January 2020 | Issue Brief

The Hyde Amendment and Coverage for Abortion Services

Alina Salganicoff, Laurie Sobel, and Amrutha Ramaswamy

Since the Supreme Court's 1973 decision in *Roe v. Wade*, abortion has been squarely in the middle of political debates at the national and state levels. Soon after the Court's ruling, Congress enacted the Hyde Amendment, which blocks federal funds from being used to pay for abortion outside of the exceptions for rape, incest, or if the pregnancy is determined to endanger the woman's life, resulting in dramatically limited coverage of abortion under Medicaid and other federal programs.[1] Since it was first enacted over 40 years ago, the amendment has been sponsored and supported by legislators who oppose abortion and, in particular, object to the federal government's use of taxpayer money for abortion services. The policy is not a permanent law, but rather has been attached as a temporary "rider" to the Congressional appropriations bill for the Department of Health and Human Services (HHS) and has been renewed annually by Congress. While abortion policy has been a hotly contested issue in most presidential elections, the Hyde Amendment was not the focus of these debates until the 2016 election. Following their party's platforms, Hillary Clinton, the Democratic candidate, called for the repeal of the Hyde Amendment during the 2016 presidential election, and Donald J. Trump, the Republican candidate and current president, called for the annual provision to become permanent law.[2] Leading up to the 2020 presidential election, nearly all Democratic candidates have gone on the record in their support of "repealing" of the Hyde Amendment. While the presidential candidates may have a position opposing the Hyde Amendment, any change to the policy would require approval by Congress. This brief details the federal programs that are affected by the Hyde Amendment, provides estimates on the share of women insured by Medicaid affected by the law, reviews the impact of the law on their access to abortion services, and discusses the potential effect if the law were to be repealed.

What programs does the Hyde Amendment affect?

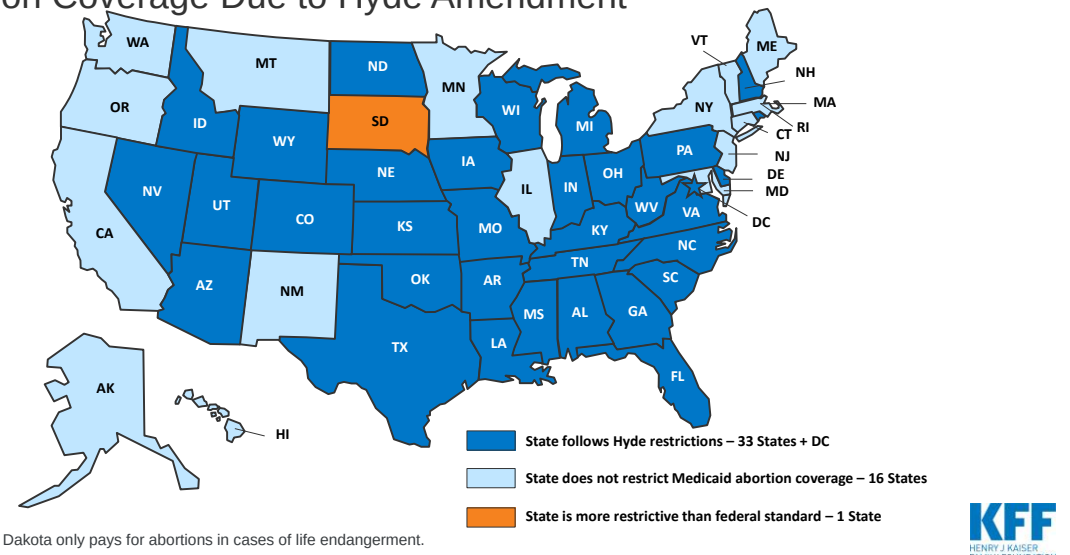
Initially, the Hyde Amendment only affected funding for abortions under Medicaid, a state and federal health program for low-income individuals. Because Congress reauthorizes the Hyde Amendment annually as an attachment to the appropriations bill for HHS, it also restricts abortion funding under the Indian Health Service, Medicare, and the Children's Health Insurance Program. Over the years, language similar to that in the Hyde Amendment has been incorporated into a range of other federal programs that provide or pay for health services to women including: the military's TRICARE program, federal prisons, the Peace Corps, and the Federal Employees Health Benefits Program. The Affordable Care Act (ACA) also included a provision that applied similar abortion coverage limitations to plans that are sold through

the Marketplace for women who receive federal income-based subsidies to purchase private health insurance.

