



441 G St. N.W.  
Washington, DC 20548

September 15, 2014

Congressional Requesters

**Health Insurance Exchanges: Coverage of Non-excepted Abortion Services by Qualified Health Plans**

This Correspondence Is Temporarily Restricted  
Pending Official Public Release.

The Patient Protection and Affordable Care Act (PPACA) requires the establishment in all states of health insurance exchanges—marketplaces where eligible individuals may compare and select among insurance plans offered by participating private issuers of health coverage.<sup>1</sup> PPACA requires the insurance plans offered under an exchange, known as qualified health plans (QHP), to provide a package of essential health benefits—including coverage for specific service categories, such as ambulatory care, prescription drugs, and hospitalization. In addition to these categories states may require or restrict coverage of other benefits by QHPs.<sup>2</sup> Consistent with federal and state law, QHPs may cover other benefits, such as abortion services.<sup>3</sup>

PPACA prohibits the use of federal funds made available to offset the cost of QHP coverage—that is, income-based tax credits and subsidies—to pay for “non-excepted abortion services,” which, based on the law applicable to the 2014 benefit year, are abortion services performed *except* where the pregnancy is the result of an act of rape or incest, or the life of the pregnant

<sup>1</sup>Pub. L. No. 111-148, §§ 1311(b), 1321(c), 124 Stat. 119, 173, 186 (Mar. 23, 2010) (hereafter, “PPACA”), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010) (hereafter, “HCERA”). In this report, references to PPACA include any amendments made by HCERA.

PPACA directed states to establish state-based exchanges by January 1, 2014. In states electing not to establish and operate such an exchange, PPACA requires the federal government to establish and operate an exchange in the state, referred to as the federally facilitated exchange. PPACA also requires the creation of similar exchanges, called Small Business Health Options Program (SHOP) exchanges, where small employers can shop for and purchase health coverage for their employees. This report does not examine SHOP exchanges.

In this report, the term “state” includes the District of Columbia.

<sup>2</sup>PPACA, §§ 1311(d)(3)(B), 10104(e)(1), 124 Stat. at 176, 900.

<sup>3</sup>PPACA, § 10104(c), amending § 1303, 124 Stat. at 896-99.

Other benefits that QHPs may choose to provide include, for example, adult dental and vision services.

woman would be endangered unless an abortion is performed.<sup>4</sup> While QHPs may cover non-excepted abortion services, PPACA places requirements on the provision of such coverage. These include the requirement to estimate the cost of coverage of such services, at an amount of no less than \$1 per enrollee, per month, and to collect from each enrollee an amount equal to the actuarial value of the coverage—segregated from any other premium amounts collected by the QHP—to be used to pay for the costs associated with providing non-excepted abortion services.<sup>5</sup> In addition, PPACA directed the Office of Personnel Management (OPM) to contract with issuers to offer at least two multi-state QHPs in each state, at least one of which does not cover non-excepted abortion services.<sup>6</sup>

There are 23 states with laws restricting the circumstances under which QHPs may provide non-excepted abortion services as a covered benefit in 2014,<sup>7</sup> and 28 states with no such laws. Among the 23 states with restrictions, 17 have laws that do not permit the coverage of non-excepted abortion services by QHPs, and 6 states permit the coverage of non-excepted abortion services only in limited circumstances, such as to prevent substantial and irreversible impairment of a pregnant woman's major bodily function.

You asked that we provide a list of QHPs that do and that do not cover abortion services and for additional information on issues related to that coverage. This report describes whether non-excepted abortion services are covered by QHPs within the 28 states with no laws restricting such coverage for the 2014 benefit year, and provides additional information—such as the scope and the cost of non-excepted abortion services coverage—for selected QHPs that cover such services.

To obtain the information we present here, we contacted every state to determine whether states had laws restricting the circumstances under which abortion services may be provided as a covered benefit by QHPs in 2014. Based on our review of those laws and relevant federal laws and regulations, we determined that 23 states have laws restricting the circumstances under which non-excepted abortion services may be provided as a covered benefit by QHPs for

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<sup>4</sup>The term non-excepted abortion services for purposes of PPACA refers to services for which the expenditure 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 6 months before the beginning of the benefit year involved. PPACA, § 10104(c), amending § 1303(b)(1)(B), 124 Stat. at 897. The applicable law identifying the scope of excepted and non-excepted abortion services for the 2014 benefit year is the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, div. F, § 1101(a)(4), 127 Stat. 198, 412 (Mar. 26, 2013) (incorporating by reference Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, div. F, §§ 506-507, 125 Stat. 786, 1111-12 (Dec. 23, 2011)). In this report, 2014 refers to the 2014 benefit year, which is January 1, 2014, through December 31, 2014.

Individuals and families with incomes generally between 100 and 400 percent of the federal poverty level may qualify for a premium tax credit which subsidizes the cost of premiums for QHPs purchased through the exchanges. Those with incomes between 100 and 250 percent of the federal poverty level also may qualify for cost-sharing reductions to reduce out-of-pocket costs, such as deductibles and copayments, for covered services. PPACA, §§ 1401, 1402, 124 Stat. at 213, 220.

<sup>5</sup>PPACA, § 10104(c), amending § 1303(b)(2)(B) - (D), 124 Stat. at 897-98.

<sup>6</sup>PPACA, § 10104(q), adding § 1334(a)(6), 124 Stat. at 902-03. According to OPM, PPACA established the Multi-state Plan Program to expand the number of QHPs in states and to ensure that high-quality QHPs with reliable benefits are available nationwide. With respect to 2014, PPACA directs OPM to contract with a health insurance issuer for the offering of a multi-state QHP if the issuer offers the plan in at least 60 percent of states. In 2014, a total of 134 multi-state QHPs were offered in the individual market in 31 states.

