

The Hyde Amendment

Report to 9/17/23 meeting of the National Mobilization for Reproductive Justice

By Robin Strauss, NYC

In 1976, the Hyde Amendment, named after a Republican representative from Illinois, Henry Hyde, cut off federal funds for Medicaid abortions. Rosie Jimenez was the first to die of complications from a forbidden abortion after the law was enacted. She was 27 years old, a student, and a single mother of her 5 year old daughter. Since 1994 there have been 3 very narrow exceptions to the ban that the Hyde Amendment presents: These are “where the mother’s life is endangered; where she would suffer ‘severe and long-lasting health damage’ if she gave birth as determined by 2 physicians; or where pregnancy is due to rape or incest, and the incident has been reported to a law enforcement agency or public health service.” In cases of rape or incest, a woman could receive a Medicaid abortion if she reported the attack within 60 days of the crime. Clearly, many of these exceptions do not apply in those states now where total bans have been enacted. But in those where they have not, these exceptions are extremely hard to obtain.

The breadth of who is denied abortion access due to bans on federal funding is far reaching. Medicaid is both a state and federal health program. Congress reauthorizes the Hyde Amendment annually as an attachment to the appropriations bill of Health and Human Services. Since the initial passing of the Hyde Amendment, anti-abortion politicians have adopted language and extended similar policies to other federal health insurance programs. These include coverage for federal employees’ health benefits and their families, Indian Health Services, the military’s TRICARE program for military personnel and their families, Alaska Natives, people with disabilities who have federal health benefits, and inmates in federal prisons. The Affordable Care Act also includes limitations on those who receive federal income subsidies to purchase private health insurance. In addition, restrictions on abortion coverage extend to poor residents of the District of Columbia because Congress has jurisdiction over the District’s policy.

Because Medicaid is jointly funded by the federal and state governments, states where abortion still exists can choose to pay for abortions under Medicaid but must use state revenues because the Hyde Amendment withholds federal Medicaid funding. Most states do not do this.

We know that Medicaid is a significant and growing source of health coverage for low-income women and child-bearing people. Due to the economic inequalities of the capitalist system, which is linked to racism and discrimination, women/child-bearing people of color and poor people are disproportionately likely to be insured by the Medicaid program and therefore at risk because of the Hyde Amendment. While it’s hard to put an exact number on how many abortions the Hyde Amendment prevents or has prevented, there is agreement that it’s substantial. According to the Guttmacher Institute which supports abortion rights, about one-fourth of women who would have had Medicaid-funded abortions, instead give birth when this

funding is unavailable. A direct result of the Hyde Amendment is that it extends wealth and health inequalities, further extends poverty and increases forced sterilization.

Advocates who oppose abortion are working to make Hyde permanent law. Repealing the amendment is important and extends beyond the fight only for choice. Rather, repealing the amendment is a matter of fighting for racial and economic justice, as well as a fight for those who are the most vulnerable.

The Hyde Amendment was the result of a strategic plan of the Catholic Church and fundamentalist Protestants, whereby they began chipping away at abortion rights by banning economic access. The Amendment was designed to deprive poor women of their constitutional right to choose abortion. What specifically happened was that anti-abortion activists began to challenge federal Medicaid provisions.

The history of the fight to oppose the Hyde Amendment is an interesting one. I was involved with an activist, socialist group called CARASA that was a leader of the struggle in the 1970's.

CARASA (Committee for Abortion Rights and Against Sterilization Abuse) entered the fight in the mid 1970's to oppose the Hyde Amendment. This group defined themselves as socialist and focused on an economic basis of women's oppression as well as patriarchy as a system of gender oppression. These were feminists that were making the link between racial and class oppression in the US and the Third World. Their anti-war and civil rights activism made them particularly sympathetic to the anti-imperialist ideologies put forth by Black and Latino nationalist organizations like the Black Panther Party and the Young Lords. Most importantly, CARASA members were oriented to the experiences and perspective of women of color, and they insisted that without economic guarantees, reproductive freedom was nonexistent for anyone but those with resources. The Hyde Amendment as well as other attacks by the religious right gave CARASA founders the push they needed to mobilize and redefine the feminist abortion rights movement to achieve what they termed "reproductive rights," which would guarantee abortion access to the poorest women. CARASA believed the state was obligated to provide abortion for women who did not have financial access to it. They knew that the Hyde Amendment would prevent many poor women from having abortions and would promote sterilization. According to CARASA, the Hyde Amendment restrictions were the greatest threat to abortion rights and women's lives since the Supreme Court ruling in 1973 in Roe. We see the real threat in the death of Rosie Jimenez who was pressured to have an unsafe abortion after the Hyde Amendment was passed in 1977.

The Hyde Amendment has been challenged in the Supreme Court over the years by pro-choice groups who have argued that the law violated an individual's constitutional right of freedom of religion and separation of Church and state. They also argued that Hyde violated the Equal Protection of the laws by singling out abortion as the only form of medical care that will not be provided by Medicaid even when medically necessary. They argued that the denial of reimbursement for abortion would increase the pressure on poor women to be sterilized. 90% of the cost of sterilization is reimbursed under Medicaid.

In 1978 when the Supreme Court upheld Hyde as constitutional, the rules under which federal funds could be used to pay for abortions became tighter. Later changes expanded the ban to prevent abortion funding from federal worker health plans, women in federal prisons, women in the military and Peace Corps volunteers. In 1978 CARASA published statistics on the effects of Hyde on poor women which indicated that this Federal fund ban had a very real effect on poor women's ability to control their fertility. Many women carried a pregnancy to term or scraped together the money for a legal abortion by borrowing and forgoing other necessities. As a result of Hyde, CARASA members placed safe, legal and affordable abortions at the forefront of their political ideology. NY State did preserve Medicaid funding but with an annual legislative battle.

After Roe was overturned, there were renewed calls to abandon the Hyde Amendment. Biden did not include restrictions in his 2023 budget. We can guess but don't know for sure whether it'll be added back to the final bill text.

Lastly, I want to draw your attention to a recent decision by Mexico's Supreme Court that eliminated all federal criminal penalties for abortion, just a couple of weeks ago. What their ruling means specifically is that the federal health service and all federal health institutions are required to offer abortion to anyone who requests it. While it's not clear how this ruling will play out in Mexico where abortion is legal in some jurisdictions and not in others, it is clearly in stark contrast to the backwards Dobbs decision by the US Supreme Court. Repeal of the Hyde Amendment is one of the intersectional demands of the National Mobilization for Reproductive Justice. We must stand behind this demand with greater clarity and understanding of its impact on the most marginalized groups and fight for its repeal.