
March 31, 2023

FAQs on Coverage of Abortion for which Public Funding is Prohibited by Qualified Health Plan (QHP) Issuers in the Individual Market

Q1. Can QHP issuers offering coverage in the individual market through the Exchanges provide abortion coverage after the *Dobbs v. Jackson Women’s Health Organization* case?¹

A1. Yes, if doing so is consistent with state law. In some states, by function of state law, QHP issuers offering coverage in the individual market through the Exchanges are required or allowed to cover abortion, either in all or certain circumstances.² QHP issuers are required to segregate funds used for abortion services for which federal funding is prohibited pursuant to Section 1303 of the Affordable Care Act (ACA)³ and 45 CFR 156.280. Abortion services for which federal funding is prohibited are defined as abortions for which the use of federal funds appropriated for the Department of Health and Human Services is not permitted, based on the law as in effect as of the date that is six months before the beginning of the plan year involved.⁴

Q2. Have any of the federal regulations that apply to QHP issuers offering abortion coverage through the Exchanges changed after the *Dobbs v. Jackson Women’s Health Organization* case?

A2. No, issuers in the individual market offering one or more QHPs that include abortion coverage for which public funding is prohibited must continue to adhere to the accounting and administrative requirements for segregation of funds used for abortion services pursuant to Section 1303 of the ACA and 45 CFR 156.280, and issuers may continue to cover such abortions without federal funding if doing so is consistent with state law.

Q3. May QHP issuers offering coverage in the individual market through the Exchanges provide abortion coverage without cost sharing?

A3. Yes, issuers may offer coverage of abortion services without cost sharing through QHPs sold on the Exchanges where consistent with state law.⁵ Issuers are required to provide such coverage in some states. Under Section 1303 of the ACA, QHP issuers in the individual market that offer coverage of abortion services for which public funding is prohibited must segregate a minimum \$1 per member, per month (PMPM) premium into a separate account that consists solely of such payments and that is used exclusively to pay for abortion services for which public funding is

¹ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022).

² Affordable Care Act (ACA) Section 1303(a)(2), 42 U.S.C. § 18023(a)(2).

³ ACA Section 1303(b)(2)(C), 42 U.S.C. § 18023(b)(2)(C).

⁴ ACA Section 1303(b)(1)(B)(i), 42 U.S.C. § 18023(b)(1)(B)(i).

⁵ ACA Section 1303(a)(2), 42 U.S.C. § 18023(a)(2).

prohibited. Because the actual PMPM cost to issuers for abortion services for which public funding is prohibited is often less than the mandatory \$1 PMPM charge, some QHP issuers may have found that the balances of their segregated accounts have increased over time. QHP issuers may use those funds to provide more comprehensive coverage of abortions for which public funding is prohibited and may take steps to get their costs of providing such abortions closer to the \$1 statutory minimum to avoid excess funds increasing in their segregated accounts in the future. For example, issuers may provide coverage of abortions for which public funding is prohibited without cost sharing and/or cover such abortions as a pre-deductible benefit for current and future enrollees.⁶

⁶ Issuers are reminded that a QHP that covers a service without cost sharing or with cost sharing less than the deductible or that otherwise characterizes that benefit as pre-deductible, other than as permitted under section 223(c)(2) of the Internal Revenue Code (Code), cannot be a high deductible health plan under section 223 of the Code; thus, an enrollee in such a QHP would not be eligible to contribute to a health savings account.