<sup>7</sup>The restrictions apply to all QHPs offered in the 23 states, including multi-state QHPs offered in 13 of these 23 states in 2014. Multi-state QHPs were not offered in 10 of these 23 states in 2014.

the 2014 benefit year. See enclosure I for a complete list of states we identified. In order to report on whether non-excepted abortion services are covered by QHPs within the 28 states with no laws restricting such coverage in 2014, we obtained data on QHPs' coverage of non-excepted abortion services from the Centers for Medicare & Medicaid Services (CMS), within the Department of Health and Human Services (HHS), the agency responsible for overseeing the establishment of health insurance exchanges; private issuers of QHPs; state departments of insurance and state exchange organizations; and from officials at OPM. While these data sources have different characteristics and limitations, we have determined that, when taken together, they are reliable for the purpose of identifying which QHPs do and which do not provide non-excepted abortion services coverage in 2014 within the 28 states with no laws restricting such coverage. To provide additional information regarding non-excepted abortion services for selected QHPs that cover such services, we interviewed and collected documentation from a non-probability sample of 18 issuers about the QHPs they offer in 10 states. Our criteria for selecting these issuers included states with no laws restricting non-excepted abortion services coverage organized by CMS region, state uninsured population, and number of issuers covering non-excepted abortion services. These 18 issuers accounted for nearly one-quarter of QHPs that covered non-excepted abortion services and were offered within the 28 states. See enclosure II for a detailed description of our scope and methodology.<sup>8</sup>

We conducted our work from February 2014 to September 2014 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

## Results

### *1. Which QHPs participating in health insurance exchanges provide non-excepted abortion services as a covered benefit, and which do not?*

As illustrated by figure 1, within the 28 states with no laws restricting the circumstances under which QHPs may provide non-excepted abortion services as a covered benefit in 2014:

- in 5 states (Connecticut, Hawaii, New Jersey, Rhode Island, and Vermont), all QHPs cover non-excepted abortion services;<sup>9</sup>

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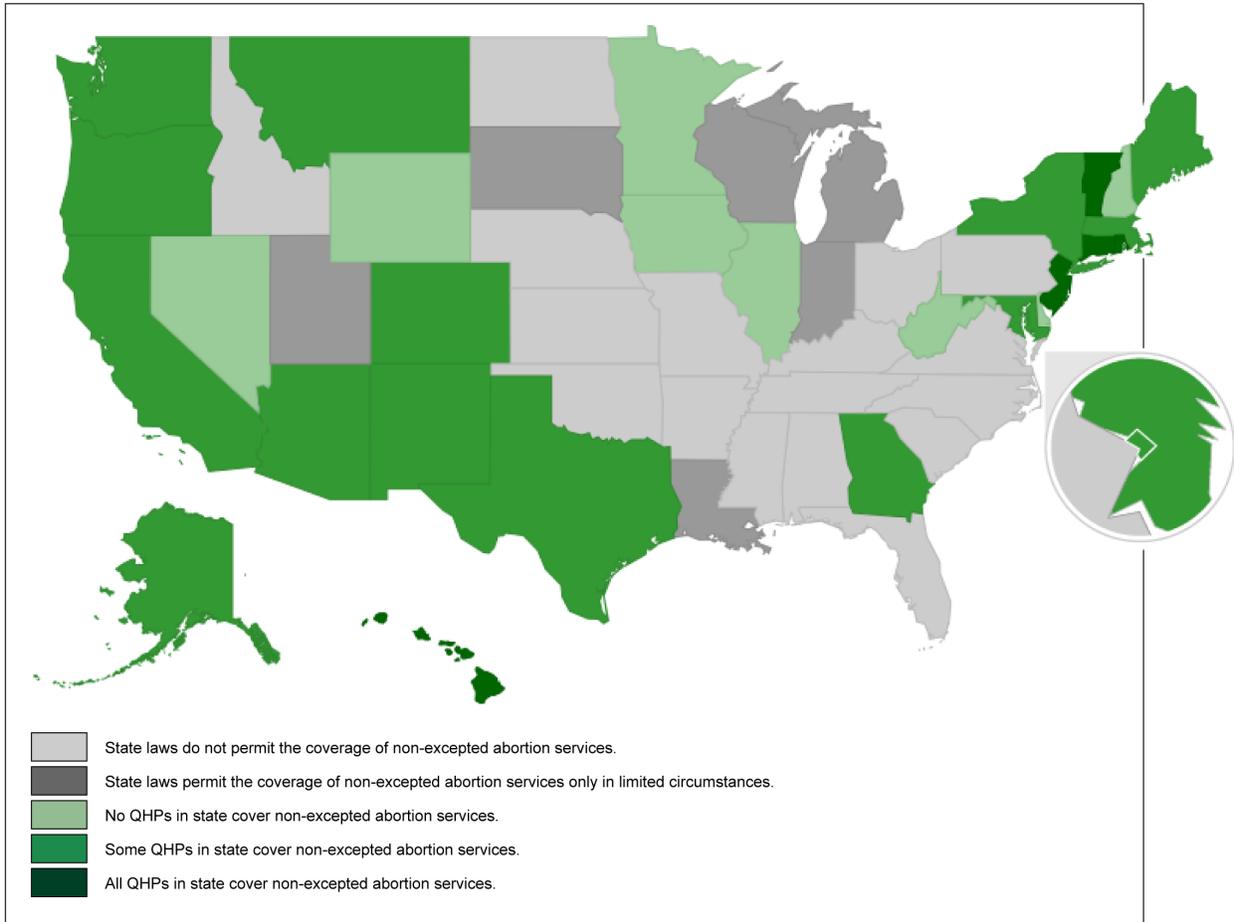
<sup>8</sup>Our work was not designed to assess CMS's oversight of compliance with federal requirements because this was beyond the scope of our objectives. However, in the course of our work, we identified instances where practices of private issuers and others may have been inconsistent with federal requirements related to the coverage of non-excepted abortion services. These practices included some instances in which QHP issuers estimated the cost of coverage of non-excepted abortion services at less than the statutory minimum of \$1 per enrollee, per month; a state-based exchange did not assess any premium for coverage of non-excepted abortion services for certain enrollees; and QHP issuers did not notify enrollees regarding coverage of non-excepted abortion services. Our work did not examine the circumstances that might explain more fully how inconsistencies may have occurred nor did our work systematically determine the extent of the potential inconsistencies that may exist among QHPs operating within the federally facilitated or state-based exchanges. However, we have informed CMS of these matters so that the agency may consider whether additional guidance or outreach is necessary to ensure compliance with these requirements.

