



Abortion Coverage Under Medicaid

By Fabiola Carrión

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Introduction

Federal Medicaid funding for abortion is severely constrained, but not completely unavailable. Thirty-four states and the District of Columbia follow the federal standard and provide abortions in cases of life endangerment, rape, and incest.¹ This Q&A provides an overview of the scope of federal Medicaid coverage of abortion and related services, and the process for obtaining coverage in the states in which funding is limited by the Hyde Amendment.

What is the Hyde Amendment?

Since 1976, an annual appropriations bill rider known as the Hyde Amendment has restricted federal funding for abortion services except in the narrow circumstances of rape, incest, or life endangerment. As a legislative rider, the language of the Hyde Amendment has sometimes differed, but the intent has always remained the same: to restrict funding and access to abortions. Four years after its first passage, the U.S. Supreme Court upheld the Hyde Amendment's restrictions on federal funding. It also found that states are not obliged to "pay for those medical services for which federal reimbursement is unavailable."² However, states may use their own funding resources to cover abortions past these circumstances.³

What are the Hyde Amendment exceptions?

The Hyde Amendment allows federal funding of abortion only when a pregnancy is the result of rape or incest, or when it is necessary to save the pregnant patient's life.⁴ The current version of the Hyde Amendment establishes that federal funding is available when a patient "suffers from a physical disorder, physical injury, or physical illness, including a life-

¹ Four of these states also provide state funds for abortions in cases of fetal impairment. Four of these states also provide state funds for abortions that are necessary to prevent grave, long-lasting damage to the woman's physical health. Fifteen states provide state funding for abortions beyond the federal restrictions either voluntarily or by court order. South Dakota does not comply with the Hyde Amendment, and only covers abortions that endanger a pregnant person's life. See generally, Guttmacher Institute: State Laws and Policies, *State Funding of Abortion Under Medicaid as of February 1, 2019* (2019), <https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicare> (last visited Feb. 19, 2019).

² *Harris v. McRae*, 448 U.S. 297, 315-21, 326 (1980).

³ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 507(c), 129 Stat. 2242 (2015).

⁴ *Id.* §§ 506-507, 129 Stat. 2242, 2649.

endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed."⁵

The Centers for Medicare and Medicaid Services (CMS) – a federal agency with the U.S. Department of Health and Human Services – clarified that abortions falling within the Hyde exceptions “should be considered to fall within the scope of services that are medically necessary,” and that participating states are required to cover such abortions in their state Medicaid programs.⁶

When any of these circumstances arise, most states require that a provider fill out a specific form in order to process Medicaid reimbursement for the abortion. Some states simply require a provider letter or statement outlining the justification for the request.⁷ In addition, states may require that the rape or incest survivor report to government authorities.

How does the application of the life endangerment exception work?

Under the life endangerment provision, physicians must find and certify in writing to the state Medicaid agency that based on their professional judgment, the life of the patient would be endangered if the pregnancy were carried to term.⁸ Some states require that the physician detail the medical justification for the abortion and attach any pertinent information including laboratory tests, radiological evaluations, consultations, etc.⁹ (See Appendix).

How does the application of the rape and incest exceptions work?

Federal funding, including Medicaid, must cover abortions when the pregnancy resulted from rape or incest, as defined by the state’s criminal code.¹⁰ Federal policy permits but does not require documentation or certification for abortions that fall under the rape or incest exceptions.

⁵ Id. § 507(a)(2).

⁶ Health Care Financing Admin., Dear State Medicaid Director Letter [hereinafter Dear State Medicaid Director Letter] (Feb. 12, 1998), <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/smd021298.pdf>.

⁷ These states are Alabama, Delaware, Idaho, Indiana, Louisiana, Maine, Nebraska, North Carolina, North Dakota, and Rhode Island.

⁸ See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 614, 129 Stat. 2242 (2015).

⁹ These states are Delaware, Arizona, Florida, Indiana, Iowa, Michigan, Nevada, South Carolina, Tennessee, and Utah. Montana does not require additional documents, but encourages the attachment of additional documents “as needed.” Virginia and Wisconsin ask for details, but do not ask for any attachments.

¹⁰ See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 507, 129 Stat. 2242 (2015). See also Dear State Medicaid Director Letter, *supra* note 6.

Are there reporting requirements for the rape and incest exceptions?

States may, but are not required to, impose reporting or documentation requirements on Medicaid enrollees and Medicaid providers to confirm that a pregnancy was the result of rape or incest.¹¹ This requirement may involve reporting the rape or incest to a law enforcement agency, child protective services, or other government agency. Fifteen states that only fund Hyde abortions require Medicaid enrollees to report the rape that caused the pregnancy in order to receive Medicaid coverage.¹²

Are there waivers or exceptions to these reporting requirements?

In accordance with federal policy, all rape reporting requirements must be reasonable and “may not serve to deny or impede coverage for abortions.”¹³ States must waive any reporting or documentation requirements and consider the procedure reimbursable if the “treating physician certifies that in his or her professional opinion, the patient was unable, for physical or psychological reasons, to comply with the [reporting] requirements.”¹⁴ With the exception of six states, all states that have reporting requirements also have instituted waivers (See Appendix).

