

## **1977 – The Hyde Amendment was revised.**

A revised version of the Hyde Amendment passed in 1977 allowing states to deny Medicaid funding except in cases of rape, incest, "severe and long-lasting" damage to women's physical health, and life endangerment. The original Hyde Amendment allowed funding for abortion when it endangered the lives of women. In later years, these new exceptions were challenged, and for some time the only exception was for life endangerment. Currently, the Hyde Amendment allows government funding for abortion in cases of rape, incest, and life endangerment.

The Hyde Amendment in later years expanded to affect women who were not Medicaid recipients. Those denied access to federally funded abortion include Native Americans, federal employees and their dependents, Peace Corps volunteers, federal prisoners, military personnel and their dependents, and disabled women who rely on Medicare.

### **The Hyde Amendment**

After **Roe v. Wade** decriminalized abortion in 1973, Medicaid covered abortion care without restriction. In 1976, Representative Henry Hyde (R-IL) introduced an amendment that later passed to limit federal funding for abortion care. Effective in 1977, this provision, known as the Hyde Amendment, specifies what abortion services are covered under Medicaid.

Over the past two decades, Congress has debated the limited circumstances under which federal funding for abortion should be allowed. For a brief period of time, coverage included cases of rape, incest, life endangerment, and physical health damage to the woman. However, beginning in 1979, the physical health exception was excluded, and in 1981 rape and incest exceptions were also excluded.

In September 1993, Congress rewrote the provision to include Medicaid funding for abortions in cases where the pregnancy resulted from rape or incest. The present version of the Hyde Amendment requires coverage of abortion in cases of rape, incest, and life endangerment.

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### **Challenges to Hyde**

The first challenges to the Hyde Amendment came shortly after its implementation. The Supreme Court has held that the Hyde Amendment restrictions are constitutional<sup>8</sup> and that states participating in Medicaid are only required to cover abortion services for which they receive federal funding rather than all medically necessary abortions.<sup>9</sup> Challenges under state constitutions have been more successful. Several lawsuits have been brought in individual states arguing that state constitutions afford greater protection for privacy and equal protection than the federal Constitution.<sup>10</sup>

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## Implementation of the Hyde Amendment

The Hyde Amendment affects only federal spending. States are free to use their own funds to cover additional abortion services. For example, Hawaii, New York, and Washington have enacted laws funding abortions for health reasons. Other states, such as Maryland, cover abortions for women whose pregnancies are affected by fetal abnormalities or present serious health risks. These expansions are important steps toward ensuring equal access to health care for all women.

Prior to the 1993 expansion of the Hyde Amendment, thirty states chose not to use their own Medicaid funds to cover abortions for pregnancies resulting from rape or incest.<sup>11</sup> Initially, a number of states expressed resistance to comply with the expanded Hyde Amendment, and presently thirteen states are under court orders to comply and cover rape and incest in addition to life endangerment.<sup>12</sup> Every court that has considered the Hyde Amendment's application to a state's Medicaid program since 1993 has held that states continuing to participate in the Medicaid program must cover abortions resulting from rape or incest in order to be compliant with the Hyde Amendment, regardless of state laws that may be more restrictive.

## References

1. The Henry J. Kaiser Family Foundation, "[The Medicaid Program at a Glance](#)," Key Facts (January 2005).
2. The Henry J. Kaiser Foundation, "[Medicaid's Role for Women](#)," Issue Briefs: An Update on Women's Health Policy (November 2004).
3. *Id.*
4. The Henry J. Kaiser Family Foundation and the Alan Guttmacher Institute, "[Medicaid: A Critical Source of Support for Family Planning in the United States](#)," Issue Briefs: An Update on Women's Health Policy (April 2005).
5. The Henry J. Kaiser Family Foundation, "[State Fiscal Conditions and Medicaid](#)," Medicaid Facts (November 2005).
6. *Id.*
7. *Id.*
8. See *Beal v. Doe*, 432 U.S. 438 (1977) and *Maher v. Roe*, 423 U.S. 464 (1977).
9. 448 U.S. 297 (1980).
10. Advocates bringing lawsuits have ensured state Medicaid coverage for abortions in all or most circumstances in Alaska, Arizona, California, Connecticut, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, Oregon, Vermont, and West Virginia. Courts in Florida, Idaho, Kentucky, Michigan, North Carolina, Pennsylvania, and Texas have upheld funding restrictions under their respective state constitutions. Center for Reproductive Rights, "[Portrait of Injustice: Abortion Coverage Under the Medicaid Program](#)".
11. Bruce Alpert, "Fight Brews as Clinton Backs Medicaid Abortions," *New Orleans Times-Picayune*, December 30, 1993, at B1.
12. The Guttmacher Institute, "[State Funding of Abortion Under Medicaid](#)," State Policies in Brief (June 1, 2005).
13. Heather Boonstra and Adam Sonfield, "[Rights Without Access: Revisiting Public Funding of Abortion for Poor Women](#)," *The Guttmacher Report on Public Policy* vol.3(2) (April 2000).