Because Medicaid is jointly funded by the federal and state governments, states can choose to pay for abortions under Medicaid in other instances, but must use their own revenues, and not federal funds, to cover the service. Currently, 16 states have a policy directing the use of their own funds to pay for abortions for low-income women insured by Medicaid beyond the Hyde limitations, 9 of which provide coverage as the result of a court order (**Figure 1**). The Arizona Medicaid program, however, does not pay for abortions outside of circumstances permitted by Hyde despite court orders directing them to do so.

Figure 1

Women Covered by Medicaid in 34 States & DC Have Extremely Limited Abortion Coverage Due to Hyde Amendment



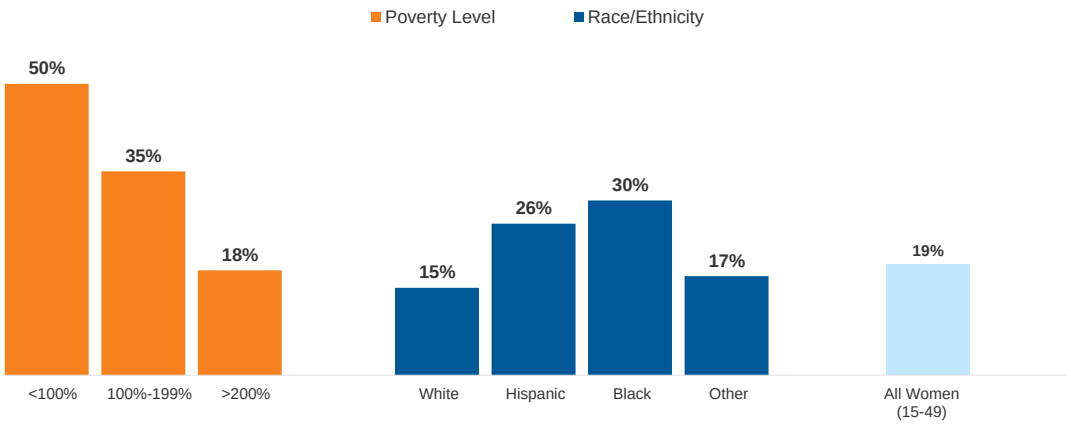
NOTES: South Dakota only pays for abortions in cases of life endangerment.
SOURCE: Kaiser Family Foundation, State Funding of Abortions Under Medicaid, January 2020.

What is the Hyde Amendment's impact on women on Medicaid?

Medicaid is a significant and growing source of health coverage for low-income women in the nation. Today, Medicaid covers two in ten women of reproductive age (15-49 years). In 2018, half (50%) of women below the Federal Poverty Level (FPL) were insured by Medicaid (**Figure 2**).[3] The ACA has enabled states to increase eligibility for Medicaid to 138% of the FPL ($27,579 for a family of three in 2018). However, 14 states have not expanded the program[4].

