December 2018 | Issue Brief

Abortion Coverage in the ACA Marketplace Plans: The Impact of Proposed Rules for Consumers, Insurers and Regulators

Alina Salganicoff and Laurie Sobel

Key Takeaways

On November 7, 2018, the Trump Administration issued new proposed regulations that would change the way Marketplace plans must bill and consumers must pay premiums for coverage in plans that include abortion services. The regulations would require:

- Issuers to send two separate monthly bills either by mail or electronically to each policyholder: one bill for the non-Hyde abortion coverage (at least $1 per member per month) and one bill for the premium for the coverage of Essential Health Benefits and all other services. Consumers would need to pay their monthly premium in two separate transactions.
- These regulations would disrupt coverage for many consumers, place additional administrative and reporting requirements on issuers, and add new oversight responsibilities for state insurance regulators.
- Ultimately, it is highly likely that fewer women would have abortion coverage, thus making it more difficult for them to afford abortion services--even in states that have not enacted abortion coverage restrictions.

Introduction

On November 7, 2018, a day after the 2018 midterm elections, the Trump Administration issued a proposed regulation to address “Exchange Program Integrity.” A major element of this proposed rule would affect insurers, consumers, and state insurance regulators in the states that either allow or require abortion coverage. The Affordable Care Act (ACA) allows states to ban plans from offering abortion as a benefit on their Qualified Health Plans (QHPs) and requires plans that cover abortion to segregate policyholder payments for abortion coverage from all other premium charges.

The Trump administration acknowledges the new proposed regulation will be confusing for consumers and burdensome to issuers, but believes it is more consistent with “congressional intent” and is a “better implementation” of the ACA’s statutory requirement for separate payments. If finalized, these proposed rules could disrupt coverage for many consumers, place administrative and reporting requirements on issuers, and add new oversight responsibilities for state insurance regulators. Furthermore, this proposed

regulation will likely result in plan decisions to eliminate abortion coverage from their policies in order to avoid additional administrative requirements, placing the costs of abortion care directly on women enrollees and potentially limiting their access to these services. These impacts are not surprising; the rule is consistent with ongoing Congressional and Trump Administration efforts to limit the number of abortions in the U.S. This brief provides an overview of current ACA-related abortion coverage policies and analyzes the potential impact of the proposed changes.

Background

The ACA requires all QHPs to provide coverage for 10 Essential Health Benefits (EHB), but prohibits abortion services from being included as an EHB. States may ban plans offered through the ACA Marketplace from covering any abortions--even if the pregnancy is a result of rape or incest or a threat to the woman's life as permitted under the Hyde Amendment. Since the ACA was implemented, 26 states have banned abortion coverage on their ACA Marketplace (**Figure 1**).

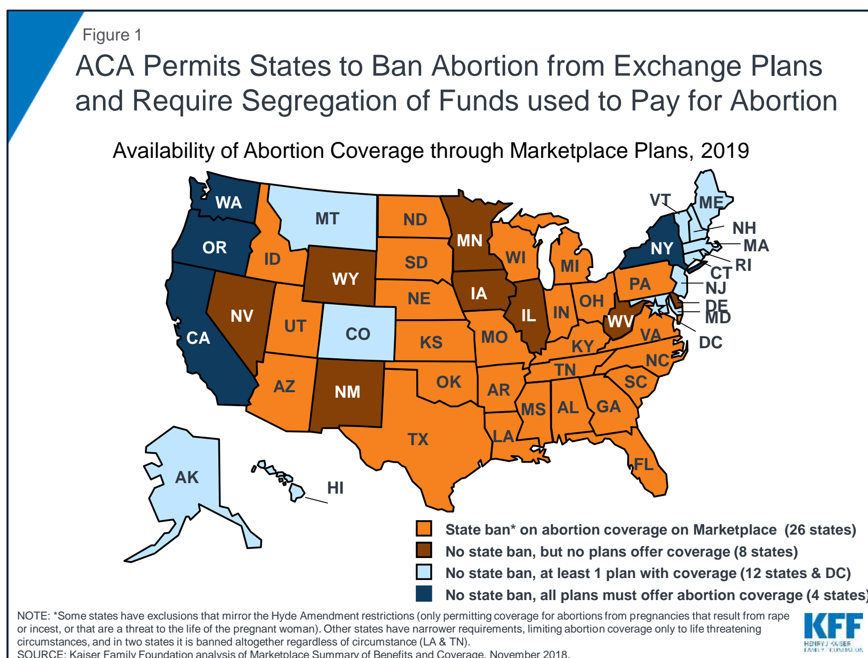


Figure 1

ACA Permits States to Ban Abortion from Exchange Plans and Require Segregation of Funds used to Pay for Abortion

NOTE: *Some states have exclusions that mirror the Hyde Amendment restrictions (only permitting coverage for abortions from pregnancies that result from rape or incest, or that are a threat to the life of the pregnant woman). Other states have narrower requirements, limiting abortion coverage only to life threatening circumstances, and in two states it is banned altogether regardless of circumstance (LA & TN).
SOURCE: Kaiser Family Foundation analysis of Marketplace Summary of Benefits and Coverage, November 2018.