<sup>9</sup>As noted above, PPACA directed OPM to contract with issuers to offer at least two multi-state QHPs in each state, at least one of which does not cover non-excepted abortion services. In 2014, multi-state QHPs were not offered in the five states where all QHPs cover non-excepted abortion services.

- in 15 states (Alaska, Arizona, California, Colorado, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, Montana, New Mexico, New York, Oregon, Texas, and Washington), some QHPs cover non-excepted abortion services; and
- in 8 states (Delaware, Illinois, Iowa, Minnesota, Nevada, New Hampshire, West Virginia, and Wyoming), no QHPs cover non-excepted abortion services.

Nationally, 1,036 QHPs in these 28 states cover non-excepted abortion services and 1,062 QHPs do not.

**Figure 1: Qualified Health Plans (QHP) Providing Non-expected Abortion Services as a Covered Benefit in 2014**



Source: GAO analysis of state law and of information obtained from the Centers for Medicare & Medicaid Services, states, private issuers, and from the Office of Personnel Management. | GAO-14-742R

**Interactive map and data**

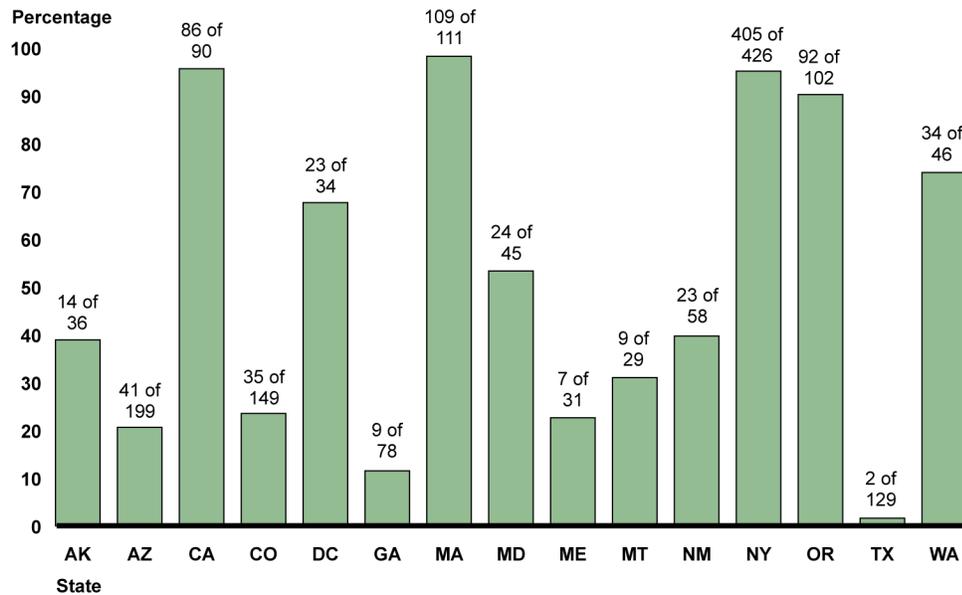
This map and the data that underlie it are available at [http://www.gao.gov/multimedia/GAO-14-742R/interactive\\_graphic](http://www.gao.gov/multimedia/GAO-14-742R/interactive_graphic).

Data table: The interactive map contains links to a data table that displays the issuers offering QHPs within the 28 states with no laws restricting the coverage of non-expected abortion services for the 2014 benefit year and, for each issuer, whether all, some, or none of the issuer’s QHPs provide non-expected abortion services coverage.

Download the full data set: The full data set lists each QHP offered within the 28 states with no laws restricting the coverage of non-expected abortion services for the 2014 benefit year, and indicates whether the individual QHP covers non-expected abortion services.

As figure 2 illustrates, among the 15 states with some QHPs covering non-expected abortion services, the QHPs providing such services in these states ranged from 2 percent of QHPs in Texas to 98 percent of QHPs in Massachusetts.

**Figure 2: Percent of Qualified Health Plans (QHP) Covering Non-expected Abortion Services in 2014 among Fifteen States Where Some but Not All Plans Cover Such Services**



Source: GAO analysis of information obtained from the Centers for Medicare & Medicaid Services, states, private issuers, and from the Office of Personnel Management. | GAO-14-742R

2. *For selected QHPs, what is the scope of the non-expected abortion services benefits that are provided?*

Of the 18 issuers offering QHPs that cover non-expected abortion services from which we obtained information, all but three issuers indicated that the benefit is not subject to any restrictions, limitations, or exclusions. One issuer told us that it only covers services for a “therapeutic abortion,” which a health care provider determines to be medically necessary.<sup>10</sup> Two issuers that offered QHPs in New York indicated that, consistent with requirements set by the state-based exchange, they impose a limit of one non-expected abortion treatment per year. However, one of these two issuers indicated they also offer QHPs that were not subject to this restriction.<sup>11</sup> All 18 issuers also indicated that their abortion services benefit is subject to the same requirements as other benefits, such as enrollee out-of-pocket costs—including deductibles, copayments, and coinsurance—and prior authorization, all of which can vary depending on the location where the service is provided. For example, issuers indicated that if this service is provided in an outpatient setting—which one issuer noted is the typical location—enrollees are not required to request prior authorization, similar to any other service performed in an outpatient setting. Additionally, if performed in an inpatient setting, the service would require prior authorization, similar to any other service performed in such a setting. Issuers indicated that this benefit is described in member materials where other covered benefits are listed.

