



**MEDICAL POLICY STATEMENT
WEST VIRGINIA MARKETPLACE**

Policy Name	Policy Number	Date Effective
Abortion	MM-0918	05/01/2020
Policy Type		
MEDICAL	Administrative	Pharmacy
		Reimbursement

Medical Policy Statement prepared by CSMG Co. and its affiliates (including CareSource) are derived from literature based on and supported by clinical guidelines, nationally recognized utilization and technology assessment guidelines, other medical management industry standards, and published MCO clinical policy guidelines. Medically necessary services include, but are not limited to, those health care services or supplies that are proper and necessary for the diagnosis or treatment of disease, illness, or injury and without which the patient can be expected to suffer prolonged, increased, or new morbidity, impairment of function, dysfunction of a body organ or part, or significant pain and discomfort. These services meet the standards of good medical practice in the local area, are the lowest cost alternative, and are not provided mainly for the convenience of the member or provider. Medically necessary services also include those services defined in any Evidence of Coverage documents, Medical Policy Statements, Provider Manuals, Member Handbooks, and/or other policies and procedures.

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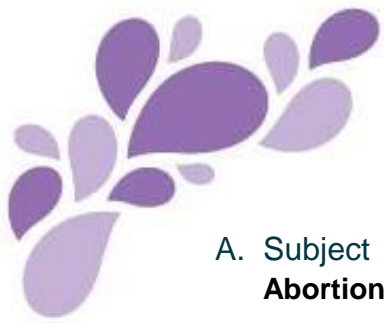
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A. Subject
Abortion

B. Background

CareSource will cover therapeutic abortions for eligible CareSource members in accordance with strict federal and state guidelines, which permit an abortion only in instances where continuation of the pregnancy places the life or health of the mother in danger or in instances where the mother was a victim of rape or incest. Abortions are not covered if used for family planning purposes.

C. Definitions

- **Abortion** - means the use or prescription of any instrument, medicine, drug or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead embryo or fetus. *WV Code section 16-2I-1(a); For a similar definition see WV Code section 16-2F-2(1)*
- **Dismemberment Abortion** - means with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body to cut or rip it off. The term "dismemberment abortion" includes an abortion in which a dismemberment abortion is performed to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child. The term "dismemberment abortion" does not include an abortion which uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, an abortion following fetal demise which uses a suction curette, suction curettage or forceps to dismember the body of a dead unborn child, or when forceps are used following an induced fetal demise by other means. *WV Code section 16-2O-1(3)*
- **Fetus** - means the developing young in the uterus, specifically the unborn offspring in the postembryonic period from nine weeks after fertilization until birth. *WV Code section 16-2M-2(4)*
- **Nonmedically viable fetus** - means a fetus that contains sufficient lethal fetal anomalies to render the fetus medically futile or incompatible with life outside the womb in the reasonable medical judgment of a reasonably prudent physician. *WV Code section 16-2M-2(6)*
- **Therapeutic Abortion** - means an abortion performed to save the life or health of a mother, or as a result of incest or rape. *(CareSource Evidence of Coverage, Section 13, Glossary, Page 144)*
- **Medical emergency** - means a condition that, on the basis of a reasonably prudent physician's reasonable medical judgment, so complicates the medical condition of a pregnant female that it necessitates the immediate abortion of her pregnancy without first determining gestational age to avert her death or for which the delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis that the



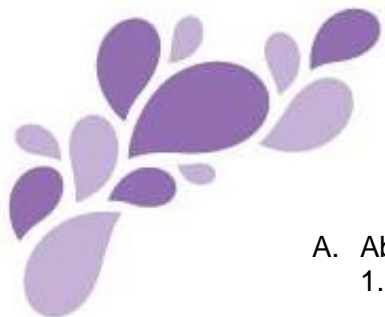
woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function. *WV Code section 16-2M-2(5); For a similar definition see WV Code section 16-2I-1(c)*

