and almost half failed to identify the correct definition of "copayment" or "deductible."[3] Another study found significant sociodemographic disparities in health insurance literacy rates, as women, young adults, those with Hispanic ethnicity, non-U.S. citizens, people with incomes below the federal poverty line, uninsured individuals, and people with lower levels of education were more likely to have inadequate health insurance literacy.[4]

In 2019, the National Health Law Program (NHeLP) published a report that examined the consumer experience in seeking information about abortion coverage in Marketplace plans.[5] Given the general confusion around the legality of abortion, lack of health insurance literacy, as well as forthcoming attempts to derail the ACA, it is more important than ever that insurers provide clear information to consumers about whether and to what extent different plans cover abortion services. In light of this need, we conducted an update to this study to see how the trends we identified in 2019 might have changed in the post-*Dobbs* landscape – for the better or worse. While we have seen numerous states enact draconian abortion bans, we have also seen states across the country step up to improve and expand insurance coverage of abortion, a reflection of the fact that insurance coverage is one of the most fundamental

[2] Karen Pollitz et al., Kaiser Fam. Found., *KFF Survey of Consumer Experiences with Health Insurance* (Jun. 15, 2023), **https://www.kff.org/private-insurance/poll-finding/kff-survey-of-consumer-experiences-with-health-insurance**

[3] Les Masterson, Forbes, *Americans Confused By Basic Health Insurance Terms But Happy With Their Plans* (Dec. 8, 2022), **https://www.forbes.com/advisor/health-insurance/confused-by-health-insurance-terms/#:~:text=Nearly%20half%20(46%25)%20don,you%20receive%20covered%20health%20services.**

[4] Jean Edward et al., *Significant Disparities Exist in Consumer Health Insurance Literacy: Implications for Health Care Reform*, 3 HEALTH LITERACY RSCH. & PRAC. 250 (2019), **https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6831506/**

[5] Fabiola Carrión & Alexis Robles, Nat'l Health Law Prog., *Beyond the Law: The Challenge of Marketplace Coverage of Abortions* (2019), **https://healthlaw.org/wp-content/uploads/2019/08/NHeLP-AbortionCoverage-Report-Formatted.FINAL-8.8.2019.pdf.**

factors in facilitating equitable abortion access.[6] This is particularly true for people with low incomes, Black, Indigenous, and other people of color, and others who face structural barriers to accessing care and are often least equipped to handle the unexpected out-of-pocket costs associated with abortion care. This reality heightens the need for accurate information on abortion coverage when people are shopping for plans on the health exchanges.

This report will first provide an overview of pertinent legal background on the Affordable Care Act, how the health law impacts abortion coverage, and an explanation of our research methodology. We then provide an overview of the key themes we found in our research on how plans used different (and frequently stigmatizing) terminology to describe abortion coverage, gaps in coverage in states without restrictions, and other self-imposed limitations. We conclude with a series of recommendations for how states can improve the information plans make available to consumers when shopping on the Marketplaces.

The Affordable Care Act: A Legal Overview

The Fundamentals of the ACA

The Patient Protection and Affordable Care Act (Affordable Care Act or ACA) fundamentally transformed the American health care system. One of the most important changes was the creation of the health insurance Marketplaces, also known as the exchanges. The exchanges provided a new mechanism for individuals, who do not qualify for Medicaid or lack other forms of health insurance (e.g., employer-sponsored insurance), to obtain coverage.

The ACA created three different Marketplace structures, state-based marketplaces (SBM), Federally facilitated Marketplaces (FFM), and State Partnership Marketplaces (SPM). As of publication, nineteen states maintain their own state-based exchanges, where states are responsible for performing all Marketplace functions like enrollment and information-sharing, while twenty-nine states rely on the Federally facilitated Marketplace. Only three states (Arkansas, Georgia, and Oregon) use a State Partnership Marketplace, where the state

[6] Cat Duffy, Nat'l Health Law Prog., *2022 State Legislative Session Highlight: Major Gains In Abortion Insurance Coverage Despite Dobbs* (Oct. 2022), **https://healthlaw.org/2022-state-legislative-session-highlight-major-gains-in-abortion-insurance-coverage-despite-dobbs/**; Cat Duffy, Nat'l Health Law Prog., *2023 State Legislative Roundup: Major Wins on Improving Abortion Coverage* (Nov. 2023), **https://healthlaw.org/2023-state-legislative-roundup-major-wins-on-improving-abortion-coverage/**.