How do providers apply for a waiver?

Most states’ reimbursement forms include an option to waive the reporting requirement and offer providers the opportunity to attest that in their opinion the patient was unable to comply with this reporting.

Can patients get coverage for other reproductive health services even though their state Medicaid programs only cover Hyde abortions?

States are obliged to furnish enrollees with covered services that are determined to be “medically necessary.”¹⁵ Although federal law and policy does not define “medical necessity,” many states have defined the term in law, regulation, or policy to incorporate preventive, ameliorative, and curative services, procedures, and levels of care.¹⁶

While federal funding is not available for non-Hyde abortions and abortion-related services, federal reimbursement is available for services, tests, and procedures that normally would have been performed for a pregnant person even if the patient eventually sought abortion services. The extent of coverage depends on whether the state Medicaid plan covers these

¹¹ See Dear State Medicaid Director Letter, *supra* note 6.

¹² Maryland, Massachusetts, Montana, and New Jersey also have reporting requirements, but those states cover abortions beyond Hyde with state funding.

¹³ See Dear State Medicaid Director Letter, *supra* note 6.

¹⁴ See Dear State Medicaid Director Letter, *supra* note 6.

¹⁵ *Beal v. Doe*, 432 U.S. 438 (1977).

¹⁶ See, e.g., Fla. Stat. § 409.9131(2)(b).

ancillary services and whether these services are affiliated with the non-covered abortion.¹⁷ Some of these services include:

- Tests to identify sexually transmitted infections (such as chlamydia, gonorrhea, and syphilis);
- Laboratory tests routinely performed on a pregnant patient, such as pregnancy tests, pap smears, and urinalysis;
- Family planning

In addition, federal funding is available for treating any medical problems resulting from a medically unsupervised abortion (i.e., where someone other than a physician, such as the patient, has induced the abortion), or an ectopic (tubal) pregnancy, which must always be removed. Depending on the circumstances, ectopic pregnancies are treated with medication (methotrexate), laparoscopic surgery, or abdominal surgery.¹⁸ However, no federal funding is available for post-partum services related to induced abortions.¹⁹

Lastly, CMS confirms, the hospital or clinic must be able to distinguish between costs attributable to an abortion versus those attributable to a family planning service (and cites sterilization as an example).²⁰

¹⁷ CMS, STATE MEDICAID MANUAL § 4432(B). ¹⁸ Id.

¹⁹ Id. §4421(A)(2).

²⁰ Id. §4432(B).

APPENDIX: How Each State Covers Abortions

State	Fund Abortions Beyond Hyde	Form or Written Statement Required	Law Enforcement Report Required	Waiver to Reporting Requirement
Alabama	No	Form (life endangerment only)	No	N/A
Alaska	Yes	Form	No	N/A
Arizona	Yes	Form	Yes	Yes
Arkansas	No	Yes (Form DMS-2698)	Yes	Yes
California	Yes	No	No	N/A
Colorado	Yes	Form (sexual assault/incest only)	No	N/A
Connecticut	Yes	Form	No	N/A
Delaware	No	Written request	Yes	Yes
Florida	No	Form	No	N/A
Georgia	No	Form	No	N/A
Hawaii	Yes	No	No	N/A
Idaho	No	Written Statement	Yes	Yes
Illinois	Yes	Form	No	N/A
Indiana	No	Written request	Yes	No
Iowa	No	Form	Yes	No
Kansas	No	Form	No	N/A
Kentucky	No	Form (life endangerment only)	No	N/A
Louisiana	No	Written Statement	Yes	Yes
Maine	No	Written Statement	No	N/A
Maryland	Yes	Form	Yes	No
Massachusetts	Yes	Form	Yes	No
Michigan	No	Form	Yes	Yes
Minnesota	Yes	Form	No	N/A
Mississippi	No	Form	No	N/A
Missouri	No	Form	No	N/A
Montana	Yes	Form	Yes	Yes
Nebraska	No	Written Statement	No	N/A
Nevada	No	Form	No	N/A
New Hampshire	No	Form	No	N/A
New Jersey	Yes	Yes**	No	N/A
New Mexico	Yes	No	No	N/A
New York	Yes	No	No	N/A
North Carolina	No	Written Statement	No	N/A
North Dakota	No	Written Statement	Yes	Yes
Ohio	No	Form	Yes	Yes
Oklahoma	No	Form	No	N/A
Oregon	Yes	No	No	N/A
Pennsylvania	No	Form	Yes	Yes
Rhode Island	No	Written Statement	No	N/A
South Carolina	No	Form	Yes	Yes
South Dakota	No	No	South Dakota does not cover rape or incest,	N/A

			despite federal requirements.	
Tennessee	No	Form	No	N/A
Texas	No	Form	No	N/A
Utah	No	Form	Yes	Yes
Vermont	Yes	Form	No	N/A
Virginia	No	Yes (MAP-3006 form)	Yes	No
Washington	Yes	No	No	N/A
West Virginia	Yes	Form	No	N/A
Wisconsin	No	Form	Yes	No
Wyoming	No	Form	Yes	Yes
District of Columbia	No	Written Statement	No	N/A