



Taxpayer Funding of Abortion and Abortion Businesses

by Connor Semelsberger, MPP

Key Points

The Hyde Amendment, which restricts taxpayer funding of abortion, has had bi-partisan support for over forty years. Democrats now want to repeal it.

The Hyde Amendment has saved an estimated 2,409,311 lives since 1976.

The decades-long consensus against public funding for abortion should not only be maintained but further strengthened to ensure that no taxpayer funding is used to promote or provide abortion as legitimate health care.

Summary

Ever since the Supreme Court handed down its infamous *Roe v. Wade* decision in 1973, legalizing abortion nationwide, a national debate has raged over whether the government should subsidize abortion, the legal practice of terminating the lives of unborn children in the womb.¹ In 1976, Congress took its first definitive action in prohibiting taxpayer funding for elective abortions in Medicaid by passing the Hyde Amendment. Several states have followed suit, passing their own restrictions on abortion funding. However, because government funding is a complex system of joint federal and state programs, completely banning taxpayer funding for abortions and abortion businesses like Planned Parenthood is challenging. There is still much work to be done to free the American taxpayer from subsidizing the horrific practice of abortion.

Federal Funding for Abortions

The Hyde Amendment

In the years following *Roe v. Wade*, the government paid for an estimated 300,000 abortions annually through Medicaid, a joint federal-state program that provides health care coverage for low-income individuals.² The national debate over public funding for abortions rose to the forefront in 1976, when Rep. Henry Hyde (R-Ill.) proposed an amendment to the fiscal year (FY) 1977 *Department of Labor, Health, Education and Welfare Appropriation Act* (H.R. 14232) prohibiting federal Medicaid funds from paying for abortions.³ The amendment was adopted into the base bill and sent to then-President Gerald Ford for signature. However, President Ford vetoed the legislation because it exceeded the proposed budget. In response, both the House (312-93) and the Senate (67-15) voted to override the presidential veto, passing the first federal funding bill that restricted taxpayer funding for abortion into law on September 30, 1976.⁴ It was a major victory to pass an annual spending bill with abortion funding restrictions. However, due to the nature of the federal appropriations process, this amendment must be included in each year's funding bill in order for it to take effect. The federal policy prohibiting the use of taxpayer funds to pay for or subsidize elective abortions has since been known as the Hyde Amendment. A version of the Hyde Amendment has been passed every year since 1976.

However, shortly after the Hyde Amendment's passage, implementation was blocked by a federal court in New York after a Medicaid recipient challenged the constitutionality of the law. In 1977, this case made its way to the Supreme Court in *Califano v. McRae*.⁵ It was ultimately sent back to the district court for further review, which allowed the Hyde Amendment to go into effect temporarily. After further review at the district court, the case made its way back to the Supreme Court. On June 30, 1980, in a 5-4 decision, the Supreme Court ruled in *Harris v. McRae* that the Hyde Amendment did not violate the U.S. Constitution.⁶ Since 1980, the Hyde Amendment has been fully enforced every year, creating a long precedent of prohibiting taxpayer funding for elective abortions.

The passage of the Hyde Amendment would not have been possible without the broad support of Democrat members, as 247 House Democrats and 48 Senate Democrats voted for the final spending package with the Hyde Amendment included.⁷ Notably, Shirley Chisholm, the first African American woman in Congress and a public supporter of legal abortion, voted alongside 16 of her African American colleagues in favor of the 1977 spending package with the first Hyde Amendment. Throughout its history, the Hyde Amendment has received widespread bipartisan support both from Congress and the White House. Every president since Jimmy Carter has signed an appropriations bill with the Hyde Amendment into law.

The historic bipartisan support ended in 2016, when the Democratic National Committee (DNC) decided to include the Hyde Amendment's repeal as a policy priority in its party platform—the first time either party had made such a declaration.⁸ Since then, several Democrat members of Congress have called for repealing the Hyde Amendment, culminating in an effort by Rep. Ayana Pressley (D-Mass.) to offer an amendment to the FY 2021 Labor, Health and Human Services, and Education appropriations bill that would have done just that. The amendment was never voted on, but it has renewed the national debate over whether public funds should pay for elective abortions.