handles plan management and consumer assistance but utilizes the federal HealthCare.Gov website for enrollment and other Marketplace functions.[7]

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 or "Metal Level"	Premium Rate (how much the plan pays)	Cost-Sharing Req's (e.g., deductibles, co-pays & coinsurance)
Platinum	90 %	10 %
Gold	80 %	20 %
Silver	70 %	30 %
Bronze	60 %	40 %

Additionally, the ACA implemented a requirement that Marketplace plans must cover at least ten Essential Health Benefits (EHBs). The EHBs list includes categories such as ambulatory patient services, prescription drugs, and preventive services, which is defined to include family planning services but explicitly does not include abortion.[8] This is just one example of how the Affordable Care Act further entrenched abortion stigma in the American health care system by arbitrarily siloing it and singling it out for differential treatment from other basic health care

[7] Kaiser Fam. Found., State Health Insurance Marketplace Types, 2024, https://www.kff.org/affordable-care-act/state-indicator/state-health-insurance-marketplace-types/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D (last visited Oct. 23, 2024).
[8] ACA § 1302(b)(1); 45 C.F.R. § 156.115(a)(4); 45 C.F.R. §147.130(a).

services. The next section will further detail how the ACA regulates insurance coverage of abortion and the specific rules it created for Marketplace plans.

The ACA and Abortion Coverage

While the Affordable Care Act instituted critical consumer protections and reduced the uninsured rate considerably, it largely reinforced abortion exceptionalism – the trend of treating abortion differently under the law (and often regulating it more severely) than comparable health care services.[9] Instead of treating it like the basic health care service it is, the ACA sidestepped the question of abortion coverage, instead establishing that states may ban or mandate abortion coverage in private and Marketplace plans.[10] This created a landscape where the state of residence often determines whether or not a Marketplace plan provides coverage for abortion care.

Ten states – California, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont, Washington – require most, if not all state regulated plans to provide abortion coverage, including specifically plans offered on the Marketplace. This number has grown since the last time NHeLP conducted this research, as we have seen states recognize the importance of comprehensive insurance coverage when seeking to protect and expand abortion access.

The number of states that prohibit Marketplace coverage of abortion has not changed since our 2019 report, as more than half (twenty-six) have coverage bans on the books.[11] While

[9] For other examples of abortion exceptionalism, *see* Jaclyn Serpico, *Abortion exceptionalism and the mifepristone REMS*, 104 CONTRACEPTION 8 (2021), **https://www.contraceptionjournal.org/article/S0010-7824(21)00103-7/fulltext**; Caitlin Borgmann, *Abortion Exceptionalism and Undue Burden Preemption*, 71 WASH. & LEE L. REV. 1047 (2014).

[10] 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."

[11] The states that prohibit abortion coverage in the Marketplaces are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. *See* Kaiser Fam. Found., State Restriction of Health Insurance Coverage of Abortion (2024) **https://www.kff.org/womens-health-policy/state-indicator/abortion-restriction/?currentTimeframe=0** (last visited Oct. 23, 2024); Guttmacher Inst., Interactive Map: US Abortion Policies and Access After Roe (2024), **https://states.guttmacher.org/policies/** (last visited Oct. 23, 2024).

Michigan repealed the state's restriction as part of the 2023 Reproductive Health Act, Montana enacted a ban on abortion coverage in 2021.[12]

The remaining fourteen states and the District of Columbia neither prohibit or require abortion coverage in their Marketplaces.[13] In these states, insurers have the ability to determine whether or not the plans they offer will include coverage for abortion services and the scope of that coverage.

In addition to delegating coverage decisions to the states, 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.[14] Separate from the ACA's provisions, federal funding for abortion coverage is already restricted by the Hyde Amendment, a budget rider limits the use of federal funds to the narrow cases of rape, incest, or life endangerment.[15] Following the standard established in Hyde, Section 1303 reaffirms that enrollees cannot use federal subsidy funds, like premium tax credits or cost-sharing reductions, to pay for abortions, except for those that fall within one of the three Hyde exceptions (also known as "exempted abortions").[16]

Furthermore, Marketplace insurers must segregate premiums in two separate accounts: one account to pay 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.[17] In determining the premium allocated to abortion services, the plan may not estimate the cost of the abortion coverage at less than one dollar

