



Section 1303 Segregated Abortion Funds Legal Explainer

By Cat Duffy

States are considering policies that leverage unused segregated premiums from Marketplace insurers to fund access to abortion services for people with low incomes, the uninsured and underinsured, and others who face significant barriers to accessing care. This legal analysis will unpack how Section 1303 of the Affordable Care Act (ACA) regulates abortion coverage and qualified health plans (QHPs), explain how these rules provide the legal framework for these segregated premium initiatives at the state level, and address how the new guidance from CMS on the usage of Section 1303 funds violates federal law.

The Affordable Care Act and Section 1303: An Overview

The 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. Twelve states mandate that Marketplace plans sold on their Marketplace must cover abortions.¹

Section 1303 of the ACA houses the statute's "special rules" for regulating abortion coverage in the Marketplaces.² First, Section 1303 mirrors the restrictions embedded in the Hyde Amendment, a long-standing federal budget rider that restricts the use of federal funding for abortion services to the narrow circumstances of rape, incest, and life endangerment.³ The ACA similarly prohibits any federally funded premium tax credits or cost-sharing reductions from being used to pay for abortion coverage.

¹ These states are California, Colorado, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Vermont, and Washington.

² 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)").

³ Fabiola De Liban et al., *Abortion Coverage Under Medicaid*, Nat'l Health Law Prog. (April 10, 2025), <https://healthlaw.org/resource/abortion-coverage-under-medicaid/>.

Second, Section 1303 requires Marketplace insurers to segregate premiums into two accounts: one to pay for all health care services for which federal funding is available, and a second account to pay for abortions beyond the narrow exceptions allowed under the Hyde Amendment (i.e., those sought for cases of rape, incest, and life endangerment).⁴ Federal law clearly states that the funds in this segregated account shall be “used exclusively to pay for such services described in paragraph (1)(B)(i),” which refers to abortions for which public funding is prohibited.⁵

Third, Marketplace insurers must collect these separate abortion premiums on behalf of everyone enrolled in their plans—i.e., the primary account holder and all dependents regardless of age, sex, or family status. Fourth and quite important, the abortion premium must be estimated at no less than \$1 per enrollee per month, irrespective of the actual cost of paying for abortions. It is critical to note that the \$1 per enrollee per month abortion premium far exceeds the actual cost of providing this coverage to enrollees.⁶ This means that each year Marketplace insurers have been collecting significant sums of excess premiums that are left in these accounts because insurers are legally prohibited from using them for any other purpose.⁷ For over a decade, these unused abortion premiums have continued to accumulate in these accounts, garnering significant sums of money.

Explanation of the 2025 Federal Guidance on Section 1303

On December 9, 2025, the Centers for Medicare & Medicaid Services (CMS) issued new guidance on the usage of Section 1303 segregated abortion payment funds.⁸ In this FAQ, CMS established a new policy that purposefully misinterprets Section 1303’s statutory language to allow insurers to pocket the excess funds left in these segregated abortion accounts after a

⁴ ACA § 1303.

⁵ ACA § 1303(b)(2)(C)(ii); 42 U.S. Code § 18023.

⁶ Cat Duffy, Nat’l Health Law Prog., *Beyond the Law: The Challenges of Marketplace Coverage of Abortion in 2024* (2024), <https://healthlaw.org/wp-content/uploads/2024/12/2024-Marketplace-Abortion-Coverage-Report-.pdf>.

⁷ Kathleen Birrane, Md. Ins. Admin., *Abortion Care Access Act Data Report* (Dec. 29, 2023), <https://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/Abortion-Care-Access-Act-Data-Report.pdf>.

⁸ CMS, Frequently Asked Questions (FAQs) on Usage of Funds in Section 1303 Segregated Accounts by Qualified Health Plan (QHP) Issuers in the Individual Market (Dec. 9, 2025), <https://www.cms.gov/files/document/2025-faqs-1303-segregated-funds.pdf>.

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plan year has concluded. CMS argues that the segregated abortion payment accounts should be treated like any other premium a QHP collects.

