

Impact Document: SB 133**SB 133 “Modifications to Medicaid Coverage” (2023)**

Overview: The goal of this document is to explain the federal waiver process to expand postpartum Medicaid coverage created by the passage of SB 133 in 2023.

Summary:

SB 133 has two important impacts on access to healthcare in Utah: it expands postpartum Medicaid coverage for low-income people from 60 days to 12 months and it increases access to family planning coverage to more Utah residents by expanding Medicaid eligibility for these contraceptive services to a larger population. However, the bill was passed with a provision that denies the 12-month expanded postpartum coverage for those whose pregnancies ended in abortion.

The coverage expansion in this bill cannot be operationalized without approval from the Centers for Medicare and Medicaid Services (CMS), and we expect CMS will not approve the initial expansion request because of the abortion carve-out in the postpartum coverage section. However, there is language in the new law that will require the state to ultimately remove the abortion restrictions and pursue CMS approval via an American Rescue Plan Act (ARPA) state plan amendment (SPA) in 2024. Assuming the SPA is approved by CMS, given it will not have the carve out for those whose pregnancies ended in abortion, SB 133 should be operationalized in mid-2024 after a 9-12-month delay created by the abortion restriction. Ultimately, SB 133 should expand health coverage to thousands of Utah families.

Reference links:

SB 133 “Modifications to Medicaid Coverage” - <https://le.utah.gov/~2023/bills/static/SB0133.html>

Provisions of SB 133 that took effect on May 2, 2023

Under SB 133, Utah’s Department of Health and Human Services (DHHS) was required to submit a waiver, called a Section 1115 waiver, to the federal Centers for Medicare and Medicaid Services (CMS), seeking approval to provide continuous Medicaid coverage during the postpartum period up to 12 months from the end of the pregnancy. This waiver has been submitted.

The Department of Health was directed in SB 133 to state in the 1115 waiver that a person would only be eligible for expanded Medicaid coverage postpartum if their pregnancy ended by way of a birth; miscarriage; stillbirth; or an abortion that is permitted under Section 76-7a-201 – the code that defines Utah’s “trigger ban.” This restriction denies expanded Medicaid coverage for anyone receiving an abortion not necessary to avert: (1) the death of the pregnant person, (2) a serious physical risk of substantial impairment of a major bodily function of the pregnant person, or (3) pregnancies resulting from rape or incest prior to 18 weeks gestation.

If CMS rejects or does not act on Utah’s 1115 waiver application by January 1, 2024, SB 133 states that DHHS shall request an ARPA SPA to provide continuous Medicaid coverage without the restriction based on how the pregnancy ends. No additional legislative approval is required to submit the SPA. However, the requirement to submit a limited 1115 waiver that won’t be approved by CMS, and then wait until after January 1, 2024, to submit the SPA application, will create a 9-12-month delay for postpartum coverage to take effect.

SB 133 also separately requires the state to provide coverage for family planning services to individuals with an income level up to 185% of the federal poverty level (FPL) and who do not qualify for full coverage under the Medicaid program. This also requires submission of a Section 1115 waiver or a SPA and CMS approval. The current income threshold for family planning services is 95% FPL, meaning this will be a very meaningful expansion in eligibility for these services once approved.

Family planning services include family planning counseling, as well as forms of medical diagnoses, treatment, or preventative care (e.g., testing and treatment for sexually transmitted infections). Family planning services do not include abortion services.

Note: Some media coverage of SB 133 glosses over the abortion restrictions within the bill that will derail the initial 1115 waiver. Reporters have cited the requirement to submit a SPA after January 1, 2024, as evidence that Utah did pass postpartum Medicaid expansion – without mentioning the self-imposed delay. When discussing SB 133, it is important to emphasize that the state is delaying this coverage from taking effect by pursuing the 1115 waiver with eligibility restrictions first, as opposed to immediately pursuing the SPA option which will offer coverage to every eligible individual regardless of how their pregnancies end.

See: “More States OK Postpartum Medicaid Coverage Beyond Two Months,” *KFF Health News*, June 1, 2023; <https://kffhealthnews.org/news/article/more-states-postpartum-medicaid-coverage-extension-year/>