Hyde Adaptations

The Hyde Amendment has taken various forms since its inception. The original version passed in 1976 included exceptions for abortions when the pregnancy threatened the life of the mother. After the original version was upheld in court, Congress passed a new iteration in 1977 that added exceptions for rape and incest victims. After the Supreme Court upheld the original language in 1980, Congress returned to the more limited exceptions (*i.e.*, the life of the mother) in fiscal years 1981 through 1993. Then, with President Bill Clinton in the White House, the exceptions for rape and incest abortions were added back into the annual Hyde Amendment. These exceptions have been included in every version since FY 1994, meaning that the federal government currently pays for abortions when the pregnancy threatens the life of the mother or resulted from rape or incest. The number of abortions and the dollar amount paid out for these abortions is not publicly known. The programs covered by the Hyde Amendment were expanded to apply to health benefits coverage premiums for Medicaid managed care programs in 1998 and the Medicare trust fund in 1999.

Ever since Congress' successful passage of the Hyde Amendment in 1976, the principle of restricting taxpayer funding for abortion has spread to other federal programs. Because the Hyde Amendment is attached to the appropriations bill covering the Department of Health and Human Services (HHS), it restricts funding for all HHS health programs, including Medicare, the Indian Health Service, and the Children's Health Insurance Program. Various other amendments have also been added to the annual appropriations bills, including the Smith Amendment (banning abortion coverage in the Federal Employees Health Benefits Program), the Dornan Amendment (restricting funding of abortions in Washington, D.C.), and other various amendments covering the Department of Defense's TRICARE program, federal prisons, and the Peace Corp.

Tax Subsidies for Abortion

Outside of the annual appropriations bills, which include many good protections against funding for abortions, the IRS code allows abortions to be deducted as a medical expense. Medical care deductions were first enacted in 1942 when abortion was illegal in almost every state. Then in 1973, following *Roe v. Wade*, the IRS adopted Rev. Rul. 73-201, which allows expenses paid for abortion to be deducted as a “medical expense” defined in §213(d)(1)(A).⁹ Because the IRS defines a medical expense to include abortion, this medical deduction essentially acts as a tax subsidy for abortions. The same is true of health flexible spending accounts (FSAs), health savings accounts (HSAs), health reimbursement arrangements, and any other tax-preferred account that uses the definition for medical care in §213(d).

Although some argue that tax-preferred accounts like FSAs and HSAs merely let the user set aside more of their earnings tax-free to be used for specific medical expenses, these arrangements still amount to a taxpayer subsidy inasmuch as the government does not collect taxes on the amounts put aside in these accounts. Furthermore, the money in these accounts can only be used for medical expenses as determined by the government, not any personal expense the user chooses. Because the IRS has defined eligible “medical care” for tax deductions to include abortion alongside services like X-rays or chemotherapy treatments, it is a government endorsement of abortion as legitimate health care.

Pro-life members of Congress have identified this issue in the tax code and have introduced legislation to correct it. The *Abortion is Not Health Care Act* sponsored by Rep. Andy Biggs (R-Ariz.) and Sen. Mike Lee (R-Utah) would clarify §213(d) to make clear that money paid for abortions shall not be treated as a tax-deductible expense.¹⁰ Additionally, in 2020 Rep. Warren Davidson (R-Ohio) and Sen. Mike Braun (R-Ind.) led a letter to the Treasury secretary signed by 103 members of Congress, requesting new regulations that would stop the IRS from defining abortion as medical care for tax deductions.

The Affordable Care Act (ACA) Breaks from the Hyde Amendment Principle

The passage of the ACA (also known as Obamacare) in 2010 directly appropriated federal funds to subsidize health plans that cover elective abortion. It is the largest deviation from the principle behind the Hyde Amendment since 1976.