<sup>10</sup>The non-expected abortion services that are included in this issuer’s definition of “therapeutic abortions” include abortion services provided to prevent harm to the woman’s health, and where indications are that the child will have a significantly increased chance of premature morbidity or mortality.

<sup>11</sup>Issuers in New York were required to offer QHPs that imposed the limit of one non-expected abortion treatment per year, but were also permitted to offer additional QHPs that did not impose such a limit.

3. *For selected QHPs, how do issuers estimate the cost of non-excepted abortion services coverage, what is this cost, and how are enrollees billed for this coverage?*

To estimate the cost of covering non-excepted abortion services, issuers we contacted indicated that they generally reviewed historical costs for these procedures, similar to the approach used to estimate the actuarial value of the premium attributable to the cost of other covered benefits. All but one of the issuers from which we obtained information estimated the cost of the coverage of non-excepted abortion services to be less than \$1 per enrollee, per month. For example, officials from one issuer told us that their actuaries estimated that the cost for non-excepted abortion services ranged between 10 cents and 20 cents per enrollee, per month, calculated across multiple states, while officials with another issuer said that the cost for these services ranged from 10 cents to 70 cents per enrollee, per month. All but two of the issuers that estimated the cost to be less than \$1 indicated they rounded the amount up to comply with PPACA's requirement that the cost of such coverage be estimated at no less than \$1 per enrollee, per month. The other two issuers noted that they did not round up the amount to the statutory minimum of \$1 and, therefore, were not using this statutory minimum as a basis for determining premium amounts to collect from enrollees for non-excepted abortion services. The highest cost estimated by the issuers we interviewed was \$1.10 per enrollee, per month. For several of the issuers we contacted, the premium amount associated with non-excepted abortion services coverage was reported to also be \$1; however, for other issuers the premium amount varied from the cost issuers estimated for this coverage. For example, the issuer that estimated the cost of coverage of non-excepted abortion services at \$1.10 per enrollee, per month, indicated that when adjusted to a paid cost based upon plan design and administrative expenses, the premium amount collected from enrollees ranged from 51 cents to \$1.46, depending on the specific QHP.

Fifteen issuers and the Washington Health Benefit Exchange—which bills enrollees on behalf of issuers offering QHPs in the state-based exchange, including for 2 of the 18 issuers from which we obtained information—did not itemize the premium amount associated with non-excepted abortion services coverage on enrollees' bills nor indicate that they send a separate bill for that premium amount.<sup>12</sup> Officials from the remaining issuer from which we obtained information told us that their bills indicate that there is a \$1 charge “for coverage of services for which member subsidies may not be used.”

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<sup>12</sup>PPACA and CMS regulations require issuers to collect from each enrollee in a QHP covering non-excepted abortion services a separate payment for coverage of these services. PPACA, § 10104(c), amending § 1303(b)(2)(B), 124 Stat. at 897-98, 45 C.F.R. § 156.280(e). According to CMS officials, the agency, during regular technical assistance calls, communicated information about ways that QHP issuers could collect this separate payment from enrollees. For example, CMS officials stated that two of the ways that QHP issuers could do so are by sending the enrollee a single invoice or bill that separately itemizes the premium amount for non-excepted abortion services or by sending a separate bill for these services.

In collecting information from the Washington Health Benefit Exchange, a state-based exchange, related to its billing practices, we learned that the exchange's billing system was not assessing any premium to individuals whose premiums are fully subsidized under the law if these individuals are enrolled in QHPs that cover non-excepted abortion services. Officials from the Washington Health Benefit Exchange have since told us that they are taking steps to address this issue. Specifically, they plan to use a year-end reconciliation process for 2014 and 2015 to notify the Internal Revenue Service of any amounts owed by the applicable taxpayer for non-excepted abortion services coverage, and modify their billing practices beginning in 2016 so that the exchange collects these amounts as enrollees are billed.

4. *For selected QHPs, how are consumers shopping for QHPs able to determine whether non-excepted abortion services are covered?*

PPACA does not establish any requirements on whether or how information about non-excepted abortion services should be made available to consumers before they enroll in QHPs, though six of the issuers we contacted indicated that they made available such information about coverage for abortion services—which they stated includes both excepted and non-excepted abortion services—to consumers shopping for QHPs. These issuers indicated that there are various ways consumers may determine if their QHPs provide coverage for abortion services before they enroll. For example, issuers said that QHP materials—such as their summary of benefits and coverage or member policies, such as the Evidence of Coverage document—indicate that abortion services are covered, and these materials are available to consumers shopping for QHPs through the issuer’s website or through the exchange’s website.<sup>13</sup> Specifically, officials with one issuer informed us that their Evidence of Coverage document, which provides details about the features of their QHPs, was available through the state-based exchange and the benefit—“voluntary termination of pregnancy”—is identified in that document under “Family Planning Services.” Eleven issuers indicated that consumers shopping for QHPs do not have access to such information; some of these issuers indicated that consumers would need to call the issuer directly before enrolling to determine whether a QHP provides coverage for abortion services.<sup>14</sup>

PPACA requires that QHP issuers providing non-excepted abortion services coverage notify enrollees at the time of enrollment that those services are covered.<sup>15</sup> While most issuers from which we collected information indicated they were notifying enrollees that abortion services were provided as a covered benefit, four issuers indicated they were not disclosing this information to enrollees. Officials with two of these four issuers told us they had only recently become aware of this requirement, and were in the process of updating their enrollee materials to come into compliance with the notification requirement. Officials with the other two issuers, both of which offered QHPs in the same state, told us that they are not providing enrollees with notification of the coverage of non-excepted abortion services at the time of enrollment. These officials said that they use model plan materials developed by the state that do not specifically indicate that non-excepted abortion services are a covered benefit,<sup>16</sup> and that such information would only be provided upon enrollee request.