Figure 2

Medicaid Plays An Important Role for Women Who Are Poor or Minorities

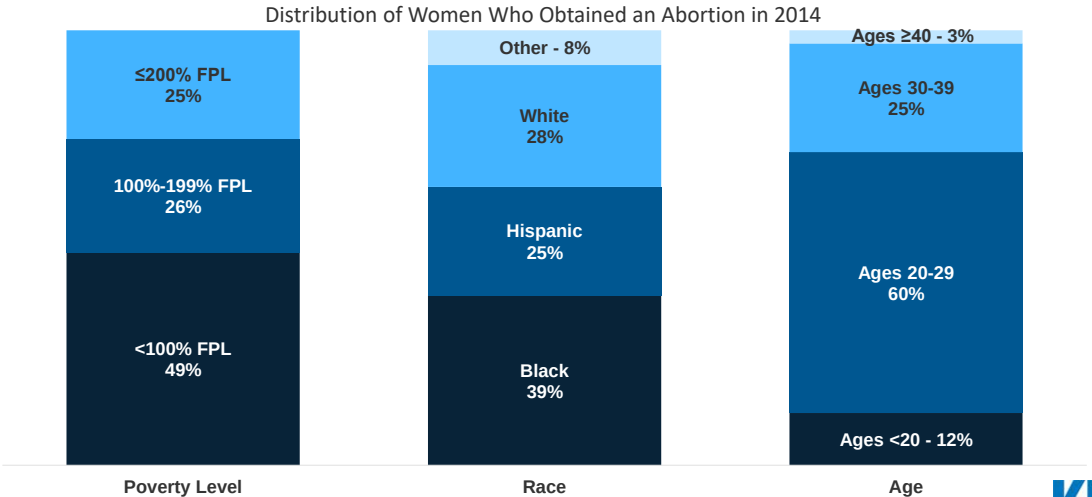


NOTES: Among women ages 15-49. Federal Poverty Level (FPL) was $12,784 for an individual in 2018.
SOURCE: Kaiser Family Foundation analysis of 2018 American Community Survey, U.S. Census Bureau.

Despite the news that unintended pregnancy and abortion rates have fallen in the general population, abortions are becoming increasingly concentrated among poor women and black women. Women of color are more likely than white women to be insured by Medicaid, and have higher rates of unintended pregnancy and abortion. In 2014, 75% of abortions were among low-income patients, and 64% were among black or Latina women (**Figure 3**).[5] Young adults and teens, who are less likely to have a steady source of income, make up the majority (72%) of abortion patients.[6]

Figure 3

Women Who Get Abortions are Disproportionately Low-Income, Young and Racial/Ethnic Minorities



NOTE: The Federal Poverty Level (FPL) was $11,670 for an individual in 2014.
SOURCE: Guttmacher Institute. Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008, May 2016.

Without coverage for abortion under Medicaid, women must pay out-of-pocket for the procedure. Costs vary by location, facility, and gestational age, but on average in 2014 an abortion cost between $500 at 10 weeks gestation, while at 20 weeks gestation, costs soared to $1195 or more.[7] Abortion costs are higher in states with more restrictive policies.[8] Women covered by Medicaid in states that use state funds to pay for abortion have no out of pocket costs for abortion.[9] Though the vast majority (~90%) of abortions are performed in the first trimester of pregnancy, the costs are challenging for many low-income women. The Turnaway Study found that women who received an abortion at any gestational age faced logistical barriers including difficulty finding a provider, and raising funds for the procedure and travel, but these barriers were more common and had greater consequences for women seeking an abortion at or after 20 weeks gestation. It is more difficult to find a provider for an abortion at or after 20 weeks gestation, and the procedure is more expensive. Approximately 5% of abortions are performed at 16 weeks or later in the pregnancy.[10] For women with medically complicated health situations or who need a second-trimester abortion, the costs could be prohibitive. In some cases, women find they have to delay their abortion while they take time to raise funds[11] or in other cases, women are not able to obtain abortions because they cannot afford the costs of the procedure.[12] Furthermore, women who first learn of a fetal anomaly in the second trimester when the costs are considerably higher can face significant costs if they seek to terminate a pregnancy that may not be viable.[13] According to the Federal Reserve Board, 40% of U.S. adults do not have enough savings to pay for a $400 emergency expense.