[12] Mont. Code Ann. § 33-22-116 (2023); H.B. 4949, 2023 Sess., (Mich. 2021), **https://www.legislature.mi.gov/documents/2023-2024/billconcurred/House/pdf/2023-HCB-4949.pdf** repealing the Abortion Insurance Opt-Out Act, Mich. Comp. Laws §§ 4 550.541 to 550.551.
[13] The states that allow abortion coverage in the Marketplaces (but do not mandate it) are Alaska, Colorado, Connecticut, Delaware, DC, Hawaii, Iowa, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, Rhode Island, Virginia, Wyoming. *See* Kaiser Fam. Found., State Restriction of Health Insurance Coverage of Abortion (2024) **https://www.kff.org/womens-health-policy/state-indicator/abortion-restriction/?currentTimeframe=0** (last visited Oct. 23, 2024).
[14] ACA § 1303.
[15] Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-147, § 507(c).
[16] ACA § 1303(A)-(B).
[17] ACA § 1303(b)(2)(C)(ii).

per month per enrollee, irrespective of the actual cost.[18] Enrollees do not pay two separate premiums under the current rules, the segregation of premium funds happens solely on the insurer's end. 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.[19]

Insurance Terminology

For this report's purposes, we differentiate between insurers and plans:

"Insurer": 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": A particular health insurance plan that an individual purchases for themself 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.

Summary of Benefits and Coverage (SBC): 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.

"Evidence of Coverage" (EOC): The contract between the plan and the consumer, which is a more comprehensive document that provides details about what a plan covers, cost-sharing obligations, and other information. These can be found in a variety of places, including on the Marketplace websites, linked in a plan's SBC, or on the insurer's website. [20]

[18] ACA § 1303(b)(2)(D)(ii).
[19] ACA § 1303(b)(3)(A).
[20] Note: these were not uniformly available for every plan we examined. However, since they were available for the vast majority of plans, and they were often essential to determining a plan's scope of abortion coverage and identifying any cost-sharing requirements or other coverage restrictions, we did include them in our analysis when they were available.

Methodology

The National Health Law Program (NHeLP) reviewed 2023 Marketplace plans' documents in all 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 Coverage (SBC) and Evidence of Coverage (EOC) documents. 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. The goal was to emulate the experience the average consumer might have when shopping for a new plan on the Marketplace – as a result, this report is a snapshot of the information landscape during a certain period of time 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. 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.

We examined many of the same variables our 2019 report investigated, including what terminology plans used to describe abortion coverage, clarity around the scope of coverage, and how plans covered abortion absent legal limitations or mandates. We wanted to see if, in the post-*Dobbs* landscape, the ways in which qualified health plans in the Marketplaces describe abortion in publicly available documents and how they cover abortion services had changed. 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. The goal of this project 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.

Analysis

Abortion Terminology Confusion

Abortion is a basic, necessary health care service – one in four women will have an abortion in their lifetime.[21] An abortion is medically necessary to anyone who is seeking the service. In spite of this, plans continue to use terms like 'elective' and/or 'therapeutic' abortions. These are distinctions without difference and only function to further reinforce abortion stigma and serve to confuse consumers.[22] We found several problematic trends in how plans discussed abortion coverage.

First, plans used different terminology in the Summary of Benefits and Coverage versus the Evidence of Coverage in how they described the offered abortion coverage. In particular, we found that plans would refer to 'abortion' in the Summary of Benefits but would describe 'pregnancy termination' or 'termination of pregnancy' coverage in the Evidence of Coverage. In Washington, six of the ten plans listed 'Abortion' under the "Other Covered Services" section on the SBCs, while the EOC documents described the coverage for 'termination of pregnancy.' Molina, a major Marketplace insurer in several states, listed 'Abortion' under "Other Covered Services" in the Summary of Benefits and Coverage but did not use the word abortion once in the Evidence of Coverage documents (except for one single time in its explanation of potential provider objections). Instead, the Molina EOC documents describe coverage for "pregnancy termination." This was the case for Molina plans offered in **Washington**, **Illinois**, **California**, **New Mexico**, **Nevada** (the only exception was **Michigan**, where both types of documents used 'pregnancy termination'). Kaiser Pemanente, another major Marketplace player, also used 'abortion' in its SBCs but 'pregnancy termination' in its EOCs for plans offered in Hawaii and **Washington**. Other examples include **HMSA** in **Hawaii**, **BlueCross BlueShield** of **New Mexico**, and **Ambetter from Coordinated Care** in **Washington**.