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<sup>13</sup>The summary of benefits and coverage summarizes the key features of the plan or coverage, such as the covered benefits, cost-sharing provisions, and coverage limitations and exceptions. PPACA, § 1001, 124 Stat. at 132 (amending section 2715 of the Public Health Service Act). Issuers are required to provide a summary of benefits and coverage for each benefit package to applicants as soon as practicable following receipt of an application for coverage, but in no event later than seven business days following receipt of the application. 45 C.F.R. § 147.200(a)(i).

<sup>14</sup>The eighteenth issuer did not respond to our request for information on whether it provides such information to consumers shopping for QHPs.

<sup>15</sup>PPACA specifies that such notice is to be provided through the summary of benefits and coverage only at the time of enrollment; however, CMS officials told us that they consider QHP issuers to be in compliance with the notice requirement if issuers provide such information through other QHP documentation distributed along with the summary of benefits and coverage prior to or at the time of enrollment. PPACA, § 10104(c), amending § 1303(b)(3)(A), 124 Stat. at 899; 45 C.F.R. § 156.280(f)(1). “At the time of enrollment” generally refers to when individuals submit their first premium payment.

<sup>16</sup>However, nothing would preclude these issuers from notifying enrollees through another mechanism, such as through the summary of benefits and coverage, which state officials confirmed is governed only by federal law.

## Agency Comments

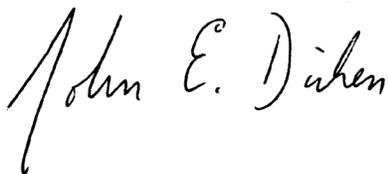
We provided a draft of this report to HHS, for CMS, and to OPM for comment. In its written comments, reproduced in enclosure III, HHS stated that, in addition to issuing a regulation governing the provision of health insurance coverage by QHPs, CMS also had answered individual questions from issuers and provided limited guidance to help ensure that stakeholders, including states and issuers, understand and follow the rules relating to coverage of abortion services in QHPs. However, HHS stated that, based upon our findings, additional clarification may be needed and CMS will use our findings to address issues of concern to better ensure that stakeholders understand the laws and regulations governing the provision of non-excepted abortion services coverage.

HHS and OPM also provided technical comments that were incorporated, as appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this correspondence to the Secretary of Health and Human Services, the Director of the Office of Personnel Management, appropriate congressional committees, and other interested parties. The correspondence will also be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-7114 or [dickenj@gao.gov](mailto:dickenj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this correspondence. Other key contributors to this correspondence included Karen Doran, Assistant Director; Todd Anderson; Nick Bartine; Sandra George; Shannon Legeer; Laurie Pachter; Steven Putansu; and Carl Ramirez.



John E. Dicken  
Director, Health Care

Enclosure(s) – III

*List of Requesters*

The Honorable John Boehner  
Speaker of the House of Representatives

The Honorable Kevin McCarthy  
Majority Leader  
House of Representatives

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
House of Representatives

The Honorable Joseph R. Pitts  
Chairman  
Subcommittee on Health  
Committee on Energy and Commerce  
House of Representatives

The Honorable John Shimkus  
Chairman  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
House of Representatives

The Honorable Tim Murphy  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Energy and Commerce  
House of Representatives

The Honorable Chris Smith  
House of Representatives

The Honorable Cathy McMorris Rodgers  
House of Representatives

**States with Laws Restricting the Circumstances under which Abortion Services  
May Be Provided As a Covered Benefit by Qualified Health Plans**

Table 1 below identifies the 23 states that we identified as having laws restricting the circumstances under which qualified health plans (QHP) may provide non-excepted abortion services as a covered benefit for the 2014 benefit year (January 1, 2014, through December 31, 2014). The table does not list the 28 states that had no relevant laws for 2014.<sup>1</sup>

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<sup>1</sup>Although Arizona and Georgia have laws that restrict the circumstances under which QHPs may provide non-excepted abortion services as a covered benefit, their laws were not applicable for the 2014 benefit year. Specifically, officials with the Arizona Department of Insurance indicated that state law (Ariz. Rev. Stat. § 20-121) does not prohibit or limit a QHP's coverage of non-excepted abortion services inside of the federally facilitated exchange, as the law applies specifically to QHPs offered through a state-based exchange, which Arizona does not have for 2014. Additionally, Georgia enacted a law after the start of the 2014 benefit year (Ga. Code Ann. § 33-24-59.17) to prohibit QHP coverage of non-excepted abortion services; however, according to CMS officials, QHPs may not change their benefit during the year.

**Table 1: States with Laws Restricting Qualified Health Plan (QHP) Coverage of Non-excepted Abortion Services for 2014**

State	Coverage of non- excepted abortion services is not permitted <sup>a</sup>	Coverage of non-excepted abortion services is permitted only in limited circumstances <sup>b</sup>	Relevant state law
Alabama	•		Code of Ala. § 26-23C-3
Arkansas	•		Ark. Code Ann. § 23-79-156
Florida	•		Fla. Stat. § 627.64995
Idaho	•		Idaho Code Ann. § 41-1848
Indiana		•	Ind. Code Ann. § 27-8-33-4
Kansas	•		Kan. Stat. Ann. § 40-2,190
Kentucky	•		Ky. Rev. Stat. § 304.5-160
Louisiana		•	La. Rev. Stat. Ann. § 22:1014
Michigan		•	Mich. Comp. Laws Serv. § 550.541
Mississippi	•		Miss. Code Ann. § 41-41-99
Missouri	•		Mo. Rev. Stat. § 376.805
Nebraska	•		Neb. Rev. Stat. § 44-8403
North Carolina	•		N.C. Gen. Stat. § 58-51-63
North Dakota	•		N.D. Cent. Code § 14-02.3-03
Ohio	•		Ohio Rev. Code Ann. § 3901.87
Oklahoma	•		Okla. Stat. tit. 63 § 1-741.3
Pennsylvania	•		40 Pa. Cons. Stat. § 3302
South Carolina	•		S.C. Code Ann. § 38-71-238
South Dakota		•	S.D. Codified Laws § 58-17-147
Tennessee	•		Tenn. Code Ann. § 56-26-134
Utah		•	Utah Admin. Code 31A-22-726
Virginia	•		Va. Code Ann. § 38.2-3451
Wisconsin		•	Wis. Stat. § 632.8985
<b>Total</b>	<b>17</b>	<b>6</b>	