- **Unborn child or fetus** - means the developing young in the uterus, specifically the unborn offspring in the postembryonic period from nine weeks after fertilization until birth. *WV Code section 16-2M-2(4)*
- **Pain capable gestational age** - means twenty-two weeks since the first day of the woman's last menstrual period. The pain capable gestational age is generally consistent with the time that is twenty weeks after fertilization. *WV Code section 16-2M-2(7)*
- **Probable gestational age of the unborn child** - means, in reasonable medical judgment and with reasonable probability, the gestational age of the fetus at the time an abortion is planned to be performed. *WV Code section 16-2M-2(9); For a similar definition see WV Code section 16-2I-1(e)*
- **Physician** - means a person with an unrestricted license to practice allopathic medicine pursuant to the WV Code or osteopathic medicine pursuant to the WV code. *WV Code section 16-2M-2(10); For a similar definition see WV Code section 16-2I-1(d)*
- **Unemancipated Minor** - means any person less than 18 years of age who is not, or has not been, married, who is under the care, custody, and control of the person's parent or parents, guardian, or court of competent jurisdiction pursuant to applicable federal law or as provided under WV Code. *WV Code section 16-2F-2(4)*

D. Policy

This policy is written to conform to Federal law and the West Virginia Code

- I. Abortion is **NOT** a covered benefit except in the case of:
 - A. A medical emergency (as defined in Section C above) **OR**
 - B. An instance where continuation of the pregnancy places the life of the mother in danger or at serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions **OR**
 - C. A non-medically viable fetus **OR**
 - D. A pregnancy as a result of rape or incest
 - A. Limitation on Pain-Capable Gestational Age: Abortion is not covered in the instance of rape or incest after the fetus reaches pain-capable gestational age (twenty-two weeks since the first day of the woman's last menstrual period or twenty weeks after fertilization)
 - B. Limitation on Dismemberment Abortions: Dismemberment abortions can only be performed in cases of rape and incest if in a reasonable medical judgment the woman has a condition that so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition may be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.
- II. Prior Authorization (PA) is required under the following circumstances:



- A. Abortion due to Medical Emergency:
 - 1. Documentation must be provided by a physician supporting the diagnosis that abortion is a medical emergency
 - B. Non-Medically viable fetus:
 - 1. Documentation provided by a physician supporting non medically viability
 - 2. Documentation provided that informed consent has occurred
 - 3. Documentation provided that parental notification or waiver has occurred in the case of an unemancipated minor
 - C. Abortion due to Rape or Incest
 - 1. Abortion due to Rape or Incest where the life of the mother is not at danger or at risk of substantial and irreversible physical impairment of a major function **AND** the fetus has not reached pain capable gestational age
 - a. Documentation provided by a physician asserting that the fetus had not reached pain capable gestational age
 - b. Documentation provided attesting that informed consent has occurred
 - c. Documentation provided that parental notification or waiver has occurred in the case of an unemancipated minor
 - 2. Abortion due to Rape or Incest where the mother's life/health is at risk **AND** the fetus has reached pain capable gestational age
 - a. Documentation provided by physician asserting mother's life/health at risk
 - b. Documentation attesting that informed consent has occurred
 - c. Documentation parental notification or waiver has occurred if an unemancipated minor
 - D. Abortion where continuation of the pregnancy places the life of the mother in danger or at serious risk of substantial and irreversible physical impairment of a major bodily function
 - 1. Documentation provided by a physician asserting life of the mother in danger or at serious risk of substantial and irreversible physical impairment of a major bodily function
 - 2. Documentation attesting that informed consent has occurred
 - 3. Documentation parental notification or waiver has occurred in the case of an unemancipated minor
 - E. Dismemberment Abortion
 - 1. Documentation provided by a physician asserting life of the mother in danger or at serious risk of substantial and irreversible physical impairment of a major bodily function **AND** that dismemberment abortion is the only option.
 - 2. Documentation attesting that informed consent has occurred
 - 3. Documentation of parental notification or waiver has occurred in the case of an unemancipated minor
- III. Informed Consent: Except in the instance of medical emergency, any abortion performed must be done with the voluntary and informed consent of the female in compliance with WV Code section 16-2I-2 as detailed below:
- A. The female must be given the following information in person or by telephone by the physician or the licensed health care professional to whom the responsibility has been delegated by the physician to perform the abortion at least twenty-four hours in advance of the abortion:
 - 1. The particular medical risks associated with the particular procedure to be employed, including any risks of infection, hemorrhage, danger to future pregnancies, and infertility **AND**