The ACA and the relevant regulatory section requires plans that offer coverage for abortion beyond Hyde limitations to segregate the federal funds used to subsidize premium costs for the EHBs from the premiums costs that pay for that coverage. Plans must collect a separate payment for abortion coverage and notify consumers regarding the inclusion or exclusion of abortion in the Summary of Benefits and Coverage at enrollment. Any plan that includes coverage of abortions beyond Hyde limitations must estimate the actuarial value of such coverage by taking into account the cost of the abortion benefit, but it must be valued at least $1 per enrollee per month. This estimate cannot take into account any savings that might be achieved as a result of the abortions (such as the savings of not paying claims for prenatal care, delivery or postnatal care).

In 2015, the Obama Administration provided guidance on how this statute should be implemented, allowing options that simplified the billing and payment process for plans that include abortion coverage yet kept funds segregated. They allowed insurers to send "the enrollee a single monthly invoice or bill that separately itemizes the premium amount for non-excepted abortion service" or "sending the enrollee a

notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services and specify the charge."

In October 2017, the Trump Administration issued a bulletin reinforcing the 2015 notice. They also indicated that CMS would fully enforce the requirements related to abortion coverage in the Federally Facilitated Exchange (FFE) and, if states failed to require compliance in plans offered by the State-Based Exchanges (SBE), CMS would step in. In August 2018, 101 members of Congress signed a letter to Secretary Alex Azar stating their dissatisfaction with the Obama Administration policy, and urging the Trump Administration to issue new regulations that they believe were needed to reflect the intent of the law.

What do the new regulations propose?

On November 7, 2018, the Trump Administration issued a proposed regulation addressing exchange program integrity and proposed significant changes to how issuers must bill and consumers should pay for non-Hyde abortion coverage in Marketplace plans that include abortion coverage. HHS takes the position that the current regulations do "not adequately reflect…Congressional intent that the QHP issuer bill separately for two distinct (that is "separate") payments as required by Section 1303 of the PPACA."

Under the proposed rule:

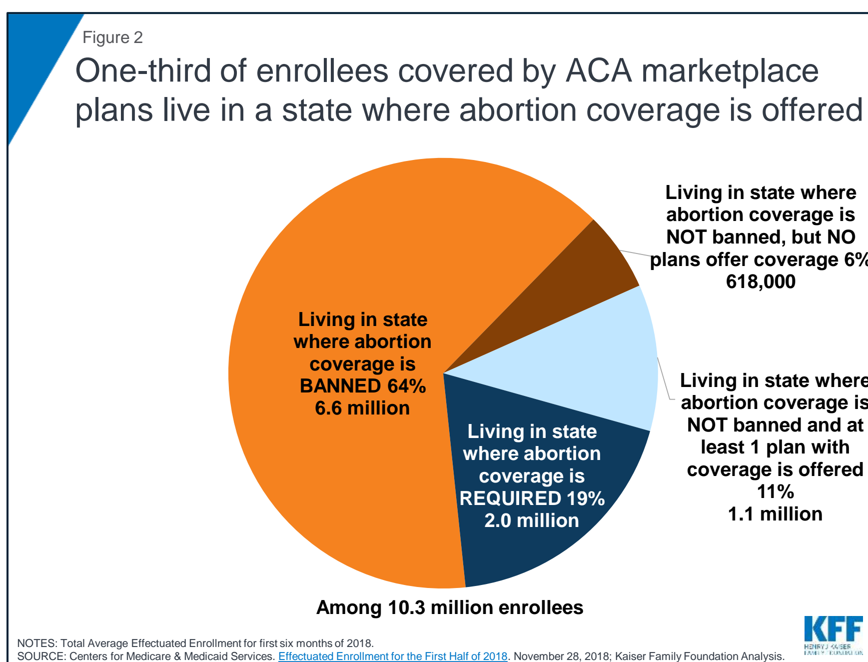
- Issuers would need to send two separate monthly bills either by mail or electronically to each policyholder: one bill would be for the non-Hyde abortion coverage (at least $1 per member per month) and one bill would be the premium for everything else excluding the non-Hyde abortion coverage
- Consumers would be instructed by the issuer to pay in two separate transactions. If the consumer is paying by mail, the consumer must be told to send two checks in separate envelopes or make two electronic payments in the cases where the policyholder pays through electronic funds transfer.

