

Abortion Coverage Under the Affordable Care Act: The Laws Tell Only Half the Story

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The health insurance marketplaces established by the Affordable Care Act (ACA) are now up and running across the country. Together, the ACA and state-specific laws dictate whether and how abortion can be included among the health services covered by plans available through these new marketplaces. However, understanding these laws and their impact is not sufficient for a consumer to determine the actual availability of abortion coverage among marketplace plans: In states where abortion coverage is permissible, it is up to plan issuers to decide whether to include coverage of abortion in their plans and, if so, to what extent. Moreover, informed consumer choice can only be achieved if that information is presented in a manner that is clear and easily accessible to individuals shopping for coverage on health insurance marketplaces.

It is currently not easy for consumers to ascertain the degree to which abortion coverage is included within marketplace plans, likely in part because no specific, nationwide standards for how that information should be conveyed to the public have been established. This has frustrated policymakers and activists on both sides of the abortion rights divide. Antiabortion leaders in Congress brought the issue to the fore in the form of the Abortion Insurance Full Disclosure Act, introduced late last year by Rep. Chris Smith (R-NJ) and more recently in the Senate by Sen. Pat Roberts (R-KS). The House passed the bill on January 28, attaching it to the No Taxpayer Funding for Abortion Act, which would render disclosure largely moot, given that the bill aims to eliminate abortion coverage in the marketplaces. Moreover, these bills would advance abortion

opponents' idea of "full disclosure" by further stigmatizing abortion care and requiring consumers be given misinformation implying that abortion coverage would add to their premium costs.

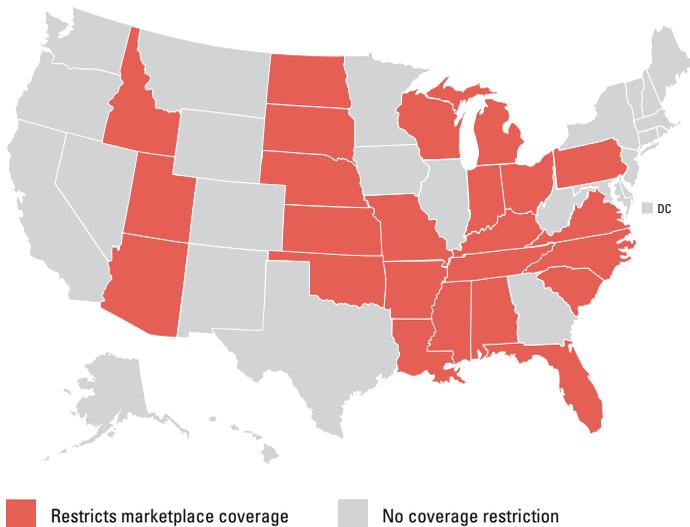
Consistent fact-based transparency about whether or not a plan covers abortion would benefit all consumers—those seeking a plan that includes abortion coverage, as well as those seeking a plan that excludes it. The Guttmacher Institute has been able to gather enough information on its own to conclude that plan approaches vary widely and that transparency varies even more. Importantly, there appears to be a way forward that is practical and appropriate, and that would provide consumers with the information they need to buy a plan that is right for them and their families.

What the Laws Say

The ACA provides for the establishment of state-based, online marketplaces where individuals and small businesses can shop for private insurance; whether run by states themselves or the federal government, these marketplaces are now operational in all 50 states and the District of Columbia. The law also explicitly allows states to enact—or repeal—laws restricting coverage of abortion within marketplace plans. Currently, 26 states and the District of Columbia permit coverage of abortion among their marketplace plans (see map, page 16).¹ The remaining 24 states have banned marketplace plans' coverage of abortion. Most of those states make exceptions in only the most extreme cases, such as rape, incest or when a woman's life is endangered; two states (Louisiana and Tennessee) prohibit abortion coverage within their marketplaces in all circumstances, without exception.

WIDESPREAD RESTRICTIONS

Twenty-four states restrict abortion coverage in private plans offered through health insurance marketplaces.



Source: reference 1.

Under the ACA, no plan is compelled to cover abortion. If a plan issuer does opt to cover abortion care beyond the narrow circumstances of rape, incest and life endangerment (the limited conditions the federal government adheres to for its own employees and others eligible for federally subsidized health care or coverage), then the ACA expressly requires the issuer to establish specific accounting mechanisms. They must create two separate accounts into which enrollees' premium payments are deposited: one from which any abortion claims (beyond instances involving rape, incest or life endangerment) would be paid, and another comprising the vast majority of enrollees' premium dollars, from which all other claims would be paid. Congress devised this arrangement as part of a compromise to ensure that any federal subsidies received by eligible enrollees would not mix with dollars used to cover abortion care for which federal funding is prohibited.