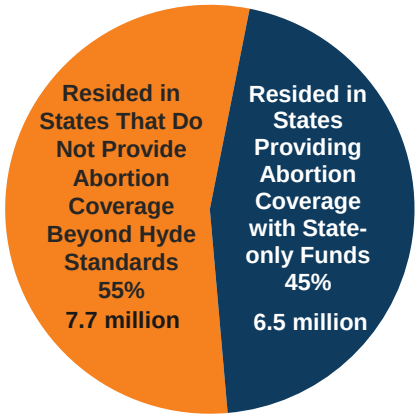
A 2019 GAO study of state policies regarding Medicaid coverage of abortion found that South Dakota's Medicaid program only covers abortions in the case of life endangerment, but not in the cases of rape or incest, in violation of federal law. The same study also found that 14 state Medicaid programs do not cover Mifeprex, the prescription drug most commonly used for medication abortions.[14] All 14 of these states only pay for abortions in the circumstances permitted by the Hyde Amendment. The only option for women enrolled in Medicaid in these states is to obtain a surgical abortion in the cases of rape, incest, and life endangerment. To date, CMS has not taken any action against these 14 states for failing to comply with the outpatient drug requirements or against South Dakota for not covering abortion in all of the circumstances required by Hyde.[15] Furthermore, while 37 states reported that their Medicaid programs cover Mifeprex, only 13 of these states have actually requested a Medicaid rebate for this drug. In the other states, the program had not paid for this drug for a patient in the last three years, indicating that medication abortions may be very limited in these states.

The GAO study also found that states have a variety of invasive requirements for women claiming abortion coverage under Hyde including: provider certification of rape, incest, or life endangerment; beneficiary certification of rape or incest; documentation (such as police report or report with a public health agency) of rape or incest; prior authorization; and prior certification of counseling for the abortion. Since 2013, Iowa has required formal approval from the Office of the Governor in order to secure reimbursement for any abortions covered by Medicaid. Between 2013 and 2017, South Dakota, Iowa, and Wyoming did not report paying for any abortions eligible for federal funding (**Appendix Table 2**).

What would be the impact on abortion coverage if the Hyde Restrictions were lifted?

Figure 4

In 2018, 55% of Reproductive Age Women on Medicaid Lived in a State that Followed Hyde Amendment Standards



Total Number of Women Enrolled in Medicaid = 14.2

NOTES: West Virginia and Maine changed their policies regarding use of state funds for Medicaid abortions after 2018. In November 2018, West Virginia no longer allowed state funds to pay for non-Hyde abortion. Starting in 2020, Maine permits state payment for non-Hyde abortions services under Medicaid.
SOURCE: Kaiser Family Foundation analysis of 2018 American Community Survey, U.S. Census Bureau.

KFF HENRY J KAISER FAMILY FOUNDATION

As a rider to the annual appropriations bill that Congress must pass in order to fund the operations of federal programs, the Hyde Amendment affects millions of women. For example, if the ban were to have been lifted in 2018, it could have provided federal support for abortion coverage for 14.2 million reproductive-age women enrolled in Medicaid, as well as millions of others in similarly restricted federal programs. In particular, it would have potentially broadened abortion coverage for 7.7 million women on Medicaid who lived in states (**Appendix Table 1**) that followed Hyde restrictions, which represented over half (55%) of reproductive-age women enrolled in Medicaid in 2018 (**Figure 4**).[16] For many low-income women, the lack of Medicaid coverage for abortion is effectively an abortion ban. A recent study estimated that 29% of pregnant Medicaid-eligible women in Louisiana would have had abortions instead of giving birth if Medicaid covered abortions. Not surprisingly, states that do not use state funds to cover abortions outside of the Hyde limitations, pay for substantially fewer abortions. In 2014, 52% of abortion patients residing in states that use their own funds to pay for abortion had the procedure covered by Medicaid, compared to 1.5% of patients who live in states adhering to Hyde restrictions.[17] This stark differential strongly suggests that if abortion coverage was to be expanded under Medicaid, more women would qualify for abortion coverage and the number of abortions paid for by the program would rise. However, the extent of the change in Medicaid-funded abortions would likely vary considerably by state as it would be affected by a range of factors including state laws, reimbursement rates, and the availability of providers. For example, some states already have (or could enact) laws that prohibit state dollars from being used for abortion in the same way that they now ban coverage through private plans