[21] Rachel Jones, *An estimate of lifetime incidence of abortion in the United States using the 2021–2022 Abortion Patient Survey*, 145 CONTRACEPTION (2024), **https://www.contraceptionjournal.org/article/S0010-7824(24)00108-2/fulltext**. Note: NHeLP recognizes that people of all genders, gender identities, and expressions require access to abortion, and we have tried to otherwise limit our use of gendered language where possible. Any instances of gendered language are a reflection only of the particular data being cited.

[22] See Elizabeth Janiak & Alisa Goldberg, *Eliminating the phrase "elective abortion": why language matters*, 93 CONTRACEPTION 89 (2016), **https://www.contraceptionjournal.org/article/S0010-7824(15)00624-1/fulltext**.

Second, when insurers did draw distinctions between 'elective' and 'therapeutic' abortions, they often failed to define what these terms mean. When definitions were supplied, they were inconsistent across Marketplace plans or across states. While one plan might refer to a 'therapeutic abortion' as one performed in life endangerment scenarios, another might define it more expansively to include cases of rape, incest, and/or life endangerment. This occurred in New Mexico, as **United Healthcare of New Mexico** defined a 'therapeutic abortion' as a "pregnancy termination recommended by a doctor to save the life of the mother." In contrast, **Ambetter from Western Sky Community Care** defined a 'therapeutic abortion' as one "performed to save the life or health of the member, or as a result of incest or rape." In Virginia, **Kaiser Pemanente** offered coverage for "elective and therapeutic termination of pregnancy" and defined 'therapeutic' terminations as permitted for cases of fatal fetal anomalies, rape, incest, or life endangerment.

Third, there was no consistency in how plans categorized abortion care in the Evidence of Coverage documents. While 'abortion' was reliably listed under either 'Other Covered Services' or 'Services Your Plan Does Not Cover' in Summary of Benefits and Coverage documents, we found significant variation in how plans chose to classify abortion services in EOCs, which often could impact the scope of coverage or application of cost-sharing or prior authorization requirements. Some examples of the different benefit categories we found included: maternity care, family planning, reproductive health care services, special services for women, women's health care, medical and surgical benefits, and general 'covered services.'

While these may not seem like major discrepancies, they add another layer of complexity for consumers looking for information about abortion coverage in an already confusing and byzantine system. It is highly unlikely that consumers are reading these documents in full (especially since EOCs can often be over 100 pages). Instead, they are likely performing keyword searches for 'abortion' and might not know to also search for other terms – especially since the Summary of Benefits and Coverage typically says 'abortion.' Not only does it complicate the consumer's path to finding information on coverage, it is also highly stigmatizing that Marketplace plans that provide coverage generally used terms like "pregnancy termination" or "interruption of pregnancy," while plans that did not provide coverage used the term "abortion." In short, Marketplace plans often used euphemisms to obfuscate when abortion is a covered service but had no issue using the term abortion when it was an excluded service. Research has shown that using "termination of pregnancy" is not

more accurate or in line with patient or provider preferences and that adopting euphemisms may further reinforce the idea that abortion is shameful or something to hide.[23]

Lack of clarity in scope of abortion coverage

The Affordable Care Act requires Marketplace plans to provide consumers with a Summary of Benefits and Coverage (SBC) and explicitly requires the SBC to include information on whether or not the plan covers abortion services.[24] The SBC categorizes health care services into three major buckets: "Common Medical Events," "Other Covered Services," and "Services Your Plan Generally Does Not Cover." Many reproductive health care services, including family planning and maternity care, are generally placed under "Common Medical Events," which includes information about cost-sharing requirements, coverage limitations, and other important information. This information is particularly important in states that prohibit cost-sharing requirements, so enrollees are equipped with the information they need to ensure they are not erroneously charged. Abortion, despite being a common health care service, was only included under Common Medical Events once during our research.[25]

In general, when plans offered coverage for abortion services beyond the narrow Hyde exceptions, it would list abortion or pregnancy termination under Other Covered Services in its SBCs. This category offers no information about cost-sharing and generally little to no information about potential restrictions other than the fact that limitations may apply and enrollees should contact their plan for more information. Examples include **Inland Empire Health Plan** in California and **WellSense Health Plan** in Massachusetts.