The ACA also calls upon the federal Office of Personnel Management (OPM) to contract with at least one issuer that has provider networks across multiple states to offer "multi-state" plans through the marketplaces of those different states. Multi-state plans are designed to pro-

vide plan competition and ensure that residents of every state have a variety of health plans to choose from; this has been particularly problematic for consumers in many less-populated states. The ACA requires these plans be available through every state's marketplace by 2017 and they are currently being phased in; at least two multi-state plans are now being offered as options on the marketplaces of 30 states and the District of Columbia.²

The ACA mandates that at least one of the multi-state plans offered on each state's marketplace excludes abortion coverage (exceptions for instances of rape, incest and life endangerment are permissible). An official from the federal Department of Health and Human Services (DHHS) indicated in July 2013 that the agency was looking to balance this requirement by also ensuring that at least one multi-state plan would cover abortion (if not otherwise prohibited by state law).³ Yet, according to an October 2013 letter issued by OPM in response to a query from Rep. Chris Smith, of the more than 150 total multi-state plans being offered in 2014, only two cover abortion—both of which seem to be specific to Alaska's marketplace, despite the "multi-state" label.⁴

What the Plans Are Doing—and Saying

A consumer shopping for a plan that covers abortion must live in a state where such coverage is not prohibited by law and where plans are actually offered that include abortion coverage. Equally important, consumers—both those seeking plans that cover abortion and those wishing to avoid such plans—must have the tools necessary to find out whether and to what extent plans cover abortion to make an informed decision.

To get a sense of whether this kind of information is readily accessible to consumers, Guttmacher staff searched online marketplaces in a geographically diverse selection of 12 of the 26 states where abortion coverage is legally permitted. In each state, marketplace plans currently available to an individual living in that state's most populous county were evaluated. To ascertain information on abortion coverage, Guttmacher reviewed each plan's summary of benefits and coverage (SBC). These standardized eight-page

documents are intended to inform individuals' plan choices with basic, comparable coverage and cost information. When plans did not mention abortion in their SBCs, additional links were clicked to find pages that might offer consumers documents with more detailed lists of covered services and exclusions; when available, these documents were also searched for mention of abortion coverage.

For the 24 states that restrict abortion coverage, online marketplaces were primarily examined to determine whether they at least provide clear and easy-to-find notices stating that abortion coverage is prohibited and, therefore, not among the covered services of any plan.

States Permitting Abortion Coverage in Marketplace Plans

Plan issuers in states that permit abortion coverage in marketplace plans demonstrate varying levels of transparency with regard to its inclusion or exclusion. From what could be discerned from documents accessible through the 12 marketplaces examined, issuers in only Colorado, Connecticut, Rhode Island and Washington clearly offer plans that cover abortion beyond cases of rape, incest or life endangerment (see table). In Rhode Island and Washington, abortion coverage

is listed in some plans' SBCs; in Colorado and Connecticut, plans including abortion coverage can be identified by searching more detailed plan documents. In two of these states (Colorado and Washington) and four others (Alaska, Illinois, Georgia and Nevada), a consumer is able to identify at least one issuer offering plans excluding abortion coverage, either through SBCs or more detailed documents. Not all of these plans are clear about whether they make any exceptions to this exclusion. In the remaining four states, information on abortion coverage was not available from any plans' SBCs or more detailed documents available through the marketplace.

However, the information consumers can find may not tell the whole story about what issuers are, or are not, covering. Rather, because the vast majority of plan documents searched are silent with regard to abortion coverage, or occasionally provide confusing or contradictory information, it is often difficult to know whether and to what extent abortion might be excluded. Notably, in eight of the states investigated, Guttmacher did not find a single issuer providing any information on abortion coverage in their plans' SBCs.

Documents available on Alaska's marketplace demonstrate how inconsistent and unclear plan

Information on Abortion Coverage Available to Consumers					
State	Plans with SBCs containing information about abortion coverage	Can confirm at least one plan offers abortion coverage		Can confirm at least one plan does not offer abortion coverage	
		Information from SBC	Information from other source	Information from SBC	Information from other source
Alaska	22 of 29			X	
Illinois	19 of 65			X	X
Rhode Island	9 of 12	X			
Washington	32 of 38	X		X	
Colorado	0 of 71		X		X
Connecticut	0 of 16		X		
Georgia	0 of 31				X
Nevada	0 of 39				X
Minnesota	0 of 50				
New Hampshire	0 of 10				
New Jersey	0 of 26				
West Virginia	0 of 12				

Notes: SBC = summary of benefits and coverage. Includes all plans available on the marketplace to adult consumers in each state's most populous county at the time of Guttmacher's search (January 2014).

issuers can be in providing information to consumers. According to the 2013 letter issued by OPM, two of the 36 multi-state plans offered on Alaska's marketplace cover abortion. However, Guttmacher was unable to find any documents specific to those two plans that make this coverage apparent to the consumer; abortion is not listed as a covered service in either plan's SBC, nor are more detailed documents available through the marketplace. However, the other multi-state plans offered in Alaska's most populous county do list abortion as an excluded service in their SBCs.