and the ACA Marketplace plans. Advocates who support abortion rights are working to counteract these efforts through federal legislation such as the EACH Woman Act, which would prohibit the federal and state governments from restricting insurance coverage for abortion in both public and private health insurance programs. Advocates who oppose abortion are working to make Hyde permanent law and are endorsing the passage of legislation such as amending Title I8 of the United States code, to prohibit abortion in cases where a fetal heartbeat is detectable.

The removal of the Hyde Amendment from the appropriations bill would also affect an estimated 1.33 million women under the age of 50 enrolled in Medicare,[18] and many others who receive their care through the Indian Health Service and the Children's Health Insurance Program. In order for women in the military and the Peace Corps, federal employees, and others who are receiving federally funded health benefits (outside of the HHS Appropriations bill) to obtain abortion coverage, the Hyde-like provisions would either need to be repealed from the authorizing law or lifted from the Congressionally approved appropriations bills that fund those federal programs.

Despite higher shares of women with private insurance and Medicaid resulting from the coverage expansions established by the ACA, coverage for abortion services remains limited. While the removal of the Hyde Amendment could broaden this abortion coverage for millions of low-income women who receive federally subsidized health coverage, the true impact of such a policy change would vary by program and state. Forty years after the first time the Hyde Amendment was first applied to a federal appropriations bill, the law is still being debated reflecting the polarized nature of the abortion debate in the United States.

Appendix Table 1: Medicaid Coverage of Women Ages 15-49, 2018			
State	Total	Number of Women on Medicaid	% of Women on Medicaid
U.S. Total	72,919,981	14,203,832	**19%**
Alabama	1,081,346	645,969	16%
Alaska	166,677	88,941	20%
Arizona*	1,558,071	853,141	23%
Arkansas	659,541	353,644	27%
California	9,229,294	5,098,973	26%
Colorado	1,320,205	816,934	18%
Connecticut	761,268	476,444	23%
Delaware	204,347	127,383	23%
District of Columbia	194,931	119,346	24%
Florida	4,487,777	2,348,891	15%
Georgia	2,487,971	1,457,428	13%
Hawaii	292,847	194,264	16%
Idaho	382,674	224,566	12%
Illinois	2,868,999	1,824,309	19%
Indiana	1,459,627	945,764	17%
Iowa	662,368	443,309	20%
Kansas	627,734	410,253	12%
Kentucky	963,065	554,695	28%
Louisiana	1,047,863	530,407	31%
Maine	264,456	159,714	19%
Maryland	1,355,457	875,532	19%
Massachusetts	1,532,430	986,126	25%
Michigan	2,152,550	1,323,301	25%
Minnesota	1,208,425	840,309	19%
Mississippi	667,232	367,520	18%
Missouri	1,322,185	856,147	13%
Montana	217,036	124,497	21%
Nebraska	416,594	278,840	11%
Nevada	688,401	394,604	19%
New Hampshire	275,179	191,086	16%
New Jersey	1,957,006	1,301,237	16%
New Mexico	452,599	198,977	35%
New York	4,412,398	2,601,709	27%
North Carolina	2,330,766	1,351,540	15%
North Dakota	161,362	108,596	12%
Ohio	2,508,038	1,546,646	24%
Oklahoma	865,367	487,458	13%
Oregon	942,429	549,544	23%
Pennsylvania	2,699,101	1,727,129	22%
Rhode Island	229,017	142,839	24%
South Carolina	1,100,564	633,819	18%
South Dakota**	183,714	121,243	11%
Tennessee	1,513,470	846,831	20%
Texas	6,787,065	3,750,328	11%
Utah	766,707	524,307	9%
Vermont	126,041	83,234	23%
Virginia	1,901,620	1,241,180	11%
Washington	1,707,866	1,063,613	21%
West Virginia	366,565	206,039	30%
Wisconsin	1,231,683	841,691	17%
Wyoming	120,053	77,634	9%