The majority of plans that did not provide comprehensive abortion coverage (mostly commonly these plans only covered abortions in cases of rape, incest, and/or life endangerment) listed abortion under 'Services Your Plan Generally Does Not Cover.' Most of the time this would include limited information about the potential exceptions. For example,

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[23] *See* Shelly Kaller et al., *Abortion terminology preferences: a cross-sectional survey of people accessing abortion care,* 23 BMC WOMEN'S HEALTH (2023), **https://pmc.ncbi.nlm.nih.gov/articles/PMC9850636/#CR32**; Áine Kavanagh & Abigail RA Aiken, *The language of abortion: time to terminate TOP,* 125 BJOG 1065 (2018), **https://obgyn.onlinelibrary.wiley.com/doi/10.1111/1471-0528.15137**.

[24] 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**.

[25] In New York, Capital District Physicians' Health Plan included information about abortion coverage under the "If you are pregnant" Common Medical Events category in its **Summary of Benefits and Coverage.**

Rocky Mountain Health Plans in Colorado listed "Abortion (except in cases of rape, incest, or when the life of the mother is endangered)" under the excluded services category in its Summary of Benefits. However, some plans failed to provide even this limited additional information, such as Innovation Health Plan in Virginia and Aetna CVS Health plans offered in Delaware, Nevada, Virginia that only listed "Abortion" under Services Your Plan Generally Does Not Cover on its SBC (although the EOC documents clarify that these plans cover abortions for cases of rape, incest, or life endangerment).

Similar to 2019, we found discrepancies between a plan's Summary of Benefits and Coverage and other plan documents like the Evidence of Coverage. In Michigan, Molina Healthcare lists "pregnancy termination" under Other Covered Services in the SBC, however, the Evidence of Coverage outlines that Molina only covers "[m]edically necessary non-elective pregnancy termination services." In other states, we found Summary of Benefits and Coverage documents that did not mention abortion at all but the Evidence of Coverage would provide information on abortion coverage.

Coverage Restrictions

The availability and scope of abortion coverage varied widely in the states we examined for this report. We found significant coverage gaps, even in states that had no legal restrictions that would constrain Marketplace insurers from offering coverage. Out of the twenty-four states that do not prohibit abortion coverage, eighteen of them (sixty-seven percent) plus the District of Columbia have at least one plan that offers coverage beyond the limited cases of rape, incest, or life endangerment.[26] However, in the remaining six states, no Marketplace insurer offered a plan that would provide coverage beyond the circumstances of rape, incest, or life endangerment.[27] In each of these states, at least three different insurers participated in their Marketplace.

[26] These states are Alaska, California, Connecticut, Colorado, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington, in addition to the District of Columbia.
[27] These states are Delaware, Iowa, Minnesota, New Hampshire, Nevada, and Wyoming. However, during the 2024 state legislative session, Minnesota enacted an abortion coverage mandate that will require Marketplace plans to provide comprehensive abortion coverage to enrollees. See H.F. 5247, 2024 Leg., 93rd Sess. (Minn. 2024), https://www.revisor.mn.gov/bills/text.php?number=HF5247&version=4&session=ls93&session_year=2024&session_number=0&format=pdf.

Additionally, in several states that have no legal restriction on abortion coverage, insurers are independently choosing to limit the coverage they provide, often adopting the restrictions found at the federal level in the Hyde Amendment. For instance, in Colorado, major insurers such as **Cigna** and **Anthem** both only provide coverage for abortion "in cases of rape, incest, or when the life of the mother is endangered."[28] Some insurers go even further, voluntarily imposing limitations that are more restrictive than the Hyde Amendment, even when there is no state law requiring them to do so. An example of this can be found in Michigan, as **Ambetter from Meridian** and **Oscar Health** restrict the coverage exclusively to cases of life endangerment.

Thus, even when there are no legal barriers to providing abortion coverage, many plans are voluntarily choosing to impose restrictions. It is reasonable to assume that this decision is at least in part rooted in abortion stigma, since the economic data is clear that providing abortion coverage does not materially increase premiums or other costs.[29] Data on the implementation of exceptions to abortion bans shows they are fundamentally unworkable – there is no reason to think this would be any different for insurance coverage policies.[30]

Many marketplace plans arbitrarily limit coverage by requiring prior authorization for abortion services. Some plans explicitly outline when prior authorization is required for abortion services, while other plans only include vague conditional statements. In California, Illinois, Nevada, New Mexico, and Washington, Molina Healthcare requires prior authorization for abortions provided in an inpatient setting (although not for outpatient procedures). In Minnesota, **Quartz** lists "elective abortions" sought in cases of rape, incest, or life endangerment as "Covered with Prior Authorization" under the Reproductive Health category.