By contrast, in states where available plan documents, especially SBCs, or the marketplace itself make information on abortion coverage readily available, it takes as few as one or two mouse clicks to understand whether and to what extent abortion is covered. For example, in Washington, five of seven issuers list abortion in all of their SBCs—and all five offer plans that cover abortion. Notably, Washington is the one state to date where bills that would require marketplace plans (except multi-state plans) to cover abortion have gained real traction, though have yet to pass the state legislature.⁵

The way in which online marketplaces are structured can also help provide clarity to consumers. For example, although abortion coverage is not made clear in any Colorado issuers' SBCs, the state-based marketplace does feature an online tool that enables consumers to compare plans based on their coverage of abortion, among other health services. Colorado is currently the only state among the 12 Guttmacher explored that seems to have this capability, though its utility is somewhat limited: The option to compare plans based on abortion coverage only appears if a consumer selects a plan that covers abortion. If one happens to compare three plans, none of which cover abortion, then abortion coverage does not pop up as a comparable plan characteristic.

Although both the availability of abortion coverage and consistency in coverage disclosures vary among states, both factors seem driven in part by which issuers are participating in a given state's marketplace, because some issuers' plans ap-

pear more transparent than others. For instance, across multiple states, all of the plans offered by Humana that Guttmacher examined were consistent on two counts: First, they do not cover abortion except in cases of rape, incest or life endangerment. Second, while this information is not evident in their SBCs, it is in Humana's more detailed plan documents, which are also reliably available online.

On the other hand, whether abortion is covered in plans offered by various Blue Cross Blue Shield (BCBS) issuers is consistently difficult to discern—if it is possible at all. BCBS plans commonly do not mention abortion in their SBCs, except in Washington, Rhode Island and for the multi-state plans offered by BCBS in Alaska that do not cover abortion. Moreover, links on the marketplaces that suggest consumers will be connected to BCBS plan documents detailing covered and excluded services instead almost always take a consumer to marketing materials or generic BCBS Web sites. The consistent lack of clarity on the part of BCBS affiliates is a particular problem because, in some states, an affiliate is the only issuer participating in the marketplace.

States Restricting Marketplace Plans' Coverage of Abortion

Notably, 22 of the 24 states that have restricted abortion coverage in their marketplaces have also relied on the federal government to facilitate their marketplaces.⁶ All are accessed through the federally administered Web site HealthCare.gov, and so have the same online appearance to consumers. A section called "Rights, Protections, and the Law" on HealthCare.gov—a seemingly natural fit for information on abortion coverage—addresses topics such as mental health and substance abuse services, contraceptive coverage and breast-feeding; however, it does not include information to identify the 22 states operating marketplaces through this portal that have made obtaining abortion coverage impossible, nor does such notice seem to be accessible anywhere else on the site.

Kentucky and Idaho are the only two states restricting abortion coverage that are implementing their own marketplaces, and so are able to de-

sign the appearance of and information available on their Web sites. Guttmacher staff could find no general notice to consumers on either site that coverage of abortion is prohibited and, therefore, that such coverage is unavailable.

In addition to the marketplace Web site searches described above, Guttmacher specifically examined at least one plan from every issuer in Utah being offered through the state's marketplace. Among states banning abortion coverage, Utah has the broadest exceptions, including cases of fetal impairment and severe risk to a woman's health, in addition to cases of rape, incest and life endangerment. It appears that only one issuer (SelectHealth) may be taking advantage of these exceptions and extending its coverage to all of these circumstances, but that is not clear: Its SBC lists abortion as an excluded service "except in limited circumstances." Otherwise, abortion is simply not a health service for which coverage information is readily available.