Source: GAO analysis of state laws and of information obtained from the Centers for Medicare & Medicaid Services and state officials. | GAO-14-742R

Note: The term “non-excepted abortion services” for purposes of PPACA refers to services for which the expenditure 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 6 months before the beginning of the benefit year involved. The law applicable to QHPs for the 2014 benefit year (January 1, 2014, through December 31, 2014) prohibits the use of federal funds made available to offset the cost of QHP coverage to pay for abortion services except where the pregnancy is the result of an act of rape or incest, or the life of the pregnant woman would be endangered unless an abortion is performed. Although Arizona and Georgia have laws that restrict the circumstances under which QHPs may provide non-excepted abortion services as a covered benefit, their laws were not applicable for the 2014 benefit year.

<sup>a</sup>Fourteen states have enacted laws prohibiting QHPs offered in a health insurance exchange from covering non-excepted abortion services. These states are: Alabama, Arkansas, Idaho, Kansas, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Virginia. Three states—Florida, Kentucky, and North Dakota—permit QHPs to cover non-excepted abortion services through a separate plan rider. However, according to CMS, federal rules prohibit QHPs from offering coverage riders. Therefore, QHPs in these states are effectively prohibited from covering non-excepted abortion services.

<sup>b</sup>These states allow QHP coverage of abortion services in limited circumstances in which federal funding is not permitted, such as the following: services performed in the case of a fetus with a lethal defect; to increase the probability of a live birth; to save the life or preserve the health of an unborn child; or to prevent substantial and irreversible impairment of a pregnant woman’s major bodily function.

## Objectives, Scope, and Methodology

This enclosure provides additional details regarding our approach for obtaining the information presented, specifically: (1) determining whether states have laws restricting the circumstances under which abortion services may be provided as a covered benefit; (2) identifying which qualified health plans (QHP) cover non-excepted abortion services; and (3) selecting private issuers that we interviewed and collected documentation from regarding the QHPs they offer that cover non-excepted abortion services.

### State Laws

To determine whether states have laws restricting the circumstances under which abortion services may be provided as a covered benefit by QHPs for the 2014 benefit year (January 1, 2014, through December 31, 2014), we contacted each state department of insurance to ask officials to identify relevant laws, reviewed those laws, and, as appropriate, conducted follow-up with state officials to clarify our understanding. Using that information and relevant federal requirements, we identified 23 states with laws restricting the circumstances under which non-excepted abortion services may be provided as a covered benefit by QHPs for 2014. Based on that analysis, we placed these states into the following two categories: (a) state laws do not permit the coverage of non-excepted abortion services by QHPs; or (b) state laws permit the coverage of non-excepted abortion services only in limited circumstances. We identified 28 states as not having laws restricting the circumstances under which abortion services may be covered by QHPs for the 2014 benefit year.

### Coverage of Non-excepted Abortion Services

To report on which QHPs for 2014 provide non-excepted abortion services as a covered benefit, and which do not, within the 28 states that we identified as not having laws restricting the circumstances under which QHPs may provide non-excepted abortion services as a covered benefit, we took the following steps.

First, to identify the QHPs participating in health insurance exchanges for 2014, we obtained data from the Centers for Medicare & Medicaid Services (CMS) dated March 31, 2014,<sup>1</sup> for QHPs offered in 14 states—13 states participating in the federally facilitated exchanges (FFE) and in New Mexico, which established a state-based exchange (SBE) but chose to have CMS carry out certain functions on its behalf for 2014.<sup>2</sup> CMS collected these data from issuers as part of the agency's certification of QHPs to be included in the 2014 exchanges. To assess the reliability of these data, we interviewed CMS officials about the agency's policies and procedures to ensure that the data captured all relevant issuers and QHPs, and that data submitted by issuers were accurate. During that process, we learned that the CMS data did not include QHPs that—as of the date of the file (March 31, 2014)—were in the process of correcting data errors. To ensure that our analysis included all QHPs that are participating in health insurance exchanges in these 28 states in 2014, we included in our analysis additional QHPs that were not identified in the March 31, 2014 file, but that had enrollees based upon a

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<sup>1</sup>CMS Qualified Health Plan Landscape data, as of March 31, 2014, downloaded from <https://www.healthcare.gov/health-and-dental-plan-datasets-for-researchers-and-issuers/>, accessed May 29 and June 4, 2014.

<sup>2</sup>PPACA directed states to establish state-based exchanges by January 1, 2014. In states electing not to establish and operate such an exchange, PPACA requires the federal government to establish and operate an exchange in the state, referred to as the federally facilitated exchange. PPACA, §§ 1311(b)(1), 1321(c), 124 Stat. at 173 and 186.

file we obtained from CMS containing enrollment counts by QHP dated February 28, 2014.<sup>3</sup> For the remaining 14 states operating SBEs, we obtained data directly from each SBE from February 2014 through May 2014. To assess the reliability of the data obtained from the SBEs, we performed electronic tests of the data. When we found missing values or other anomalies, we contacted SBE officials and incorporated the corrections we received. Based on the activities described above, we determined the data collected from CMS and the states were sufficiently reliable for the purposes of determining which QHPs participate in health insurance exchanges in these 28 states.

Next, we collected information related to the coverage of non-excepted abortion services by 2,098 QHPs for 2014 from a number of sources, based upon our determination of the availability and reliability of the source.