Senators Ben Nelson (D-Nebr.) and Harry Reid (D-Nev.) offered an amendment to the ACA that included section 1303. This section explicitly allowed elective abortion coverage in these federally subsidized health plans. The ACA directly appropriates taxpayer funds for various health programs and through tax credits that subsidize health plans. Since the Hyde Amendment only covers funds that are

appropriated under the Labor and Health and Human Services (LHHS) Appropriations Act, these funds bypass restrictions on abortion funding.

On the surface, section 1303 appeared to be a pro-life solution because it allowed each state to opt-out of abortion coverage in state exchanges. However, the status quo is that all state exchanges allow plans that cover elective abortion unless a state takes executive or legislative action to exclude these plans. As of 2020, 26 states have opted out of covering abortion on their state exchange. Of the 24 states which permit elective abortion coverage in exchange plans, nine exclusively offer health plans that subsidize abortion. Section 1303 also added a “secrecy clause” that prohibits insurers from informing individuals whether a specific plan covers abortion or not. The only way an enrollee can discover if the plan covers abortion is from the summary of benefits they are given. For this reason, Family Research Council and the Charlotte Lozier Institute collaborated to create Obamacareabortion.com, a website that tracks which ACA plans cover abortion.¹¹

- Twenty-six states have opted out of elective abortion coverage in the state-based insurance exchanges: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. Individuals living in these states can purchase any plan on the exchange, knowing that none will cover elective abortions.
- Twenty-two states prohibit elective abortion coverage in insurance policies for public employees: Arizona, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, and Virginia.
- Eleven states have the most pro-life policies, prohibiting elective abortion coverage in private insurance plans in the state as well as on the Obamacare state exchanges: Idaho, Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, North Dakota, Oklahoma, Rhode Island, and Utah.

State efforts to ban coverage for elective abortion on their state exchanges is a worthwhile effort. However, the federal taxes collected from residents in those states are still used to subsidize health plans that cover abortion in the remaining states. The ACA directly spends money in the form of advanceable, refundable tax credits to assist low-income individuals in purchasing health care plans on state exchanges, including plans that cover elective abortion. The government may either pay out this “premium tax credit” to a federally approved insurance company to lower out-of-pocket monthly

premiums for qualifying individuals, or individuals can get the tax credit directly when filing taxes.¹² In 2019 alone, the government paid out \$11.8 billion in advanceable premium tax credits for plans that cover abortion on demand.¹³

Section 1303 also set up a separate abortion surcharge payment for any health plan with elective abortion coverage. Everyone enrolled in an ACA plan with elective abortion coverage must pay an abortion surcharge of no less than \$1 to subsidize the abortion coverage, whether they use it or not. This accounting gimmick set up under the Obama administration never followed Section 1303's requirement that abortion surcharge funds must be collected separately and segregated from all other health care premium funds. Fortunately, in December 2019, the Trump administration issued new regulations ensuring that consumers know their health care plan covers abortion and that abortion funding is kept separate from all other covered services.¹⁴ Even with these efforts, a permanent congressional remedy is still needed to ensure that ACA funds do not subsidize elective abortion.

State Funding for Abortions

The Hyde Amendment bans federal funding for abortions in Medicaid and other HHS health programs. However, because Medicaid is a joint federal-state program that provides health care coverage for millions of low-income Americans, states can use state taxpayer funds to cover abortions for Medicaid eligible patients.¹⁵ As with the Hyde Amendment, a legal challenge was brought against state efforts to restrict funding for abortions. However, in 1980, the Supreme Court decided in *Williams v. Zbaraz* that state action to restrict funding for elective abortions is also constitutional.¹⁶ Since then, most states have put in place regulations to restrict state funding for elective abortions. Nevertheless, 16 states currently use taxpayer money to directly fund abortions in their state Medicaid programs.¹⁷ It is important to note that nine of these states do so because of a state court ruling requiring them to fund abortions, but seven of these states have taken voluntary executive or legislative actions to fund abortions with state funds.