How could the new proposed regulations affect enrollees and insurers?

Consumers enrolled in 24 States and DC will potentially be affected, but the impact would be greatest for the enrollees who live in the four states that mandate abortion coverage and in the additional 12 states that offer plans with coverage. HHS estimates that 1.3 million enrollees to Marketplace plans will be impacted by the regulation. There are, however, 3.1 million enrolled who will be potentially impacted **(Table 1)**, 2.0 million enrollees alone in states (CA, NY, OR, WA) which require all plans to cover abortion services **(Figure 2)**. There are an additional 1.1 million enrollees in 12 other states and DC that include abortion coverage in their Marketplace plans. HHS estimates that consumer costs will total $30.8 million, but do no factor in the costs to consumers of a separate mailing nor potential loss of coverage.

Table 1: State Abortion Coverage Policies and Enrollment		
State Abortion Coverage Rules for QHPs	**Number of States**	**Number of Enrollees**
Mandatory in all plans	4	2.0 million
No ban, at least one plan offers abortion coverage	12 and DC	1.1 million
No ban. no plans offer abortion coverage	8	618,000
Abortion coverage is banned	26	6.8 million
For details by state, see Appendix.		

Some consumers will likely be confused by the requirement to receive two invoices for the same insurance policy every month, and to pay two separate payments each month. The proposed regulation acknowledges that sending policyholders two separate bills would cause confusion because they might not understand why they are getting two different bills and why they need to make these payments separately. However, HHS has said that asking consumers to send separate payments will "help reduce consumer confusion about receiving two separate bills in a single envelope."



Men and women who are beyond their reproductive years are most likely to be confused about the separate bill for abortion coverage, a health service they do not need. They may think the abortion coverage is a rider and not part of their plan, and decide not to pay the $1 without recognizing that they are making incomplete payments on their full insurance. Abortion coverage is not a rider. In fact, the CMS prohibits plans from selling any coverage riders on the Marketplace and a recent review of insurance plans finds there are no abortion riders available to individuals outside the Marketplace.

Some consumers may fail to pay their premium in full and have their coverage terminated for delinquent payment. The proposed rule states that if a subscriber fails to pay in separate envelopes or as separate transactions but pays the total amount in one payment, then the issuer is not permitted to cancel the coverage. It does not speak, however, to what issuers should do if the payment is not made in

full—that is, if the policyholder pays for the EHB share of the premium but does not make the abortion payment.

When an issuer may begin the termination process for delinquent payments varies. Insurers could terminate coverage if QHP premium payments are not made in full following a grace period. Some insurers may have opted to set a premium threshold, which is a dollar amount or a percentage of the premium that the policyholder may owe before the process to terminate the policy for nonpayment is initiated. The amount the policyholder owes for non-payment is cumulative and over time, even a premium threshold will not be protective for policyholders who may be confused about or unaware they have not paid their premiums in full.

What happens when individuals fail to pay some or all of their premiums?

- Consumers receiving a federal Alternative Premium Tax Credit (APTC) are eligible for a three months grace period before their coverage is terminated for non-payment or incomplete payment of premiums. For others, it is state law that determines the length of the grace period.
- For individuals receiving APTC, the issuer is required to pay for all claims for covered services provided to the policyholder in the first month of the grace period. Issuers may suspend payments for claims for services rendered during the second and third months of the grace period for consumers receiving APTC.
- Issuers may terminate coverage if a consumer either fails to pay the outstanding premium or an amount that satisfies any applicable premium threshold, before the end of the grace period. The issuer will deny any claims that were suspended during the second and third months of the three-month grace period and the consumer is responsible for covering those costs.

Source: CMS 2018, Health Plan Coverage Effectuation: Payments, Grace Periods, and Terminations.

Some issuers might eliminate abortion coverage from their plans altogether because of the additional cost and administrative requirements. As a result, women enrollees will bear the cost of abortion services, even in states that permit Marketplace plans to offer abortion coverage. To implement this process, issuers will need to establish a protocol for sending two separate bills (including printing the letter and an additional envelope) and will also need to pay for postage for an extra monthly mailing (bulk mail is $0.383/mailing). HHS has calculated that this would affect 1,111 plans in 17 states and estimated costs per issuer ($63,120) totaling an estimated $807,385.92 for all plans. These estimates do not include the cost of printing and mailing the extra bills as well as additional staffing that will be needed to answer enrollee questions and address delinquent payments. Insurers could experience declining enrollment when enrollees default on coverage payments, even when they have the resources to cover the costs.