Finally, in eight of the 24 restrictive states, additional abortion coverage is legally permitted through the purchase of a separate plan "rider" and payment of an additional premium.¹ However, the extent to which issuers will offer such riders, and consumers would actually purchase them, remains entirely unclear. In Michigan, the most recent state to enact such a policy, it has been reported that no issuers plan to offer these riders to individual consumers in the state's marketplace (although seven plan to offer them as part of employer-based plans).⁷

Achieving Informed Consumer Choice

The statutory requirements under the ACA pertaining specifically to abortion coverage disclosure are unbalanced: Plans covering abortion beyond cases of rape, incest and life endangerment are explicitly required to disclose this information to enrollees "only as part of the summary of benefits and coverage explanation, at the time of enrollment." The ACA itself does not make such specific disclosure requirements of plans that exclude or severely limit abortion coverage, although it does more generally require plans to disclose their major coverage exclusions.

The guidance offered so far by DHHS to plan issuers has been unclear with regard to how issuers should carry out the ACA's abortion coverage disclosure requirement. Indeed, a February 2012 instruction guide issued by the administration to plan issuers effectively does not allow for a plan to provide information about its abortion coverage, or lack thereof, anywhere within its SBC.⁸ It would appear, however, that the administration has the latitude to remedy this problem in a relatively simple way that would benefit all consumers.

The ACA requires every plan offered through a state's marketplace to provide an SBC to all consumers and enrollees. The ACA further mandates that each SBC include a table of common medical events, alongside coverage explanations of typical health services related to these medical events. For example, common medical events on DHHS's template for SBCs include "if you have outpatient surgery" and "if you have mental health, behavioral health, or substance abuse needs" (see image, page 20). The ACA and its implementing regulations require this table to include information on out-of-pocket costs and on limitations of and exceptions to coverage for each of the 10 essential health benefits categories defined by the ACA, and DHHS is authorized to identify additional services that must be included.

Thus, whether by updating the 2012 instructions to health plan issuers or publishing additional specific guidance, the Obama administration has the ability to require that abortion be among the health services for which coverage and exclusion details are clearly listed within each SBC. Specifically, "if you need an abortion" should be an added row in the table of common medical events and coverage descriptions, after the "if you are pregnant" listing. As for specific services someone may receive if in need of an abortion, coverage details of both surgical and medication abortion care could be included. Furthermore, the table of common medical events contains a "limitations and exceptions" column, where plans that exclude abortion would be expected to denote this exclusion and could make clear whether exceptions are made in limited cases such as rape, incest or life endangerment. (Per the current in-

structions to issuers for completing SBCs, coverage exclusions for these common medical events should also be listed in a box titled “Services Your Plan Does Not Cover,” located just after the common medical services table.)

Abortion is notable as an inclusion or exclusion of a plan’s coverage and, for myriad reasons, would be most appropriately placed among other common medical events within the SBC. First, abortion is a service that more than one million U.S. women need every year.⁹ Further, it epitomizes the type of service that insurance was originally designed to cover—i.e., something that cannot be planned for, given that no one plans to have an unplanned pregnancy or a wanted pregnancy that poses severe health risks. Moreover, numerous private insurance plans have long covered abortion as part of their standard benefit packages.¹⁰ And because of the contentious politics and misinformation surrounding abortion coverage under the ACA, consumers are understandably mindful of—and often confused about—whether abortion coverage is legal in their state, not to mention whether it is available in a given plan.

Providing consumers such detailed coverage explanations of abortion care in SBCs would

not negate the need for the federal and state governments to ensure all plans’ detailed coverage explanations are also accessible through the marketplaces. Such documents can go into detail beyond what SBCs are designed to provide, and abortion is only one of a multitude of health services about which consumers are seeking to make informed health coverage choices. Moreover, in states where abortion coverage is prohibited, the marketplaces themselves could and should offer notice via the Web site that consumers will not be able to obtain a plan that covers abortion. For example, for the federally facilitated marketplaces, it could be accomplished with a minor addition to the “Rights, Protections, and the Law” section of HealthCare.gov to list the states where coverage of abortion is restricted and prompt consumers to consult plans’ SBCs if they are interested in knowing whether there are any limited exceptions to a plan’s exclusion of abortion.

