



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

BULLETIN 2022-7

TO: All Disability Insurers Providing Health Insurance Coverage in California and Interested Parties

FROM: Insurance Commissioner Ricardo Lara

DATE: July 21, 2022

RE: Coverage for Abortion and Abortion-Related Health Care Services

The purpose of this Bulletin is to remind insurers of their current obligations to cover abortion and abortion-related services, and to alert insurers to recent changes in the law. In the wake of the recent U.S. Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*,¹ I want all to know that I will aggressively enforce California insurance laws protecting reproductive freedom. Defending all people's right to healthcare, including a pregnant person's right to reproductive freedom, is a top priority for me and the California Department of Insurance. I want to ensure that both consumers and insurers have accurate information relating to abortion coverage and access in California, that consumers know that California law continues to protect their access to reproductive health services, and that the Department of Insurance is there to protect consumers' access to reproductive health services.

Abortion coverage is a basic health care service

Pursuant to California Insurance Code sections 10112.27 (individual and small group market) and 10112.281 (large group market), all non-grandfathered individual and small group health insurance policies and all large group health insurance policies issued, amended, or renewed in California must cover medically necessary basic health care services.² Basic health care services include medically necessary outpatient physician services, diagnostic laboratory services, and hospital inpatient services and ambulatory care services.³

¹ (Jun 24, 2022) No. 19-1392 __U.S. __.

² The California essential health benefits package found at Insurance Code § 10112.27 also applies to student blanket health insurance policies pursuant to 45 CFR § 147.145.

³ Cal. Ins. Code § 10112.281(b).

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After the passage of the Affordable Care Act, medically necessary basic health care services⁴ were included in the Insurance Code; they are required to be included in all non-grandfathered individual and small group health insurance policies as essential health benefits.⁵ As of July 1, 2022, the requirement to cover medically necessary basic health care services was expanded to all large group health insurance policies issued, amended, or renewed in California.

California courts have affirmed that abortion and abortion-related services are basic health care services and, as such, must be included as covered benefits in a health insurance policy.⁶ Specifically, the California Third District Court of Appeal held that because California law guarantees "the right to choose whether to bear a child or obtain an abortion, the only legally tenable interpretation of the law is that abortions are basic health care services" that health insurance policies are required to cover.⁷

The Court also addressed the language used to describe abortions, including 'voluntary' or 'elective' abortions as distinct from medically necessary or therapeutic abortions. The Court stated that, "the correct question is not whether an abortion is a medically necessary service, but what service is medically necessary to treat the condition of pregnancy. The answer is that an abortion is one of two possible medically necessary procedures when the patient is pregnant."⁸ California law includes the right to choose whether to bear a child or obtain an abortion, and the state may not interfere with that choice.⁹ Therefore, an abortion, regardless of the reason, is a medically necessary treatment for pregnancy.

All insurers who issue or administer individual or group health insurance policies, except for specialized health insurance policies, should examine all policy forms, clinical criteria, and utilization management and review policies and procedures, among any other documents, to ensure that abortion and abortion-related services are included as covered benefits. Any references to 'voluntary' or 'elective' abortion must be removed. Abortion under this benefit includes surgical abortion, as well as medication abortion when dispensed by a certified prescriber in person or via mail-order delivery.¹⁰

Medication abortion dispensed by pharmacies

Insurance Code section 10123.201(a) provides that if a health insurance policy covers outpatient prescription drugs, then it must cover all medically necessary prescription

⁴ The Knox-Keene Health Care Service Plan Act of 1975 has long required health care service plans to cover medically necessary basic health care services. See Cal. Health & Safety Code §§ 1345, 1367(i).

⁵ Cal. Ins. Code § 10112.27(a)(2)(A)(i) (incorporating by reference medically necessary basic health care services as defined in Cal. Health & Safety Code § 1345(b), and 28 CCR § 1300.67).

⁶ *Missionary Guadalupanas of the Holy Spirit v. Rouillard* (2019) 38 Cal. App. 5th 421.

⁷ *Id.* at 436.

⁸ *Id.* at 435.

⁹ Cal. Health & Safety Code § 123462.

¹⁰ *Questions and Answers on Mifeprex*, U.S. Food & Drug Administration, see question 6 (Dec. 16, 2021) <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifeprex>.

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drugs. By the beginning of 2023, pharmacies should be certified to dispense medication abortion, which would fall under the outpatient prescription drug benefit. Once pharmacies are certified to dispense medication abortion, abortifacient drugs dispensed by a pharmacy must be covered under the policy's prescription drug benefit, in addition to the medical benefit if the policy covers basic health care services. All insurers whose policies include outpatient prescription drug coverage, including grandfathered plans, must list mifepristone on their prescription drug formularies.

Insurers should monitor the U.S. Food & Drug Administration's Mifepristone REMS Program closely for modifications and ensure that network pharmacies are preparing to dispense mifepristone at retail and through the mail consistent with state and federal law.

Cost sharing and treatment limitations for abortion services

Beginning January 1, 2023, section 10123.1961, added to the Insurance Code by [Senate Bill 245](#) (Gonzalez, Chapter 11, Statutes of 2022), will limit the imposition of any cost-sharing requirement on any abortion or abortion-related service covered by a health insurer, including both medication and surgical abortion. Section 10123.1961 will also prohibit insurers from imposing any utilization management or review on coverage for outpatient abortion services, including medication abortion.

Although section 10123.1961 does not become effective until January 1, 2023, I encourage all insurers who issue or administer health insurance policies, except for specialized health insurance policies, to come into compliance with this new statute before that date. I also encourage insurers to start making any necessary policy form filings with my Department to speed implementation. The Department will rigorously enforce this statute immediately upon its effective date, which is upon issuance or renewal on or after January 1, 2023.

If you have questions regarding this Bulletin, please contact:

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