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[28] In 2023, Colorado enacted a law that requires abortion coverage without cost-sharing in all individual and group plans issued in the state. This law will go into effect January, 2025. *See*: S.B. 23-189, 2023 Leg., Reg. Sess. (Colo. 2023) **https://leg.colorado.gov/sites/default/files/documents/2023A/bills/2023a_189_enr.pdf**.

[29] N.J. Dept. of Banking & Ins., Freedom of Reproductive Choice Act: Report to the Governor and Legislature (Nov. 2022), **https://nj.gov/dobi/P.L.2021c.375report.pdf**; State of Colo., Senate Bill 22-040 New Health Benefit Coverage Study (Feb. 2023), **https://drive.google.com/file/d/1RuaCFPw1r5wphsAkmoYYAOELs6ZLMxzG/view**; State of Colo., Senate Bill 22-040 New Health Benefit Coverage Study: Addendum (Feb. 2023), **https://drive.google.com/file/d/1U3rq2tDouPUIwIPO3vJNIOXkxG9_bMpX/view**.

[30] Mabel Felix, Laurie Sobel, & Alina Salganicoff, Kaiser Fam. Found., *A Review of Exceptions in State Abortion Bans: Implications for the Provision of Abortion Services* (Jun. 2024), **https://www.kff.org/womens-health-policy/issue-brief/a-review-of-exceptions-in-state-abortions-bans-implications-for-the-provision-of-abortion-services**.

In Washington, **Ambetter from Coordinated Care** plans require prior authorization for abortion services provided by non-network providers. In contrast, **Elevate Health Plans** in Colorado outlines that "non-elective abortions" are covered and "[p]rior authorization may be required" but provides no clarification on when prior authorization requirements might be applied. **Ambetter of Illinois** includes abortion care in a list of "maternity benefits that may require prior authorization" but also says "NOTE: Abortifacient drugs are covered at no cost share to the member. Prior authorization is not required for these services." It is extremely unclear whether this language means that prior authorization will never be applied to abortion services, or that it only may be required for procedural abortions but not medication abortions.

These prior authorization requirements may impede access to care. Abortion is a time-sensitive, medically necessary service and allowing prior authorization requirements result in delays and potential denials of care. A 2022 study by the American Medical Association found that over ninety percent of physicians reported that prior authorization requirements led to delays in care for their patients.[31] Timely access to care is essential because, while abortion is safe at any point during pregnancy, abortion care becomes more expensive and more complicated as a patient gets further into their pregnancy.[32] While NHeLP believes that prior authorization requirements should never be applied to abortion services, when plans do institute such policies, they must make it clear when and how prior authorization must be obtained prior to obtaining services. When these requirements are not clearly spelled out in policy documents for consumers, it may lead to significant out-of-pocket costs if they seek care without approval.

We also examined whether or not plans imposed lifetime or annual limits. These types of restrictions on abortion coverage only serve to arbitrarily restrict access to care and stigmatize the people who need more than one abortion.[33] Every pregnancy is unique, as are the varied reasons why people need abortions, and blunt coverage restrictions do not reflect this reality.

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[31] Am. Med. Assoc., 2022 AMA prior authorization (PA) physician survey (2022) **https://www.ama-assn.org/system/files/prior-authorization-survey.pdf** (last visited Jan. 26, 2024).

[32] Ushma Upadhyay et al., *Trends In Self-Pay Charges And Insurance Acceptance For Abortion In The United States, 2017–20*, 41 HEALTH AFFAIRS 4 (April 2022), **https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01528**.

[33] For more on the stigma around multiple abortions, *see*: Carrie Purcell, The Conversation, *Attitudes to women who have more than one abortion need to change* (Feb, 2017), **https://theconversation.com/attitudes-to-women-who-have-more-than-one-abortion-need-to-change-85707'**; We Testify, Multiple Abortions, **https://wetestify.org/abortion-explained-multiple-abortions** (last visited Dec. 10, 2024).

