

Public Funding of Abortion

American women have made great strides in all areas of their economic, social, and personal lives since the legalization of abortion in 1973. Unfortunately, the fundamental right to abortion guaranteed by *Roe* has not been realized by many of the nation's most vulnerable women, especially low-income women and women of color, due to harmful public funding restrictions.

The Hyde Amendment

In 1973, *Roe v. Wade* legalized abortion for all women, including poor women. Poor women were able to access abortions funded by Medicaid, the joint federal-state program that provides low-income individuals with basic healthcare services. Just three years after *Roe*, however, Congress passed a prohibition on the use of federal funds for abortion services in Medicaid. The prohibition – known as the Hyde Amendment – became effective in 1977 and has been reauthorized every year by Congress.¹ Although the language has changed over the years, the Hyde Amendment currently prohibits states from using federal Medicaid funds for abortions unless the pregnancy is the result of rape or incest or the woman's life is in danger.²

Before the Hyde Amendment, Medicaid paid for one-third of all abortions in the U.S.; today it pays for less than 1 percent of all abortions.³ In fiscal year 2001, the most recent year for which statistics are available, only 81 abortions were paid for by both federal and state Medicaid under the narrow exceptions.⁴

Every state but one covers the abortions permitted by the Hyde Amendment.⁵ Only 17 states go beyond the restrictions of the Hyde Amendment and use their own funds to cover medically necessary abortions for Medicaid beneficiaries.⁶ This means that the vast majority of poor women in the U.S. are denied the right to abortion because of their inability to pay.

The Hyde Amendment Endangers Women's Health

The Hyde Amendment does not include an exception for women's health. In Florida, Medicaid refused to cover the abortion of a woman with cancer who needed chemotherapy but could not receive treatment because she was pregnant. Although delaying chemotherapy would likely cause her death, death was not considered "imminent" so her case did not fit within the narrow life exception.⁷

The Hyde Amendment Means That Medicaid Funds Pregnancy but not Abortion

Medicaid covers all prenatal and pregnancy-related care for eligible women. Currently, 11.5% of U.S. women of reproductive age (15-44) are covered by Medicaid.⁸ Studies have found that between 18 and 35% of Medicaid-eligible women who would have had an abortion if public funding had been available instead carried their unplanned pregnancy to term.⁹ Funding pregnancy, but not abortion, means that a woman enrolled in Medicaid is denied the full menu of comprehensive reproductive healthcare services.

The Hyde Amendment Particularly Burdens Women of Color and Immigrant Women
Restrictions on public funding for abortion disproportionately affect women of color who are more likely to rely on Medicaid for their family planning needs. Women of color make up 51% of non-elderly Medicaid beneficiaries but less than 20% of the general population.¹⁰ Women of color also are more likely to have unintended births, which could be due at least partially to the ban on Medicaid funding of abortions.¹¹ Public funding restrictions on abortion also harm immigrant women.¹² Although there are states that use their own Medicaid funds to pay for abortions, only half of these fund coverage for immigrant women, denying many immigrant women the ability to control their reproductive lives.¹³

The Hyde Amendment Creates Economic Barriers and Health Concerns for Poor Women

The average cost of a first-trimester abortion is \$468.¹⁴ Poor women denied abortion coverage under the Hyde Amendment may have to postpone paying for other basic needs like food, rent, heating and utilities in order to save the money needed for an abortion. Moreover, the time needed to save money means that poor women tend to have their abortions two to three weeks later than other women. The greater the delay in obtaining an abortion, the more expensive and less safe the procedure becomes, catching poor women in a vicious cycle. By the time they raise enough funds for a first-trimester abortion, they are in their second trimester and need even more money. At 16 weeks, the average cost of the procedure increases to \$774, and at 20 weeks to \$1,179.¹⁵ Women who cannot pay for an abortion may resort to self-inducing an abortion or seeking unsafe, illegal abortions from untrained, unlicensed practitioners.¹⁶ Rosie Jimenez, a Latina college student who was unable to pay for a legal abortion, became the first woman to die from a back alley abortion after the passage of the Hyde Amendment.¹⁷

Federal Employees, American Indian Women, and Women in the Military also Face Funding Restrictions

Congress also prohibits funding of abortion for other women who rely on the federal government for their healthcare needs, amounting to more than 20 million women whose reproductive rights are limited. This includes women serving in the U.S. military and Peace Corps, federal employees, residents of the District of Columbia, women in federal prisons, and women covered by the Indian Health Service.¹⁸ Teens from low-income families under the age of 19 who rely on the State Children's Health Insurance Program (S-CHIP) for healthcare also are burdened by restrictions on the use of federal funds for abortions except in cases of rape, incest, or life endangerment.