NOTES: Numbers may not add up due to rounding. West Virginia and Maine have changed their policies about using State funds for Medicaid abortions since 2018. West Virginia did use state funds to pay for non-Hyde Medicaid abortions up until November 2018. In 2018, Maine followed the federal Hyde restrictions and did not use state funds to pay for abortion outside of the Hyde circumstances. Starting in 2020, Maine now pays for non-Hyde abortions services under Medicaid.
* Arizona follows Hyde restrictions despite court orders to fund all medically necessary abortion.
** South Dakota pays for abortion only in cases of life endangerment.
Orange shading indicates that states that are more restrictive than the federal Hyde standard.
Blue shading indicates states restricting Medicaid abortion coverage to Hyde Amendment rules.
SOURCE: KFF analysis based on the 2018 American Community Survey U.S. Census Bureau.

Appendix Table 2: Self-Reported Number of Covered Abortions Eligible for Federal Medicaid Funding – FY2013 – FY2017			
State	Claimed federal funding for abortions	Average number of abortions eligible for federal funding covered per year	Follows Hyde Standards, Funding Only Cases Involving Life Endangerment, Rape, and Incest
Alabama	Yes	6.2	Yes
Alaska	No	1.2	No
Arizona*	Yes	3.8	Yes
Arkansas	Yes	0.4	Yes
California	No	Not Reported[1]	No
Colorado	Yes	26.6[2]	Yes
Connecticut	No	Not Reported[1]	No
Delaware	Yes	13.8	Yes
District of Columbia	Yes	11.6	Yes
Florida	Yes	9.3[3]	Yes
Georgia	Yes	3.2[2]	Yes
Hawaii	No	Not Reported[1]	No
Idaho	Yes	4.2	Yes
Illinois	Yes	69.4[2]	No
Indiana	Yes	2.6	Yes
Iowa	Not Applicable[4]	0	Yes
Kansas	Yes	1.2	Yes
Kentucky	Yes	4.2	Yes
Louisiana	No	0.4	Yes
Maine**	Yes	10.4	No
Maryland	No	3.8[3]	No
Massachusetts	No	Not Reported[1]	No
Michigan	Yes	6.6[5]	Yes
Minnesota	Yes	2.6	No
Mississippi	Yes	14.8	Yes
Missouri	Yes	6	Yes
Montana	Yes	0.6	No
Nebraska	Unknown[6]	0[2]	Yes
Nevada	Yes	319	Yes
New Hampshire	Yes	2.8	Yes
New Jersey	No	8.8[7]	No
New Mexico	No	Not Reported[1]	No
New York	No	Not Reported[1]	No
North Carolina	No	4.2[2]	Yes
North Dakota	Yes	1.2	Yes
Ohio	Yes	4.2	Yes
Oklahoma	Yes	6.6	Yes
Oregon	No	Not Reported[1]	No
Pennsylvania	Yes	717	Yes
Rhode Island	Yes	38.5[8]	Yes
South Carolina	Yes	5.3[3]	Yes
South Dakota	Not Applicable[4]	0	No, More Restrictive than Federal Standard
Tennessee	Yes	2[3]	Yes
Texas	Yes	5.8	Yes
Utah	Yes	0.4	Yes
Vermont	Yes	<10[9]	No
Virginia	Yes	8.4	Yes
Washington	No	Not Reported[1]	No
West Virginia***	No	Not Reported[1]	Yes
Wisconsin	No	2.6[2]	Yes
Wyoming	Not Applicable[4]	0	Yes