Lifetime Limits: In Hawaii, **Kaiser Permanente** plans arbitrarily distinguish between "elective" and "medically necessary" abortions and provides different levels of coverage for the two categories. The Kaiser Evidence of Coverage indicates "pregnancy termination" is covered but it institutes a lifetime limit for "elective pregnancy terminations," restricting coverage to two abortions per member's lifetime. In contrast, the plan does not apply the lifetime limit to "medically indicated pregnancy terminations," which it defines as "when the life of the mother would be endangered if the fetus were carried to term, or when the pregnancy is the result of an act of rape or incest." This policy voluntarily replicates the restrictions established in the federal Hyde Amendment as these limitations are not based in state law.

Annual Limits: We did find some improvement around annual coverage limits, most notably in New York. In 2019, plans limited coverage of "elective abortions" to "one procedure per Member, per calendar year." In 2023, the state enacted **a law** that expanded the required abortion coverage to include "coverage of any drug prescribed for the purposes of an abortion… even if such drug has not been approved" by the Food and Drug Administration (FDA). This caused plans to update their 2024 coverage policy language to explicitly include medication abortion and, in the process, also removed the annual cap. This change was communicated to consumers by attaching a policy rider to Evidence of Coverage documents, typically included at the **end of the plan EOC document** or in a **completely separate document**.[34]

Cost-Sharing Issues

The National Health Law Program also examined the information available to consumers about the potential cost-sharing obligations associated with abortion coverage. Clear, direct information on whether or not abortion services are subject to cost-sharing is important, since the abortion method and clinical setting impact the scope of cost-sharing. Generally, cost-sharing is lowest for primary care, higher for surgical centers, and highest for inpatient services – but the average shopper on the Marketplaces might not know this without a straightforward explanation of these distinctions in plan documents.

There was a clear difference in the quality of information provided to consumers about cost-sharing requirements in the states that mandate abortion coverage versus those that do not. We looked at over fifty plans in the states that do not mandate or prohibit coverage and found that only three provided clear information on whether or not abortion services were subject to

[34] We could not find Evidence of Coverage documents for Emblem Health, Healthfirst, or MVP Health Care in New York.

cost-sharing requirements (Premera in Alaska, Kaiser Permanente in the District of Columbia, and Neighborhood Health Plan of Rhode Island). The rest either provided no information or included vague statements about how covered services may be subject to applicable cost-sharing without further clarification. Plans should provide consumers with transparent information about whether or not the limited coverage provided is subject to a deductible, co-pay, or other cost-share.

In states that do mandate abortion coverage, the vast majority of plans provided at least some information on the cost-sharing requirements – or more frequently, an explanation of how abortion services are exempt from any cost-sharing requirements. Eight of the ten states that require abortion coverage in the Marketplace also prohibit cost-sharing (a significantly higher number than when we first conducted research in 2018). This changed coverage landscape is reflected in the policy documents available to consumers, as nearly all of them provided clear information on cost-sharing for abortion services and any exceptions to the state's prohibition on cost-sharing requirements (primarily around high-deductible plans).

In the two states that require coverage but do not prohibit cost-sharing (Illinois and New Jersey), the information available to consumers was more mixed.[35] Illinois plans generally provided at least some information to consumers on cost-sharing for abortion care and several provided specific information on how those obligations may change depending on the type of abortion and/or clinical setting. For example, Aetna documents outline that cost-sharing for abortion services is "based on type of services and where it is received same as pregnancy-related services [sic]."[36] Similarly, United HealthCare's Schedule of Benefits includes a specific entry for "Abortion Care Services" and declares that "[d]epending on where the Covered Health Care Service is provided, Benefits will be the same as those stated under each Covered Health Care Service category in this Schedule of Benefits." In New Jersey, all plans had identical language in their Evidence of Coverage documents "Abortion: We cover the cost of abortion care, including the cost of medication or surgical abortion." There was no further information provided to consumers on potential cost-sharing obligations, or acknowledgement that the costs may differ depending on procedure or provider type.

[35] During the 2024 legislative session, Illinois enacted a new law that prohibits cost-sharing requirements for abortion services, which is set to be implemented in 2026. *See* H.B. 5142, 103rd Gen. Assem., (Ill. 2024), https://ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0720.

[36] Aetna Evidence of Coverage documents are not independently available online. However, they are linked in the Summary of Benefits and Coverage, as for example in this Bronze policy.

