



Kansas Legislative Research Department

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To: Senate Committee on Public Health and Welfare
From: Iraida Orr, Principal Research Analyst
Re: Use of State Funds for Abortions Under Medicaid

This memorandum is provided in response to a Committee request for confirmation on other states' use of state funds to pay for abortions under Medicaid. The varying sources cited below concur some states use state funding to pay for abortions under Medicaid for reasons other than rape, incest, or the life of the mother, which are the circumstances under which use of federal Medicaid funds is required per the federal Hyde Amendment.

National Right to Life Committee, Inc.

The National Right to Life Committee, Inc. (National Right to Life) issued a report, "The State of Abortion in the United States, 2020," analyzing abortion data released in 2019 by the Guttmacher Institute and the U.S. Centers for Disease Control and Prevention (CDC).¹ The Guttmacher Institute data analyzed covered through 2017, the CDC data was through 2015, and the National Right to Life estimated figures for 2017 through 2019. The report noted the Guttmacher Institute data were considered more reliable and complete because the survey data came directly from abortion clinics in all 50 states. The National Right to Life report noted the CDC data relied on voluntary reporting from state health departments and agencies and, since 1998, lacked data from Maryland, New Hampshire, and California.

Information on the CDC's Abortion Surveillance Report confirms states and areas, totaling 48 reporting areas, voluntarily report data to the CDC. Abortion data for 2016 indicate information was reported for New York City and 47 states. California, the District of Columbia, Maryland, and New Hampshire did not report. The Abortion Surveillance Report examines multiple variables for the populations reporting and is used in the public health field to identify characteristics placing women at high risk of unintended pregnancy, evaluate the success of programs aimed at preventing unintended pregnancies, calculate pregnancy rates, monitor changes in clinical practice patterns related to abortion, and calculate the national legal induced abortion case-fatality rate.²

The National Right to Life report contains a section on state policies on public funding of abortion that notes 17 states fund Medicaid coverage of abortion voluntarily or have laws in place requiring funding and, of these, 13 are due to court decisions. The report listed the

¹ <https://www.nrlc.org/stateofabortion/>

² <https://www.cdc.gov/mmwr/volumes/68/ss/ss6811a1.htm>

following 13 states that require coverage of abortion as a result of a court order: Alaska, Arizona, California, Connecticut, Illinois, Massachusetts, Montana, New Jersey, New Mexico, Oregon, Vermont, and West Virginia. The four states cited as providing abortion funding voluntarily are Hawaii, Maryland, New York, and Washington. The report indicates another 27 states and the District of Columbia have laws limiting Medicaid abortion funding to cases of rape, incest, and life endangerment of the mother, while 6 other states limit abortion funding to a lesser extent (Indiana, Iowa, Mississippi, Utah, Virginia, and Wisconsin).

American Civil Liberties Union

An article on the American Civil Liberties Union (ACLU) website addressing public funding for abortion indicates most states restrict Medicaid funding for abortion to the restrictions established by the Hyde Amendment. The article notes 17 states fund abortions for low income women on the same or similar terms as general health and other pregnancy-related services. The article notes, of these 17 states, 13 states provide public funding as a result of a court decision and 4 states provide public funding voluntarily. The 17 states listed are the same as those listed in the National Right to Life report previously noted. The article indicates 32 of the remaining states pay for abortions for low-income women in cases of rape, incest, or life-endangering circumstances, as required by federal Medicaid law (Hyde Amendment). The article notes one state, South Dakota, provides coverage only for lifesaving abortions and does not comply with the Hyde Amendment.³

Guttmacher Institute

A Guttmacher Institute report, "State Funding of Abortion Under Medicaid," published on February 1, 2020, notes "[s]ome states use their own funds to pay for all or most medically necessary abortions, although most do so as a result of a specific court order." The report indicates 16 states have a policy that directs Medicaid to pay for all or most medically necessary abortions. According to the report, seven states provide state funds voluntarily (Hawaii, Illinois, Maine, Maryland, New York, Oregon, and Washington) and nine do so pursuant to a court order (Alaska, California, Connecticut, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, and Vermont).

The report indicates 33 states and the District of Columbia follow the federal standard and provide abortions in cases of incest, rape, and life endangerment; 4 of the 33 states also provide state funds for abortions in cases of fetal impairment (Iowa, Mississippi, Virginia, and West Virginia); and 4 provide state funds for abortions that are necessary to prevent grave, long-lasting damage to the woman's physical health (Indiana, Utah, West Virginia, and Wisconsin).