Impact of the Hyde Amendment

Restricting taxpayer funding for abortion has had broad support from Americans for many years. The annual Knights of Columbus/Marist polling on attitudes concerning abortion has shown that since 2015, a majority of Americans oppose using tax dollars to pay for abortion. The latest poll from January 2020 shows that 60 percent of Americans, including 35 percent of Democrats, oppose funding abortions.¹⁸ This support has been reinforced by almost every national poll on abortion funding. A 2018

PRRI poll on health care coverage found that 51 percent of Americans believe Medicaid should not pay for abortions, and a 2016 Harvard poll found that 58 percent of likely voters believe the same.¹⁹

The Hyde Amendment is one of the most impactful successes of the pro-life movement. Several peer-reviewed studies have substantiated its impact on directly saving unborn children from the horrors of abortion. A 2009 Guttmacher literature review found that out of 22 peer-reviewed studies, 19 had statistically significant evidence showing that restricting Medicaid funding for abortions reduced the rate of abortion.²⁰ The reviewed studies demonstrated that restrictions on Medicaid funding for abortion, like the Hyde Amendment, lowered abortion rates. However, the studies did not provide details on the number or percentage at which abortions decreased.

Dr. Michael New, a researcher at the Charlotte Lozier Institute, analyzed available data to find the best estimate for lives saved by the Hyde Amendment. The exact language of the Hyde Amendment and state laws on Medicaid coverage for abortion have varied since the Hyde Amendment first passed in 1976, making concrete numbers difficult to calculate. Despite the changing federal and state laws on abortion funding, Dr. New's research estimates that the Hyde Amendment has saved a total of 2,409,311 lives.²¹ It is challenging to capture the real impact of pro-life efforts. Still, nothing has more directly impacted saving unborn children from abortion than the annual passage of the Hyde Amendment.

Taxpayer Funding for Abortion Businesses

Even though the Hyde Amendment and other similar provisions prevent the federal government from funding most abortions, these provisions do not stop federal funds from going to abortion businesses like Planned Parenthood, the nation's largest abortion business. Planned Parenthood reported 345,672 abortions in FY 2019, and is also a massive beneficiary of taxpayer funding. The best data on how much federal funding Planned Parenthood receives comes from a report published by the Government Accountability Office (GAO) every three years. The most recent report, covering 2013-2015, reveals that Planned Parenthood received nearly \$500 million in taxpayer funds in 2015.²² It also reveals that Planned Parenthood's two largest sources of federal funding are Medicaid and Title X.

2015 Federal Funding of Planned Parenthood by Program:

- \$414.37 million – Medicaid
- \$57.28 million – Title X Family Planning Program
- \$5.83 million – Maternal and Child Services Block Grant

- \$5.44 million – Teen Pregnancy Prevention Program
- \$3 million – Obamacare Education Program
- \$2.29 million – Social Services Block Grant
- \$840,000 – Medicare
- \$180,000 – Children’s Health Insurance Program (CHIP)
- \$9.5 million – Miscellaneous grants and contracts

Medicaid

Medicaid is the single largest federal funding stream for Planned Parenthood, and the majority of federal Medicaid funds are paid out to individual Planned Parenthood affiliates, not the Planned Parenthood Federation of America headquarters. Individual Planned Parenthood affiliates will perform health care services like cancer screenings, clinical breast exams, or prenatal services for Medicaid recipients and are reimbursed for those services via the state’s Medical Assistance program. The federal government then reimburses states for a percentage of their total Medicaid Expenditures, called the Federal Medical Assistance Percentage (FMAP), which averages 57 percent of all state paid Medicaid costs. Although the funds abortion businesses receive cannot be used to pay for abortions directly, due to the Hyde Amendment, these funds subsidize the abortion industry by allowing abortion businesses to be reimbursed for the actual health services they perform, which then frees up other money to hire abortionists, pay for abortions, or build abortion facilities. There are several pass-throughs before the federal funds end up in the hands of Planned Parenthood affiliates. However, this still equates to over \$400 million annually in federal funding from Medicaid alone.