As a result of state decisions to ban abortion coverage and issuers' choices to exclude abortion coverage where there is no state ban, only one-third of enrollees live in a state where abortion coverage is offered in the ACA Marketplace (**Figure 2**). At the time of the ACA debate about abortion coverage, some experts predicted that imposing these kinds of requirements on plans that cover abortion services would have a chilling effect on abortion coverage. This prediction has been borne out. Eight states have no legal ban, yet no plans are available that have abortion coverage. The exact reasons why the plans do not offer

abortion coverage is not clear. It is likely that the proposed payment process will make additional insurers consider dropping abortion coverage to simplify their billing practices and avoid the need for additional paperwork, staffing, reporting, and oversight. Abortion coverage is particularly at risk in the 12 states currently offering plans that cover abortion, but that do not have a mandate.

Looking Forward

This rule is consistent with the Trump Administration's stated priority to limit abortion access and other regulatory actions that could lead to the erosion of ACA related improvements for women's health services. The proposed regulations for abortion coverage would likely cause consumer confusion, lead to coverage terminations, and prompt more insurers to eliminate abortion coverage. If finalized, these regulations could further erode the availability of coverage for a health service that many women may need and use.

Appendix: State Policy on Abortion Coverage in Marketplace Plans			
	State QHP Abortion Coverage Policy	Availability of Abortion Coverage on Marketplace	Effectuated Enrollment in Marketplace
United States	**4 states required; 20 states & DC Not Banned; 26 Banned**	**16 states & DC - Yes; 34 states - No**	**10,279,194**
California	Required	Yes	1,401,520
New York	Required	Yes	223,045
Oregon	Required	Yes	134,473
Washington	Required	Yes	217,271
Alaska	Not Banned	Yes	16,150
Colorado	Not Banned	Yes	140,356
Connecticut	Not Banned	Yes	104,140
DC	Not Banned	Yes	17,620
Hawaii	Not Banned	Yes	16,848
Maine	Not Banned	Yes	67,169
Maryland	Not Banned	Yes	134,473
Massachusetts	Not Banned	Yes	241,087
Montana	Not Banned	Yes	42,807
New Hampshire	Not Banned	Yes	40,819
New Jersey	Not Banned	Yes	233,711
Rhode Island	Not Banned	Yes	31,885
Vermont	Not Banned	Yes	27,354
Delaware	Not Banned	No	20,134
Illinois	Not Banned	No	290,800
Iowa	Not Banned	No	42,693
Minnesota	Not Banned	No	100,217
Nevada	Not Banned	No	74,927
New Mexico	Not Banned	No	43,082
West Virginia	Not Banned	No	23,130
Wyoming	Not Banned	No	22,564
Alabama	Banned	No	151,573
Arizona	Banned	No	145,474
Arkansas	Banned	No	58,180
Florida	Banned	No	1,529,385
Georgia	Banned	No	388,572
Idaho	Banned	No	87,254
Indiana	Banned	No	141,003
Kansas	Banned	No	84,229
Kentucky	Banned	No	77,419
Louisiana	Banned	No	88,396
Michigan	Banned	No	256,311
Mississippi	Banned	No	69,617
Missouri	Banned	No	208,395
Nebraska	Banned	No	79,267
North Carolina	Banned	No	453,499
North Dakota	Banned	No	20,343
Ohio	Banned	No	196,640
Oklahoma	Banned	No	127,598
Pennsylvania	Banned	No	347,024
South Carolina	Banned	No	184,980
South Dakota	Banned	No	27,279

Appendix: State Policy on Abortion Coverage in Marketplace Plans			
	State QHP Abortion Coverage Policy	Availability of Abortion Coverage on Marketplace	Effectuated Enrollment in Marketplace
United States	**4 states required; 20 states & DC Not Banned; 26 Banned**	**16 states & DC - Yes; 34 states - No**	**10,279,194**
Tennessee	Banned	No	200,918
Texas	Banned	No	946,843
Utah	Banned	No	173,419
Virginia	Banned	No	333,611
Wisconsin	Banned	No	193,691

SOURCE: KFF. State Restriction of Health Insurance Coverage of Abortion; KFF Analysis of 2019 Marketplace Summary of Benefits and Coverage, November 2018. Centers for Medicare & Medicaid Services. Effectuated Enrollment for the First Half of 2018. November 28, 2018