

Abortion Services and Montana Medicaid

Abortion services in Montana are regulated under [Montana Code Annotated Title 50. Health and Safety Chapter 20. Abortion.](#) The MCAs within this Title and Chapter provide requirements for medical practitioners regarding reporting and informed consent. The Act directs the Department's Office of Vital Records to keep and maintain certain records concerning abortions performed in the State of Montana. The Act does not refer to the Medicaid agency, nor limit its application to taxpayer-funded abortions.

The federal Hyde Amendment, an annual appropriations rider on the federal appropriations act which funds the U.S. Department of Health and Human Services, imposes limits on federal funding of abortion services, including the use of Medicaid funds. (*See also* 42 CFR Pt. 441, Subpart E). Additionally, the Centers for Medicare & Medicaid Services has issued State Medicaid Manual as guidance to states when considering payment and funding of abortion services.

42 CFR Pt 441 (Subpart E – Abortions)

This section of CFR provides requirements to states to claim federal financial participation for abortion services. The requirements of these CFR sections and the language of the Hyde Amendment guide states on when federal funds can be utilized.

Hyde Amendment

The current version of the Hyde Amendment provides

SEC. 506. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term "health benefits coverage" means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 507. (a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds). . . .

Consolidated Appropriations Act, 2021, Pub. L. 116-260, Div. H, Sec. 506 (Dec. 27, 2020). Thus, only abortion services provided because of rape or incest or when the life of the mother is endangered by the pregnancy are eligible for federal funds. Abortions for any other purpose are not eligible for federal financial participation.

[CMS State Medicaid Manual](#)

This document is created and published by CMS and contains guidance to states on federal funding of abortion services. The document outlines specific services and situations in which FFP is available and when it is not.

[Montana Medicaid](#)

Montana Medicaid provides guidance to providers on abortion services through the Administrative Rules of Montana and the Physician Services Manual. Following the decision in *Jeannette R. v. Ellery*, Cause No. BDV-94-811, 1995 Mont. Dist. LEXIS 795 (1st Jud. Dist. Court, May 22, 1995), the Department has funded abortion services where a physician has determined the procedure to be medically necessary.

[ARM 37.86.104\(8\) through \(10\), \(12\) and Physician-Related Services Manual](#)

Montana Medicaid provides guidance to providers on abortion services through the Administrative Rules of Montana and the [Physician-Related Services Manual](#). [Administrative Rule of Montana 37.86.104](#) provides requirements on abortion services eligible for FFP and incorporates by reference the *Physician-Related Services Manual*, which addresses both abortion services eligible for FFP as well as abortion services which are funded with state-only Medicaid funds (medically necessary abortions where the life of the mother is not endangered).

The below guidance for providers on abortion services can be found in the *Physician-Related Services Manual*.

Abortions are covered when one of the following conditions is met:

- The member's life would be endangered if the fetus is carried to term.
- The pregnancy is the result of rape or incest.
- The abortion is determined by the attending physician to be medically necessary, even if the member's life is not endangered if the fetus is carried to term.

When using mifepristone (Mifeprex or RU 486) to terminate a pregnancy, it must be administered within 49 days from the beginning of the last menstrual period by or under the supervision of a physician who:

- Can assess the duration of a pregnancy.
- Can diagnose ectopic pregnancies.
- Can provide surgical intervention in cases of incomplete abortion or severe bleeding or can provide such care through other qualified physicians.
- Can assure access to medical facilities equipped to provide blood transfusion and resuscitation.
- Has read, understood, and explained to the member the prescribing information for mifepristone.

[Medicaid Healthcare Programs Physician Certification for Abortion Services \(MA-37\)](#)

A completed [Medicaid Healthcare Programs Physician Certification for Abortion Services \(MA-37\)](#) form must be submitted with every abortion claim or payment will be denied. This form is the only form

Medicaid accepts for abortion services. On the form providers must identify the reason for the abortion, specifically if the abortion services provided because of rape or incest, for the life of the mother, or for another medically necessary reason. The response to this form allows Montana Medicaid to assign the correct fund code. When the form indicates rape or incest, or life of the mother, the abortion service is eligible for FFP. If the abortion is for any other medically necessary reason, the abortion service is funded exclusively by the state general fund.