In the wake of the 2015 Center for Medical Progress undercover videos, which revealed countless questionable actions by Planned Parenthood affiliates (including the illegal sale of aborted baby body parts), several states took action to exclude them from the Medicaid program. These actions took the form of directives from governors notifying the individual Planned Parenthood affiliates of their exclusion from the program or legislative action prohibiting entities that supply abortions from participating in Medicaid. Nearly all these efforts, however, have been blocked in federal courts because of the Medicaid Statute. 42 U.S.C. 1396a, the code governing the state plans for Medicaid assistance, says that “any individual eligible for medical assistance may obtain such assistance from any institution, agency, community pharmacy or person qualified to perform the service or services required.”²³ In 2016, the Obama administration had sent a letter to state Medicaid Directors that went beyond the current interpretation of the Medicaid statute to direct states that they cannot take action against a provider without evidence of fraud, criminal conduct, substantive noncompliance with state requirements, or some other material issues affecting the providers’ “fitness to perform covered services.”²⁴ Fortunately,

in January 2018, President Trump's administration rescinded this letter because it limited states' ability to establish Medicaid provider standards. However, states have still not had any success in excluding Planned Parenthood from the Medicaid program because of 42 U.S.C. 1396a and 42 C.F.R. § 431.51, which requires that Medicaid recipients may obtain services from any qualified provider that will provide services to them.²⁵ Until the Medicaid statute or current regulations governing the program are amended, it will be challenging for individual states to cut all Planned Parenthood facilities from receiving Medicaid funds.

Title X

The second-largest government funding source for Planned Parenthood is the Title X Family Planning Program. This program was created in 1970 under the Nixon administration to provide funding for voluntary family planning services, including contraception, wellness exams, natural family planning education, breast cancer screenings, and HIV/AIDS testing. The program is administered through grants awarded to both public and private health agencies. In many instances, grants will be awarded to state health agencies and then subgranted to individual health clinics to perform the family planning services. Fortunately, the statute is clear that "None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."²⁶ However, at various times over the years, the regulations implementing this program have changed whether abortion businesses are eligible for these family planning grants or not.

In 1993, President Bill Clinton issued regulations that allowed abortion and family planning activities to be co-located at the same facilities and share the same finances. Under these regulations, Planned Parenthood affiliates have received millions of dollars in federal grants, both as a direct grantee and as a subgrantee, by getting Title X funding via state health agencies. States caught on to this direct connection between Title X and abortion facilities and began taking action to cut out abortion businesses from being eligible for their Title X grants. However, in the midnight hour of his administration, President Barack Obama instituted a new regulation that prohibited states from excluding abortion businesses from the program on the basis of them supplying abortions.²⁷ Some states, like Texas and Ohio, had passed legislation with a tiered system for granting Title X funds, with abortion businesses being the last in line to get the money. Still, even these types of laws were called into question under the Obama regulation.

Then in 2017, the new pro-life majority in Congress and the White House began a strong effort to restore the Title X program's original intent of not subsidizing abortions. Congress acted quickly to pass a disapproval resolution of the Obama administration regulation that prevented states from redirecting Title X grants away from abortion businesses. President Trump signed this into law and

then followed with an even stronger action to create a new regulation governing the program. The 1993 Clinton regulations were in place until 2019 when the Trump administration instituted the *Protect Life Rule*, which mandates that abortion must be physically and financially separate from any Title X family planning services. It also removed the requirement that clinics must refer patients for abortions. As a result of these new regulations, Planned Parenthood and other abortion businesses withdrew from the Title X program. They chose abortion over providing women's health services, thereby sacrificing millions of dollars in federal funding.

Looking Ahead: Legislative Efforts

Federal Legislation

In response to the public's overwhelming support of restricting taxpayer funding for abortion, Congress has introduced legislation to make permanent laws against federal taxpayer funding for abortion and abortion businesses. The most comprehensive bill is the *No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act* sponsored by Rep. Chris Smith (R-N.J.) and Sen. Roger Wicker (R-Miss.).²⁸ First, this bill would make the Hyde Amendment (which covers annual LHHS appropriated funds and other annually renewed federal laws that restrict funding for abortion) permanent. If this bill were signed into law, the funding restrictions for abortion and health plans covering abortion would be codified and not be subject to an annual fight throughout the appropriations process. Second, it would apply the principles of the Hyde Amendment to Obamacare, preventing these tax-subsidized health plans from covering abortion.