- 2. Probable gestational age of the embryo or fetus as the time of the abortion
AND
- 3. Medical risks associated with carrying the child to term
- B. The female must additionally be informed, by telephone or in person, by the physician who is to perform the abortion, or by an agent of the physician, at least twenty-four hours in advance of the abortion:
 - A. That medical assistance benefits may be available for prenatal care, childbirth and neonatal care through governmental or private entities **AND**
 - B. That the father is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion; **AND**
 - C. That she has the right to review printed and web-available materials provided by the State of West Virginia **AND**
 - D. That she will be required to execute a form prior to the abortion informing her of the opportunity to view or decline to view an ultrasound if an ultrasound is performed **AND**
 - E. That she will be required to certify before the abortion, that she has had the opportunity to review the information described above.
- C. Medical Emergency: When a medical emergency (as defined in Section C above) compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.
- IV. Notification requirements to parents of an unemancipated minor
 - A. The parent of a minor must be provided forty-eight hours' notice, by letter or telephone, before an abortion is provided, unless the unemancipated minor has obtained a waiver of notification
 - B. Notification requirements do not apply where the attending physician certifies that a medical emergency warrants a need for an abortion to be performed In this instance, the physician shall make a reasonable effort to inform, in person or by telephone, the parent, managing conservator, or guardian of the unemancipated minor within 24 hours after the time a medical emergency abortion is performed of the abortion and the necessity to do so.
- V. Telemedicine Procedures
 - A. A physician or health care provider use may not use telemedicine procedures to prescribe any drug with the intent of causing an abortion.
- VI. Reimbursement will not be made for associated services such as anesthesia, laboratory tests, or hospital services if the abortion service itself is not approved through the Prior Authorization process.

A. Conditions of Coverage

F. Related Policies/Rules



G. Review/Revision History

DATE		ACTION
Date Issued	02/01/2020	
Date Revised		
Date Effective	05/01/2020	New Policy
Date Archived	03/01/2021	

H. References

1. American College of Obstetricians and Gynecologists (2014). Retrieved on 8/15/2019 from <https://www.acog.org/-/media/Departments/Patient-Safety-and-Quality-Improvement/2014reVITALizeObstetricDataDefinitionsV10.pdf>
2. Centers for Medicare and Medicaid (n.d.). 33-24-28.2. Newborns' and Mothers' Health Protection Act. Retrieved 8/15/2019 from https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/nmhp_a_factsheet.html
3. WV Code § 16-2F-2 (2018) 2018 West Virginia Code, CHAPTER 16. PUBLIC HEALTH. ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS, §16-2F-2. Definitions. <https://law.justia.com/codes/west-virginia/2018/chapter-16/article-2f/section-16-2f-2/>
4. WV Code § 16-2M-2 (2018) 2018 West Virginia Code, CHAPTER 16. PUBLIC HEALTH. ARTICLE 2M. THE PAIN-CAPABLE UNBORN CHILD PROTECTION ACT, §16-2M-2. Definitions <https://law.justia.com/codes/west-virginia/2018/chapter-16/article-2m/section-16-2m-2/>
5. 42 C.F.R.441, Code of Federal Regulations, Subpart E – Abortions, <https://www.law.cornell.edu/cfr/text/42/part-441/subpart-E>

The Medical Policy Statement detailed above has received due consideration as defined in the Medical Policy Statement Policy and is approved.