Guidance to Providers on Exception Applicability and Procedure Types

For purposes of abortion services and the Montana Medicaid program, there is an assumption healthcare providers practice within the scope of their license and meet all requirements outlined in [Montana Code Annotated Title 50. Health and Safety Chapter 20. Abortion](#). Providers are required to bill the most appropriate procedure code for the service provided and are required to certify medical necessity through the MA-37 form. Montana Medicaid defines medically necessary services within [ARM 37.82.102\(18\)](#). A medically necessary service is “a service or item reimbursable under the Montana Medicaid program, as provided in these rules:

- (a) Which is reasonably calculated to prevent, diagnosis, correct, cure, alleviate, or prevent worsening of conditions in a patient which:
 - a. Endanger life;
 - b. Cause suffering or pain
 - c. Result in illness or infirmity
 - d. Threaten to cause or aggravate a handicap; or
 - e. Cause physical deformity or malfunction.
- (b) A service or item is not medically necessary if there is another service or item for the [member] that is equally safe and effective and substantially less costly including, when appropriate, no treatment at all.
- (c) Experimental services are procedures or services which are generally regarded by the medical profession as unacceptable treatment are not medically necessary for the purposes of the Montana Medicaid program.
 - a. Experimental services are procedures and items, including prescribed drugs, considered experimental or investigational by the U.S. Department of Health and Human Services, including the Medicare program, or the department's designated review organization or procedures and items approved by the U.S. Department of Health and Human Services for use only in controlled studies to determine the effectiveness of such services.”

Contracts

Abortion services are not consistently reviewed by the Department’s utilization review vendor, Mountain Pacific Quality Health. Montana Medicaid staff does not request MPQH to review the medical necessity of an abortion service, though staff at times requests MPQH to confirm if a claim is for an abortion or another purpose. If MPQH determines the services to be an abortion, the claim would be denied for a missing abortion form.

Conduent, Montana Medicaid’s fiscal agent, is responsible for reviewing claims that are suspended as abortions that may not be eligible for Medicaid reimbursement (“suspect abortions”). Conduent will determine if the Medicaid Healthcare Programs Physician Certification for Abortion Services (MA-37) is attached and completed properly when processing the claim. If a form is completed, Conduent forces the suspect abortion edits and applies the appropriate fund code to the claim. A fund code of “M” is assigned

when the MA-37 form indicates the abortion was for the purposes of the mother’s life or because of rape or incest. If the form indicates the abortion is medically necessary, a fund code of “S” is assigned. Fund codes are utilized to identify the FFP available for a claim; a fund code of “M” signifies FFP can be claimed. If the claim has a fund code “S”, the entire claim is paid with state general fund dollars. If a properly completed MA-37 form is not attached, the claim is denied.

Utilization Summary

Recent Utilization Data for SFY 2020-21 is as follows:

Utilization Data Summary:

Procedure Reason	State Fiscal Year	
	2020	2021
Member's Life	1	-
Rape and Incest	-	-
Medically Necessary	665	752
Total Procedures	666	752
Total Cost	\$246,836	\$256,440
Total Providers	3	3
Total Denials	41	34
*Notes: Dataset was determined by MA-37 form database. Provider details were pulled for the members with a valid form.		

Historical utilization data is as follows:

- Over the last 10 years Medicaid has paid for approximately 5,614 abortion procedures.
- Total cost of services over the last 10 years is approximately \$2,414,370.
- Over the last 10 years, total procedures billed is approximately 6,140 and total procedures denied is 526.

Provider Distribution

Medicaid funded abortions were allocated across 3 providers. These are facility-based providers, not individual providers.

	State Fiscal Year	
	2020	2021
Provider 1	36.4%	31.5%
Provider 2	48.4%	50.3%
Provider 3	15.2%	18.2%