Representative Vicky Hartzler (R-Mo.) has introduced two bills in the House that would protect taxpayers from funding abortion businesses. *The Protecting Life and Taxpayers Act* would put a sweeping ban on funding abortion businesses by prohibiting tax dollars from being provided (either directly or indirectly through a contract or subcontract) to any entity unless they certify that they will not supply abortions.²⁹ *The Defund Planned Parenthood Act* would place a one-year moratorium on federal funds for Planned Parenthood and any of its affiliates unless they certify that they will not supply abortions.³⁰

Additionally, the *Women's Health and Safety Act* sponsored by Rep. Michael Cloud (R-Texas) and Sen. James Lankford (R-Okla.) would amend the Medicaid statute to give states the ability to exclude abortion businesses from participating in Medicaid.³¹ This bill would provide the necessary legislative fix to allow states to fully cut Planned Parenthood out of the Medicaid program, its largest source of government funding. So far, congressional legislative efforts to defund Planned Parenthood have not

been successful. However, the opportunity remains for Congress to act in fully severing the abortion industry from federal taxpayer funds.

State Efforts

In the absence of strong congressional action to restrict taxpayer funding for abortions, states have stepped in.

- Thirty-four states have passed state Hyde Amendments or have taken administrative action to stop state funds from paying for abortion in Medicaid: Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

With increased discussions by pro-abortion politicians on Capitol Hill to remove the federal Hyde Amendment, it is critical for states to enact laws or strengthen their existing statutes that prohibit Medicaid funds from paying for elective abortion. Some states have gone even beyond what Congress has done in passing the Hyde Amendment to untangle taxpayer funds from subsidizing the abortion industry.

- Sixteen states have passed laws to exclude abortion businesses from federal Title X family planning grants: Arizona, Arkansas, Florida, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin.
- Sixteen states have gone even further to defund abortion businesses from state appropriations or state family planning funds: Arizona, Arkansas, Florida, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, South Carolina, Texas, and Wisconsin.
- Fourteen states have taken legislative or administrative action to exclude abortion businesses like Planned Parenthood from Medicaid: Alabama, Arizona, Arkansas, Florida, Idaho, Indiana, Kansas, Louisiana, Mississippi, Missouri, South Carolina, Tennessee, Texas, and Utah. However, because of the federal Medicaid statute that allows the free choice of provider for Medicaid eligible patients, no state has successfully defunded abortion businesses completely in Medicaid.

Because of the complex system set up under Medicaid, there are several legal hurdles for states attempting to divert federal Medicaid funds away from abortion businesses. However, section 1115 of the *Social Security Act* gives HHS the authority to approve experimental state projects that promote the objectives of Medicaid.³² These section 1115 waivers give states flexibility to design their own state-specific approaches, and some pro-life states have used these waivers as a way to redesign Medicaid family planning programs to not include abortion businesses. In January 2020, Texas was the first state to have its section 1115 family planning waiver program (which diverts federal Medicaid funds away from abortion businesses) approved.³³ Idaho, South Carolina, and Tennessee have also applied for approval of similar programs and are waiting for a determination from the Centers for Medicare and Medicaid Services.

Conclusion

Abortion is an act that ends the life of an innocent human being and can cause lasting physical and mental harm to the mother. Though legal, abortion is morally wrong and should not be endorsed by the government nor subsidized by taxpayers. Public officials from both sides of the aisle have taken steps to prohibit or restrict taxpayer funding for abortions and abortion businesses. This consensus against public funding for abortion, which has existed for decades, should not only be maintained but further strengthened to ensure that no taxpayer funding is used to promote or provide abortion as legitimate health care.

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