Unlike the National Right to Life and the ACLU information, the Guttmacher Institute report does not include Arizona in the states that pay for abortions with state funds because it concluded the Arizona state Medicaid program does not pay for medically necessary abortions, despite a court order. The report further clarifies South Dakota pays for abortions only when necessary to protect the life of the mother, in apparent violation of federal law. Additionally, the Guttmacher Institute report notes an Alaska law that defines "medically necessary," as it

³ <https://www.aclu.org/other/public-funding-abortion>

pertains to abortions, is permanently blocked by a court. A chart indicating the state funding of abortions under Medicaid is included in the report.⁴

An April 2017 report by the Guttmacher Institute, "Public Funding for Family Planning and Abortion Services, FY 1980-2015," indicates states spent \$71 million on approximately 157,000 abortion procedures for low income women in fiscal year 2015. The federal government contributed to the cost of only 160 of these abortion procedures under the requirements of the Hyde Amendment. According to the report, "[i]n FY 2015, 17 states officially had nonrestrictive policies, using their own funds to pay for most or all medically necessary abortions provided to Medicaid recipients." The report notes more than 99 percent of all publicly funded abortion procedures in FY 2015 occurred in the states with nonrestrictive policies on funding for Medicaid recipients. The discussion section of the report indicated 2 of the 17 states (Arizona and Illinois), despite their official policy, appeared not to be covering most or all medically necessary abortions. The report notes "the 15 states that are funding abortions with state dollars account for virtually all publicly funded abortions in the United States".⁵

Kaiser Family Foundation

The Kaiser Family Foundation (KFF), based on an analysis of state law and the Guttmacher Institute publication, State Policies in Brief, "State Funding of Abortions Under Medicaid" as of January 21, 2020, noted 15 states fund all or most medically necessary abortions, exceeding federal requirements. The 15 states cited are among the 16 states cited by the Guttmacher Institute, except KFF does not include Alaska because its state law defining medically necessary is temporarily blocked by a court. KFF also noted the Arizona state Medicaid program does not pay for medically necessary abortions, despite a court order to do so.⁶

Examples of State Funding for Abortions under Medicaid

The following are examples of state funding for abortions under Medicaid.

Illinois

A provider notice issued by the Illinois Department of Healthcare and Family Services on November 1, 2019, regarding changes to the claim submittal process and rates for abortion procedures, contains the following language:

All abortion services for both fee-for-service and managed care participants will be state-only funded beginning November 1, 2019. With this change, all claims, regardless of the date of service, that contain abortion procedures must be billed directly to the Department beginning November 1, 2019. This applies to claims submitted for participants

4 <https://www.guttmacher.org/print/state-policy/explore/state-funding-abortion-under-medicaid>

5 <https://www.guttmacher.org/report/public-funding-family-planning-abortion-services-fy-1980-2015>

6 [https://www.kff.org/medicaid/state-indicator/abortion-under-medicaid/?currentTimeframe=0&sortModel={\"collId\":\"Funds All or Most Medically Necessary Abortions, Exceeding Federal Requirements\",\"sort\":\"desc\"}](https://www.kff.org/medicaid/state-indicator/abortion-under-medicaid/?currentTimeframe=0&sortModel={\)

covered under a HealthChoice Illinois managed care plan as well as traditional fee-for-service.⁷

Connecticut

A September 26, 2018, research report prepared by the Connecticut Office of Legislative Research discusses the extent to which the State pays for abortions in its Medicaid programs.⁸ According to the research report, the Connecticut Department of Social Services (DSS) pays for abortions certified by physicians as "medically necessary" as defined in state statute (OGS § 17b-259b). The report notes the State's more extensive coverage policy for abortion resulted from a 1986 case in which the state court ruled a DSS regulation restricting abortion coverage to cases where the mother's life was endangered was unconstitutional. Based on the case, the State assumes 100.0 percent of the cost of medically necessary abortions. The State does not submit claims for the medically necessary abortions for federal Medicaid reimbursement. Additionally, pursuant to a subsequent opinion from the state attorney general, DSS also provides medically necessary abortions in the state children's health insurance program to the same extent as required in its Medicaid program. The report also references KFF information noting 16 states cover abortion for Medicaid recipients with state funds for abortions that exceed the restrictions imposed under the Hyde Amendment.

Additional Resource

A Congressional Research Service report, "Abortion: Judicial History and Legislative Response," updated September 9, 2019, may also be of interest to the Committee.⁹

7 <https://www.illinois.gov/htfs/MedicalProviders/notices/Pages/pm191101b.aspx>

8 <https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0260.pdf>

9 <https://fas.org/sgp/crs/misc/RL33467.pdf>