This interpretation violates federal law as it ignores the plain language and intent of the Affordable Care Act, which clearly states that these funds can only be used on non-Hyde abortions. The simple fact that the statute requires segregation of these funds to exclusively pay for abortion services—a requirement that is not applied to any other service or premium in the entire statute—proves that they are not and have never been considered to be comparable to typical premiums. Federal guidance in 2023 is particularly instructive on this point, as it acknowledges that because the \$1 per enrollee per month premium far exceeds the cost of providing abortion coverage, “QHP issuers may have found that the balances of their segregated accounts have increased over time.”⁹ Guidance from 2017 further underscores this by emphasizing if a QHP is paying a non-Hyde abortion claim, “it must draw those funds from the segregated allocation account. **The account cannot be used for any other purpose.**”¹⁰ While this situation is still evolving, this guidance clearly violates federal law.

Section 1303 Segregated Fund Initiatives

Section 1303 segregated abortion premiums represent a unique opportunity as they legally can only be used to fund clinical abortion services for which federal funding is not available. States can direct these separately accounted insurance premiums toward funding abortion care for those who face the most significant barriers to access, either by creating new grant programs or utilizing pre-existing uncompensated care funds.¹¹ It’s an innovative approach to utilizing pre-existing pools of money that are already earmarked for abortion services to fund abortion access at a time when the need is high but funding is scarce. It is important to note that these funds alone cannot solve the current abortion access crisis – abortion reimbursement rates remain unsustainably low and robust investments in all aspects of

⁹ CMS, FAQs on Coverage of Abortion for which Public Funding is Prohibited by Qualified Health Plan (QHP) Issuers in the Individual Market (Mar. 31, 2023), <https://www.cms.gov/files/document/qhp-abortion-faq.pdf>.

¹⁰ Emphasis added. CMS, CMS Bulletin Addressing Enforcement of Section 1303 of the Patient Protection and Affordable Care Act (Oct. 6, 2017), <https://www.cms.gov/ccio/resources/regulations-and-guidance/downloads/section-1303-bulletin-10-6-2017-final-508.pdf>.

¹¹ See, e.g., Cal Dept. of Health Care Access and Info., *Reproductive Health Care Initiative – Uncompensated Care Fund and Abortion Practical Support Fund*, <https://hcai.ca.gov/workforce/initiatives/reproductive-health-care-access-initiative/> (last accessed Dec. 10, 2025).

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abortion access are sorely needed. But it still represents a valuable resource that can and should be leveraged to expand access at this crucial moment.

Maryland's Public Health Abortion Grant Program and Fund provides a good template for states that want to create a new grant program that directs these leftover segregated premium accounts to fund abortion services that are not eligible for federal funding (as federal law instructs).¹² The Public Health Abortion Grant Program gives grants to providers and abortion funds that provide services to individuals who cannot use their insurance for abortion care or face other coverage gaps, such as people who are under- or uninsured, young people, and those enrolled in plans with abortion restrictions (such as religious employer-sponsored plans, etc.) These funds will be used exclusively for abortion services that are not eligible for federal funding, as required by the Affordable Care Act. The inclusion of abortion funds in this program is particularly notable since they perform an increasingly vital role in facilitating access to care as states continue to further restrict access to abortion and insurance coverage.¹³

As state fiscal pressures continue to build in the face of increased federal funding cuts, this policy presents an innovative approach to expanding abortion access without requiring new appropriations. If your state is interested in pursuing this advocacy, please reach out to Cat Duffy (duffy@healthlaw.org) and Robyn Elliott (relliott@policypartners.net).

¹² Md. Code. Ann., Ins. § 15-147 (2025).

¹³ Anna Bernstein & Benny Del Castillo, *Spotlight on an Abortion Fund: How Funds Help Fill the Gap For Pregnant People in Need*, The Century Found. (Oct. 12, 2022), <https://tcf.org/content/report/spotlight-on-an-abortion-fund-how-funds-help-fill-the-gap-for-pregnant-people-in-need/>.