

Medicaid and Abortion

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Issue

This report discusses the extent to which the state pays for abortions in its Medicaid programs. It updates [OLR Report 2010-R-0136](#).

Summary

The Department of Social Services (DSS) pays for abortions that physicians certify as “medically necessary” under [CGS § 17b-259b](#). A federal law commonly referred to as “The Hyde Amendment” limits federal Medicaid reimbursement the state receives for these procedures to those (1) needed to save the mother's life or (2) involving rape or incest. The state's more expansive coverage policy for abortion is the result of a 1986 case, in which the state court ruled that a DSS regulation that restricted abortion coverage to those needed because the mother's life was endangered was unconstitutional. Pursuant to this case, the state assumes 100% of the costs of medically necessary abortions and does not submit claims for these procedures for federal Medicaid reimbursement.

A subsequent opinion from the state attorney general concluded that DSS had to provide medically necessary abortions in HUSKY B (the state children’s health insurance program) to the same extent as required in its Medicaid program.

In practice, 16 states including Connecticut cover abortion for Medicaid recipients with state funds, exceeding restrictions imposed under the Hyde Amendment.

Hyde Amendment

At least partly in response to the landmark abortion rights U.S. Supreme Court decision, *Roe v. Wade*, Congress enacted restrictions on public funding for abortion in 1976 ([P.L. 94-439](#)). The legislation (called the Hyde Amendment after its chief proponent, Rep. Henry Hyde), limited federal funding for abortions to those cases in which they were necessary to save the mother's life. For a brief period, Congress added coverage to include cases of rape, incest, and physical health damage to the women, but these were repealed by 1981. In 1993, the exceptions for rape and incest were re-inserted ([P.L. 103-112](#)) and these, along with life endangerment, remain the three exceptions today ([P.L. 115-31](#)).

Doe v. Maher (40 Conn. Supp. 394, 1986)

In 1986, a Medicaid recipient and her physician brought a class action suit against the Department of Income Maintenance (predecessor agency to DSS) challenging the legality and constitutionality of the state regulation that restricted DSS payment for abortion to that necessary because the woman's life would be endangered if the pregnancy were carried to term. The court held in that case that such a restriction violated the due process, equal protection, and equal rights amendments of the state constitution.

Attorney General Opinion as to Applying Doe to HUSKY B

In 1998, DSS requested a formal opinion from the attorney general as to whether childbearing girls in the HUSKY B program had the same rights to abortion as those available to young women in the HUSKY A (Medicaid for children and their caretaker adults) program. DSS believed that since the *Doe* case applied only to Medicaid, it had no bearing on HUSKY B, which is a separate, federal program (State Children's Health Insurance Program or SCHIP). DSS's drafted HUSKY B regulations would have limited the coverage to that allowed by the current Hyde language.

The attorney general concluded that the differences between HUSKY A and B were not legally sufficient to render *Doe* inapplicable to HUSKY B. In [the opinion](#), he said that he believed that application of the regulation would violate the state constitution and concluded that DSS had to provide medically necessary abortions in HUSKY B to the same extent as provided in the state's Medicaid program.

Current DSS Policy

DSS regulations state that DSS will pay physicians for all abortions that a physician certifies as medically necessary, regardless of whether the (1) woman's life would be endangered by carrying the fetus to term or (2) pregnancy is a result of rape or incest ([Conn. Agency Regs., §§ 17b-262-348\(r\)\(3\)](#)).

The physician alone determines medical necessity, which is defined as those health services required to prevent, identify, diagnose, treat, rehabilitate, or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable health and independent functioning, provided such services are:

1. consistent with generally accepted standards of medical practice;
2. clinically appropriate in terms of type, frequency, timing, site, extent, and duration and considered effective for the individual's illness, injury, or disease;
3. not primarily for the convenience of the individual, the individual's health care provider, or other health care providers;
4. not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury, or disease; and
5. based on an assessment of the individual and his or her medical condition ([CGS 17b-259b](#)).

According to DSS, this policy applies to all HUSKY Health programs, including:

1. HUSKY A, which is Medicaid for children, parents, caregivers, and pregnant women;
2. HUSKY B, the State's Children's Health Insurance Program;
3. HUSKY C, which is Medicaid for elderly individuals and those living with blindness or disability; and
4. HUSKY D, which is Medicaid for low-income individuals.

Other States

According to the Kaiser Family Foundation (KFF), 16 states in practice cover abortion for Medicaid recipients with state funds, exceeding restrictions imposed under the Hyde Amendment, as shown in Figure 1. Some of these states, like Connecticut, do so as the result of a court order. (According to KFF, Arizona is subject to such a court order, but does not provide such coverage in practice.)