The Hyde Amendment's reauthorization every year provides an opportunity to reexamine its discriminatory and harmful impact on the nation's poorest women. The restoration of public funding for abortion is critical to ensuring that *all* women can exercise the right to decide whether and when to have a child. Lawmakers at both the federal and state levels should work to overturn harmful abortion funding bans so that all women, regardless of their socioeconomic status, have access to comprehensive health care and the opportunity to lead productive, healthy lives.

¹ The Supreme Court upheld the constitutionality of the Hyde Amendment in a 5-4 opinion in *Harris v. McRae*, 297 U.S. 323 (1980) (reasoning that although the federal government funded prenatal and maternity care for women on Medicaid, its refusal to pay for abortion was permissible because the government may choose to “encourage childbirth over abortion”).

² For an analysis of the inadequacy of these exceptions, see Stephanie Poggi, Ctr. for Am. Progress, *Abortion Funding for Poor Women: The Myth of the Rape Exception*, Apr. 28, 2005, available at <http://www.americanprogress.org/issues/2005/04/b615981.html>.

³ Stanley Henshaw and Lawrence Finer, *The Accessibility of Abortion Services in the United States, 2001*, 35 PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 16, 20 (2003).

⁴ Poggi, *supra* note 2.

⁵ One state – South Dakota – is in violation of federal Medicaid law because it pays for abortions only when the woman’s life is in danger.

⁶ GUTTMACHER INST., STATE POLICIES IN BRIEF, STATE FUNDING OF ABORTION UNDER MEDICAID, Oct. 1, 2007, available at http://www.guttmacher.org/statecenter/spibs/spib_SFAM.pdf.

⁷ Carol Cohan, *A Grandmother’s Commitment to Abortion Rights*, MIAMI HERALD, Oct. 17, 2006.

⁸ Adam Sonfield and Rachel Benson Gold, *Conservatives’ Agenda Threaten Public Funding for Family Planning*, THE GUTTMACHER REPORT (Guttmacher Inst., New York, N.Y.), Feb. 2005.

⁹ Henshaw & Finer, *supra* note 3, at 23.

¹⁰ *Medicaid’s Role for Women*, WOMEN’S ISSUE BRIEF (The Henry J. Kaiser Family Foundation, Washington, D.C.), May 2006, at 1.

¹¹ One-half of all births to black women are unintended compared to one-third births unintended overall. Shawn Towey, Stephanie Poggi & Rachel Roth, *Abortion Funding: A Matter of Justice*, NAT’L NETWORK OF ABORTION FUNDS POL’Y REPORT (Nat’l Network of Abortion Funds, Boston, MA), Apr. 2005, at 5.

¹² Legal immigrants who entered the U.S. after August 1996 are not eligible for federal Medicaid benefits until they have been residents for 5 years.

¹³ Nat’l Asian Pacific Am. Women’s Forum, *Hyde Amendment—30 Years is Enough! Campaign* (Aug. 2006), available at http://www.napawf.org/file/issues/Hyde_Amendment.pdf.

¹⁴ Towey, Poggi & Roth, *supra* note 11, at 6.

¹⁵ *Id.*

¹⁶ Nat’l Abortion Fed’n, *Public Funding for Abortion: Medicaid and the Hyde Amendment* (2006), available at http://www.prochoice.org/about_abortion/facts/public_funding.html.

¹⁷ Rosie crossed the border into Mexico in 1977 in search of an affordable illegal abortion and died of sepsis in a Texas hospital, with a college scholarship check, uncashed, still in her purse. Towey, Poggi & Roth, *supra* note 11, at 8.

¹⁸ *Id.* at 2.