Abortion foes are less interested in abortion disclosure than in discouraging plans from covering abortion care and consumers from buying plans that do. Antiabortion members of Congress made clear their true objectives by pairing their disclosure bill with a bill that could effectively ban

HEALTH PLAN COVERAGE INFORMATION

Summary of Benefits and Coverage: What this Plan Covers & What it Costs		Coverage Period: [See Instructions] Coverage for: _____ Plan Type: _____		
Common Medical Event	Services You May Need	Your Cost If You Use an In-network Provider	Your Cost If You Use an Out-of-network Provider	Limitations & Exceptions
If you need immediate medical attention	Emergency room services			
	Emergency medical transportation			
	Urgent care			
If you have a hospital stay	Facility fee (e.g., hospital room)			
	Physician/surgeon fee			
If you have mental health, behavioral health, or substance abuse needs	Mental/Behavioral health outpatient services			
	Mental/Behavioral health inpatient services			
	Substance use disorder outpatient services			
	Substance use disorder inpatient services			
If you are pregnant	Prenatal and postnatal care			
	Delivery and all inpatient services			
If you need help recovering or have other special health needs	Home health care			
	Rehabilitation services			
	Habilitation services			
	Skilled nursing care			
	Durable medical equipment			
If your child needs dental or eye care	Hospice service			
	Eye exam			
	Glasses			
	Dental check-up			

On the Summary of Benefits and Coverage form, a new row for “if you need an abortion” should be added to the table of common medical events and coverage descriptions.

abortion coverage in the marketplaces altogether. Moreover, their notion of disclosure would require plans to “prominently display” information about abortion coverage in all marketing or advertising materials, which would highlight it in isolation from all other covered services. The bill also would require plans to tell consumers that obtaining insurance that covers abortion would mean they would have to pay a surcharge on their premium, which is plainly not true. Rather, the ACA requires issuers to set up segregated accounts if their plan covers abortion—a requirement that, ironically, was included to please anti-abortion lawmakers. Accordingly, this legislation is dead on arrival in the Senate and has drawn a presidential veto threat.

The reality is that abortion is basic health care and insurers have every reason to cover it to the full extent of the law. Consumers should have access to information about whether and to what extent that coverage is available to them in a way that appropriately includes abortion among other commonly needed health services and that is clear, accurate and easily accessible before enrollment. The Obama administration has the authority to help make such important information clear to consumers as they choose which health plan to buy—a goal that should transcend politics.

www.guttmacher.org

REFERENCES

1. Guttmacher Institute, Restricting insurance coverage of abortion, *State Policies in Brief (as of March 1, 2014)*, 2014, <http://www.guttmacher.org/statecenter/spibs/spib_RICA.pdf>, accessed Mar. 5, 2014.
2. Office of Personnel Management, Multi-State Plan Program and the health insurance marketplace: OPM Multi-State Plan Program fact sheet, no date, <<http://www.opm.gov/healthcare-insurance/multi-state-plan-program/opm-multi-state-plan-program-fact-sheet/>>, accessed Feb. 10, 2014.
3. Adams R, The question of abortion coverage in health exchanges, *CQ Roll Call*, July 22, 2013, <http://www.rollcall.com/news/the_question_of_abortion_coverage_in_health_exchanges-226547-1.html>, accessed Feb. 10, 2014.
4. Office of Personnel Management, Letter to Rep. Chris Smith, Nov. 8, 2013, <http://chrissmith.house.gov/uploadedfiles/opm_response_to_october_16_2013_letter.pdf>, accessed Feb. 10, 2014.
5. Associated Press, Washington House passes abortion insurance bill, *Associated Press*, Feb. 5, 2014, <<http://www.columbian.com/news/2014/feb/05/washington-house-passes-abortion-insurance-bill/>>, accessed Feb. 10, 2014.
6. Kaiser Family Foundation, State decisions for creating health insurance marketplaces, 2014, 2013, <<http://kff.org/health-reform/state-indicator/health-insurance-exchanges/>>, accessed Feb. 10, 2014.
7. Ahern LK and Michigan G, Abortion rider law takes effect Thursday, *Livingston Daily*, Mar. 10, 2014, <<http://www.livingstondaily.com/article/20140310/NEWS01/303100007/Abortion-rider-law-takes-effect-Thursday>>, accessed Mar. 11, 2014.
8. Centers for Medicare & Medicaid Services, Department of Health and Human Services, What this plan covers and what it costs, 2012, <<http://www.cms.gov/CCIIO/Resources/Files/Downloads/instructions-individual-final.pdf>>, accessed Feb. 10, 2014.
9. Jones RK and Jerman J, Abortion incidence and service availability in the United States, 2011, *Perspectives on Sexual and Reproductive Health*, 2014, doi: 10.1363/46e0414, <<http://www.guttmacher.org/pubs/journals/psrh.46e0414.pdf>>, accessed Mar. 11, 2014.
10. Sonfield A et al., U.S. insurance coverage of contraceptives and the impact of contraceptive coverage mandates, 2002, *Perspectives on Sexual and Reproductive Health*, 2004, 36(2):72–79, <<http://www.guttmacher.org/pubs/journals/3607204.pdf>>, accessed Mar. 11, 2014.