NOTES: Numbers may not add up due to rounding.
* * Arizona follows Hyde restrictions despite court orders to fund all medically necessary abortion.
** Maine provides state funds for Medicaid coverage of non-Hyde abortion, effective 2020.
*** West Virginia provided state funds for Medicaid coverage of non-Hyde abortion before November 2018.
1 Could not provide information because state only uses state funds to pay for abortions, and, for example, does not require providers to report the circumstance for the abortion when requesting Medicaid payment.
2 Number is likely understated because, while the state reported paying for abortions through managed care, it could only provide information for abortions paid for fee-for-service. States are not required to report expenditures for individual managed care services for the purpose of claiming federal funding, and this information is not always readily available.
3 Could not report information for fiscal year 2017; average based on 4 years of information.
4 Reported paying for no abortions eligible for federal funding over the time period.States that did not claim federal funding for abortions and reported “No” covered federally funded abortions or all abortions (depending on state policy) through state funds.
5 Could not report managed care information for fiscal years 2013 and 2014.
6 Did not pay for any abortions through fee-for-service, but could not provide managed care information due to a change in managed care contracts. However, the state said that if it did pay for abortions through managed care, it would have claimed federal funding.
7 Could not report information on abortions in the case of life endangerment.
8 Could not report data for fiscal year 2013; average based on 4 years of information.
9 Reported paying for fewer than 10 abortions eligible for federal funding during the time of the survey, but provided no further details.
SOURCE: U.S. Government Accountability Office analysis of state survey responses, CMS Action Needed to Ensure Compliance with Abortion Coverage Requirements, January 2019; "H.P. 594", 129th Maine Legislature, Reg. Sess. 2019.

Endnotes

[1] Since1993 the Hyde Amendment has included exceptions for rape, incest and life endangerment. Public Law 103-112, 103rd Congress, 1993.

[2] Democratic Platform Committee. (2016). 2016 Democratic Party Platform.

[3] Kaiser Family Foundation analysis of 2018 American Community Survey, U.S. Census Bureau.

[4] In Kansas, on January 9, 2020, Democratic Governor Laura Kelly and Republican Senate Majority Leader Jim Denning announced a bipartisan Medicaid expansion bill that would expand Medicaid by January 1, 2021 and would fund the state's share of the cost with a capped surcharge on hospitals. The Senate bill is co-sponsored by 11 Republicans and 11 Democrats, and House members from both parties have expressed their support as well.

[5] Boonstra H, Guttmacher Institute, Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters. Guttmacher Policy Review, vol. 19. (2016)

[6] Guttmacher Institute. Induced Abortion in the United States, January 2018.

[7] Jones RK, Ingerick M, Jerman J, Women's Health Issues, Differences in Abortion Service Delivery in Hostile, Middle-ground, and Supportive States in 2014, January 2018.

[8] Ibid.

[9] Roberts SC, Gould H, Kimport K, Weitz TA, Foster DG, Women's Health Issues, Out-of-Pocket Costs and Insurance Coverage for Abortion in the United States, March 2014.

[10] Ibid.

[11] Boonstra H, Guttmacher Institute, Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters July 2016.

[12] Roberts SCM et al, BMC Women's Health Estimating the proportion of Medicaid-eligible pregnant women in Louisiana who do not get abortions when Medicaid does not cover abortion. volume 19, Article number: 78 (2019)

[13] Jones SB, Weitz TA, Am J Public Health, Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences, April 2009.

[14] The 14 states that reported not covering Mifeprex were Alabama, Arkansas, Colorado, District of Columbia, Florida, Idaho, Kentucky, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, Texas, and Utah.

[15] State Medicaid agencies are required to cover most drugs manufactured by companies participating in the Medicaid Drug Rebate Program, in exchange for significant rebates on drug purchases.

[16] Salganicoff A, Sobel L, Ramaswamy A, Kaiser Family Foundation, Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans, June 2019.

[17] Jerman J, Jones RK and Onda T, Guttmacher Institute. Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008, May 2016.

[18] Kaiser Family Foundation unpublished analysis of CMS Chronic Conditions Data Warehouse, 2017 Medicare Beneficiary Summary Files.