- **CMS:** In April, 2014, we obtained a data extract from CMS that provided information on the coverage of non-excepted abortion services by 642 QHPs offered in 12 FFE states and in 1 SBE state.<sup>4</sup> Issuers seeking to offer QHPs in these states were required to submit information to CMS in a Plans and Benefits template to describe the benefits offered by their QHPs for 2014. CMS used the data collected in this template to determine whether potential QHPs met certification requirements. In addition to other benefits, this template collected information on whether QHPs covered abortions for which public funding is prohibited—that is, non-excepted abortion services. QHPs that completed this information indicated that this benefit was “covered” or “not covered”. We obtained information from CMS regarding how information collected in the Plans and Benefits template is used by the agency, the guidance and training the agency provided to issuers in completing this template, and opportunities issuers had to correct erroneous information. CMS stated that the data collected in the Plans and Benefits template contain summaries of QHP offerings, are not intended to be a complete account of all covered benefits offered by a QHP, and may not represent QHPs’ final benefit offerings approved by the state department of insurance. Despite these limitations, we believe the information collected in the template regarding the coverage of non-excepted abortion services to be reliable based upon the actions we took to independently validate the accuracy of the information that was reported and address missing information. Specifically, we corroborated the CMS data by comparing a subset of the non-missing values—which represented 37 percent of the non-missing values—to information obtained from issuers, state departments of insurance, or the Office of Personnel Management, and, as described below, we also contacted issuers or state departments of insurance to obtain information for QHPs with missing information in the Plans and Benefits template.
- **Issuers:** We contacted 11 issuers to obtain information on coverage of non-excepted abortion services by the 154 QHPs they offered in seven FFE states, because this information was not available from the CMS data extract. Additionally, one of the 18 issuers we collected information from provided information regarding one QHP that it offered in a SBE state that had been omitted from the information provided by the state department of insurance. We checked the data that we received for missing information or anomalies, but did not independently verify issuers’ responses.

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<sup>3</sup>We added to our analysis an additional 17 QHPs that met this criterion, which we identified using a data extract of the Plans and Benefits template described later in this report.

<sup>4</sup>This data extract also contained information on coverage of non-excepted abortion services by QHPs offered in states with laws restricting the circumstances under which abortion services may be provided as a covered benefit by QHPs in 2014, which we have not included in this report.

- **State departments of insurance:** We contacted 16 state departments of insurance—2 FFE states that performed plan management activities whose issuers did not indicate whether this benefit was covered in the Plans and Benefits template provided by CMS, and 14 SBE states from which data were not collected by CMS—to obtain information on coverage of non-excepted abortion services by the 1,213 QHPs offered in their states.<sup>5</sup> We checked the data that we received from the state departments of insurance for missing information or anomalies.<sup>6</sup> We also corroborated the data by comparing a subset of the information—which represented 16 percent of all QHPs or 22 percent of the QHPs that these states indicated provided non-excepted abortion services coverage—to information obtained from issuers.
- **Office of Personnel Management:** We contacted the Office of Personnel Management, which contracted with issuers for 2014 to offer multi-state QHPs in 18 of the 28 states, to obtain information on coverage of non-excepted abortion services by the 88 multi-state QHPs. To assess the reliability of the data we compared the information obtained from the Office of Personnel Management to that provided by CMS in the data extract of the Plans and Benefits template and found the coverage information to be the same for the QHPs identified in both sets of data.

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<sup>5</sup>States conducting plan management activities on behalf of the FFE are required to certify health plans for inclusion as QHPs and conduct ongoing oversight and monitoring to ensure that the QHPs comply with all applicable regulations.

To collect information from both FFE states and 10 of the 14 SBE states, we sent the states a data collection instrument that identified each QHP offered in the state in 2014 and asked whether non-excepted abortion services were covered. We collected this same information for the remaining SBE states without the use of the data collection instrument.

<sup>6</sup>The list of QHPs we obtained from the California Department of Managed Health Care (DMHC) differed from the list we obtained from California's SBE. Our analysis is based on the list of QHPs provided by California's SBE. QHPs offered in California are required to cover medically necessary physician and hospital services and, according to California's DMHC, this includes coverage of non-excepted abortion services if medically necessary. According to the Office of Personnel Management and the DMHC, however, the multi-state QHPs offered in California do not cover non-excepted abortion services.

**Table 2: Information Sources for Reporting Qualified Health Plans (QHP) Providing Non-excepted Abortion Services As a Covered Benefit in 2014**

State	Exchange type	Information sources (2,098 QHPs)			
		Centers for Medicare & Medicaid Services (642 QHPs)	Issuer (155 QHPs)	State department of insurance (1,213 QHPs)	Office of Personnel Management (88 QHPs)
Alaska	Federally facilitated exchange	•			•
Arizona	Federally facilitated exchange	•	•		
California	State-based exchange			•	•
Colorado	State-based exchange			•	•
Connecticut	State-based exchange			•	
District of Columbia	State-based exchange			•	•
Delaware	Federally facilitated exchange	•		•	•
Georgia	Federally facilitated exchange	•	•		•
Hawaii	State-based exchange			•	
Iowa	Federally facilitated exchange	•	•		
Illinois	Federally facilitated exchange	•			•
Massachusetts	State-based exchange			•	•
Maryland	State-based exchange		•	•	•
Maine	Federally facilitated exchange	•	•		•
Minnesota	State-based exchange			•	
Montana	Federally facilitated exchange	•	•		•
New Hampshire	Federally facilitated exchange			•	•
New Jersey	Federally facilitated exchange	•			
New Mexico	State-based exchange	• <sup>a</sup>			•
Nevada	State-based exchange			•	•
New York	State-based exchange			•	•
Oregon	State-based exchange			•	
Rhode Island	State-based exchange			•	
Texas	Federally facilitated exchange	•	•		•
Vermont	State-based exchange			•	
Washington	State-based exchange			•	•
West Virginia	Federally facilitated exchange	•			•
Wyoming	Federally facilitated exchange	•	•		

Source: CMS and GAO. | GAO-14-742R

<sup>a</sup>Although New Mexico established a state-based exchange, we obtained information on the coverage of non-excepted abortion services by QHPs in that state from the Centers for Medicare & Medicaid Services.