Clear information on the costs enrollees might face when seeking an abortion is vital, particularly in states that allow cost-sharing for abortion coverage. If an enrollee has yet to meet their yearly deductible when seeking care, it may functionally mean they are paying out-of-pocket, with the **average cost** for an abortion ranging from $500 to over $1,000. For people with low incomes, this kind of unexpected cost can be **catastrophic**. Ensuring plans account for the difference between provider location and abortion type is important to equip enrollees with a complete understanding of the financial options and potentially choose an option with lower cost-sharing requirements.

Recommendations

While we have seen major changes in the abortion access landscape over the last five years, the research presented in this report shows that there have not been major changes in the consumer experience in shopping for abortion coverage on the ACA Marketplaces (for better or worse). Similar to 2019, we found that insurers continue to use inconsistent and often stigmatizing language when describing coverage of abortion services, provide conflicting or insufficient information about the scope of coverage, and continue to voluntarily restrict coverage, regardless of whether or not state law requires such limitations. Furthermore, our research replicates the 2019 finding that many of the needed documents are not publicly available or require significant research in order to locate them on an insurer's website. As a result, consumers are confronted with, at minimum, an incomplete understanding of the options available to them when shopping for plans that provide abortion coverage on the Marketplaces.

NHeLP recommends states take the following actions in order to ensure individuals have access to comprehensive abortion coverage (and the information necessary to identify which plans provide such coverage):

1. States should require that plans that participate on the Marketplace must provide comprehensive abortion coverage, including ensuring that at least one Marketplace insurer in every region of the State provides coverage without restrictions in all metal levels. Insurers in states without legal restrictions should strive to provide the most comprehensive abortion coverage possible, as opposed to defaulting to the restrictions in the federal Hyde Amendment.

2. States should prohibit plans from applying cost-sharing obligations, prior authorization requirements or other utilization management techniques to abortion services. Abortions are time-sensitive services, which makes prior authorization requirements inappropriate, and even minor cost-sharing requirements may be significant burdens to abortion seekers. Prohibiting these utilization management techniques is crucial to eliminate major hurdles for abortion seekers, particularly given the increasingly constrained abortion access landscape.

3. When cost-sharing requirements are allowed, insurers should update policies to ensure that they differentiate between abortion type and clinical setting and provide enrollees with clear information that explains what obligations they may face in each scenario. The following is a good **example** of a plan document that contain straightforward, consumer-friendly information on any cost-sharing requirements for abortion services

Abortion and abortion-related Services

Description of abortion and abortion-related Services	Copayment / Coinsurance	Subject to Deductible	Applies to OOPM
Surgical abortion	No charge		✓
Prescription drugs, in accord with our drug formulary guidelines	No charge		✓
Other abortion-related Services	No charge		✓

(Note: OOPM stands for out-of-pocket maximum)

4. States should consider creating a Frequently Asked Questions (FAQ) page for consumers that provides concise and up-to-date information about abortion coverage requirements that plans must obey. It should also include information on the process to report suspected noncompliance if patients receive erroneous coverage denials or improper cost-sharing charges. The FAQ page can be hosted on the state's Marketplace website or on the website of the state agency that regulates qualified health plans. Creating one consolidated location for reliable information is vital for consumers trying to navigate a constantly shifting policy environment. The **California Department of Insurance FAQ** provides a good example.

5. Marketplace insurers should improve the quality of information provided in plan documents, including listing abortion in the "Common Medical Events" section, ensuring consistent terminology between plan documents, and clearly laying out any potential costs enrollees may face.

Conclusion

In today's rapidly shifting environment, where misinformation and confusion about the legal status of abortion continues to spread, it is more important than ever to ensure that consumers have clear, accurate information about how different insurers cover abortion care. This research shows that much work remains to improve the information about abortion coverage provided to consumers when shopping for Marketplace plans. Even in states with strong legal protections, insurers continue to use stigmatizing language, voluntarily impose onerous coverage restrictions, and provide inadequate or at times confusing information about the scope of abortion coverage in plan documents. The National Health Law Program is committed to ensuring plans comply with federal and state abortion coverage requirements. If you are a state advocate or other stakeholder that is interested in collaborating on advocacy, or if you have any questions or need technical assistance, please contact Cat Duffy (duffy@healthlaw.org).

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