

The Hyde Amendment: 30 Years of Violating Women's Rights

By Marlene Gerber Fried

The fact that funding restrictions are the most significant barrier to abortion access in the United States rarely gets attention. Although abortion rights advocates use the January 22 anniversary of *Roe v. Wade* to rally their forces, they seldom mark September 30, the date in 1976 that federal Medicaid funding for abortion was first banned by the Hyde Amendment. Now that 30 years has passed, it is important to look back on the history of this ban and its effect on women.

The Hyde Amendment: The First Step in Restricting Access to Abortion

After the 1973 *Roe v. Wade* decision, abortion opponents immediately adopted a dual strategy: outlaw abortion through direct efforts such as a constitutional amendment to ban it, while simultaneously pushing for policies that restrict access to abortion in more subtle ways. One of the first restrictive policies that abortion opponents advocated was the elimination of coverage through Medicaid, the nation's health care program for poor people.

Rep. Henry Hyde (R-IL) attached a provision, now known as the "Hyde Amendment," to the appropriations bill for the Departments of Labor, Health, Education, and Welfare (now the Department of Health and Human Services) that would end Medicaid funding for abortion. Exposing his true motives, Rep. Hyde said during the floor debate, "I would certainly like to prevent, if I could legally, anybody having an abortion, a rich woman, a middle class woman, or a poor woman. Unfortunately, the only vehicle available is the HEW Medicaid bill." The measure passed because it appealed not only to the Right's pro-traditional family elements, but also to members of its anti-big government and anti-welfare coalition.

On September 30, 1976, the Amendment passed the House 207-167, with no exceptions even for extreme circumstances. The day after the Amendment passed, abortion rights advocates challenged it in court. Federal District Court Judge John F. Dooling preliminary barred enforcement of the funding ban and later ruled that it was unconstitutional. Unfortunately, his injunction was lifted in August 1977 and the Amendment was allowed to go into effect.

Hyde through the Years

During congressional debates about the Amendment, many members revealed their contempt for and mistrust of women. In response to the original effort in 1976 to include a rape exception, Rep. Silvio Conte (R-MA) pushed for the language of "forced rape,"

arguing that otherwise, “any woman who wants an abortion under Medicaid could go in and say, ‘I’m raped,’ and there could be a lot of perjury.” Despite such sentiments, in 1977 lawmakers reached a compromise to include exceptions for instances of rape or incest that had been reported to law enforcement or public health agencies, for pregnancies that threatened the life of the mother, or where two physicians determined that “severe and long-lasting physical health damage” to the mother would result.

Because the Amendment was attached to annual appropriations bills, Congress had ample opportunity over the years to examine expert witnesses or review evidence about the implications of the ban for low-income women, but it failed to do so. Over time, anti-welfare sentiments dovetailed with opposition to abortion across party lines and throughout the branches of government. President Carter, a liberal Democrat, opposed using federal funds for abortions under Medicaid or under any new national health insurance plan, commenting, “As you know there are many things in life that are not fair, that wealthy people can afford and poor people can’t.”

In 1980, the Supreme Court disagreed with Judge Dooling and determined in *Harris v. McRae* that the Hyde Amendment was constitutional. Ignoring the real-life consequences of the ban, the Court declared that “the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all.” Thus far, this has been the only lawsuit to challenge the legality and constitutionality of the Hyde Amendment directly.

Since that time, the exceptions for rape, incest, and health have been dropped, added, and dropped again. Currently, the Amendment includes exceptions for life, rape, and incest, but not for the health of the mother.

Post-Hyde: Denying Care to More Women

Even though the Hyde Amendment did not mandate that states ban coverage for abortion, it provided an incentive for them to do so. Because Medicaid is a joint federal and state program, the denial of federal funding for abortions means that states have to shoulder the total cost. Before Hyde, only 13 states had enacted funding bans; but by 1979, 40 states had already cut off state coverage for abortions not covered by federal Medicaid. Currently, 17 states use their own funds to provide coverage for abortions that may not be paid for with federal funds.

On the federal level, anti-choice legislators have added “Hyde-type” language to other appropriations bills, thereby denying abortion coverage to federal employees, federal prisoners, military personnel and their families, and Peace Corps volunteers. In 2004, Congress passed an amendment to an omnibus budget bill sponsored by Rep. David Weldon (R-FL), which allows publicly funded institutions to refuse to provide abortion care and referrals to women.

Before Congress cut off federal funding, Medicaid paid for almost one-third of all abortions – about 300,000 annually. After the Hyde Amendment, the federal government paid for virtually none. The consequences of these funding restrictions have been devastating for poor women, who are disproportionately women of color. In 1977, Rosie Jiménez, a Latina single mother, became the first woman known to have died from an illegal abortion after the passage of the Hyde Amendment. Many women cannot obtain abortions at all – an estimated 18 to 35 % of Medicaid-eligible women who would have had an abortion if funding had been available instead carry their pregnancies to term. Women who succeed in getting an abortion do so at great personal cost – by borrowing money, postponing bills, or forgoing other basic necessities.

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