While these sources have different characteristics and limitations, based on the steps we undertook to confirm and complete missing information as described above, we determined that, when taken together, they are reliable for the purpose of identifying which QHPs do and which do not provide non-excepted abortion services coverage in 2014 within the 28 states with no laws restricting such coverage.

### Additional Information Regarding Non-expected Abortion Services

To provide additional information regarding non-expected abortion services—specifically, the scope of those services, how issuers estimated the cost of covering these services, how issuers bill enrollees for this coverage, and how consumers shopping for QHPs were able to determine whether those services were covered by the QHP—we interviewed and collected additional information from selected issuers that cover non-expected abortion services.<sup>7</sup> We selected a non-probability sample of 18 issuers from which to collect information about the QHPs they offer in 10 states. These 18 issuers offered a total of 246 unique QHPs that covered non-expected abortion services—or 24 percent of the total number of QHPs covering non-expected abortion services in the 28 states with no laws restricting the circumstances under which abortion services can be provided as a covered benefit.<sup>8</sup> All 18 issuers offer QHPs that cover non-expected abortion services for 2014. Because we selected these issuers as part of a non-probability sample, the information we report regarding the scope of non-expected abortion services and premium- and billing-related information is not generalizable to all QHPs offered under an exchange.

To select the non-probability sample of issuers, we first identified 10 states—California, Colorado, Connecticut, Georgia, Maryland, New Jersey, New York, Oregon, Texas, and Washington—by taking the following steps, in order:

- We reviewed states in each of CMS’s 10 regions so as to promote geographic variation. We excluded states from each region with laws restricting the circumstances under which abortion services can be provided as a covered benefit by QHPs, or where we had information indicating no QHPs cover non-expected abortion services for 2014. As a result, only one state was available to select in one region; in two regions, this left no states from which to choose.
- In the remaining seven regions, we selected the state with the largest total uninsured population prior to 2014, because individuals without insurance prior to 2014 would be more likely to enroll in a QHP offered on a health insurance exchange.
- Because we were unable to select a state in two regions, as noted above, we selected two additional states using the following criteria: among previously unselected states with QHPs covering non-expected abortion services, we selected the two states with the largest total uninsured population prior to 2014, regardless of their CMS region.

Next, we identified up to two issuers from each of these 10 states to interview and collect documentation from by taking the following steps, in order:

- For any state with two or fewer issuers providing non-expected abortion services coverage, we selected all issuers providing such coverage in these states. This identified the issuers to contact in five states.
- For the four states for which we had information on which QHPs covered non-expected abortion services at the time of our initial selection, we rank-ordered those states based on the number of issuers providing non-expected abortion services coverage in the state. Starting with the state with the fewest number of issuers covering non-expected abortion

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<sup>7</sup>We did not review the methodology or assumptions underlying these issuers’ estimations of the cost of the coverage of non-expected abortion services.

<sup>8</sup>The number of QHPs offered by these issuers ranged from 2 to 37, with a median of 12.

services, we selected the largest two issuers in each state, based on the number of QHPs providing non-excepted abortion services coverage offered by each issuer. However, if the same issuer was selected in either of the prior two states, we selected the next largest issuer. Additionally, if an issuer declined to provide us information, we selected the next largest issuer in the state based on the number of QHPs providing non-excepted abortion services coverage.

- For the one remaining state, we did not have information on which QHPs covered non-excepted abortion services coverage at the time of our initial selection; therefore, we selected this issuer separately when we obtained the necessary information. In this state, we selected the two largest issuers, based on the number of QHPs providing non-excepted abortion services coverage.

Because 2 of the 10 states we selected each had only one issuer providing non-excepted abortion services coverage, our approach identified 18—not 20—issuers from which to collect information.

## Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

**AUG 19 2014**

John Dicken  
Director, Information Technology  
Management Issues  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Mr. Dicken:

Attached are comments on the U.S. Government Accountability Office's (GAO) correspondence entitled, "Health Insurance Exchanges: Coverage of Non-Excepted Abortion Services by Qualified Health Plans" (GAO-14-742R).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

A handwritten signature in cursive script that reads "Jim R. Esquea".

Jim R. Esquea  
Assistant Secretary for Legislation

Attachment

**GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT CORRESPONDENCE ENTITLED, "HEALTH INSURANCE EXCHANGES: COVERAGE OF NON-EXCEPTED ABORTION SERVICES BY QUALIFIED HEALTH PLANS" (GAO-14-742R)**

The Department appreciates the opportunity to review and comment on this draft report.

Within the Department of Health and Human Services (HHS), the Centers for Medicare & Medicaid Services (CMS) strives to ensure stakeholders, including states and issuers, fully understand and follow the rules and regulations governing the provision of health insurance coverage within a Qualified Health Plans (QHP). As is the case with many provisions in the Affordable Care Act, states and state insurance commissioners are the entities primarily responsible for implementing and enforcing the law. On March 27, 2012, CMS published a final regulation *Establishment of Exchanges and Qualified Health Plans, Exchange Standards for Employers* to implement a host of Marketplace-related provisions including the rules relating to coverage of abortion services in QHPs. CMS has also answered individual questions from issuers and provided limited guidance about the rules relating to coverage of abortion services in QHPs. Based on initial findings provided by the Government Accountability Office (GAO) to CMS, CMS acknowledges that additional clarification may be needed.

While GAO's stated purpose of this correspondence was not to determine compliance with the laws and regulations that govern the coverage of non-excepted abortion services, HHS appreciates the information about QHP activities in this draft correspondence and CMS will use this information to address issues of concern in the appropriate manner. Accordingly, CMS will speak directly with the QHPs or state Departments of Insurance regarding the issues identified by GAO to determine whether additional guidance is necessary to ensure that states and issuers understand the laws and regulations governing the coverage of non-excepted abortion services.

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