"Are we even speaking the same language?"
Contested definitions of rape and life endangerment under the Hyde Amendment

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BACKGROUND

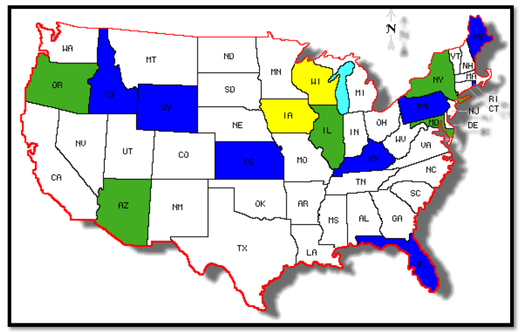
Policy Overview

- In 1976, Congress passed the Hyde Amendment, prohibiting federal Medicaid funding for abortions except in cases of rape, incest, or life endangerment.
- The majority of states (34) ban the use of state Medicaid funding for abortions except in the circumstances outlined by the Hyde Amendment.
- Few guidelines exist on how determine whether a specific case qualifies for federal Medicaid funding.

Methods

- Aimed to document how abortion providers' interpret the Hyde Amendment and investigate their experiences seeking Medicaid funding.
- Conducted 66 semi-structured, in-depth telephone interviews with abortion providers from October 2007-March 2010.
- Analyzed in-depth interview data using ATLAS.ti.

Fig. 1 Medicaid coverage of abortion in study states*



- Provides funding for all or most abortions
- Restricts funding to rape, incest, and life endangerment
- Restricts funding to rape, incest, and life endangerment, and other exceptions

*Based on law and court cases, but may not reflect implementation.

RESULTS

Medicaid procedures for securing federal funding for abortion are ambiguous. To secure federal funding for abortions, providers must submit reimbursement forms to Medicaid indicating the abortion was due to rape, incest, or life endangerment. However, many providers reported they are unclear about which forms to submit for reimbursement, and what the reimbursement process entails. Providers also said Medicaid offers inconsistent billing support.

It is difficult to consistently establish cases of rape. Providers reported that it is not always clear what circumstances are considered rape, and that some women do not disclose or label their experience as rape. Additionally, some providers don't screen for rape.

> *"There are other cases, but I'm not sure how to categorize them. There is…the violent, obviously rape, and then you get into the gray areas, things along the lines of at a party, date rape, and possibly consensual…The roofies kind of fall in between the obviously rape…You've also got some things with husbands: they're estranged, they're married, they're living separately, then he comes back and has sex with her, and - it's sticky."*

Providers are concerned about not being able to "prove" to Medicaid that a woman was raped. Out of fear of being accused of Medicaid fraud, some providers reported they require a police report documenting the rape, even when not required by Medicaid.

> *"They need to have reported it so that the doctor feels that they really were raped...What he's concerned about is that he be accused of Medicaid fraud, and if he goes to court, he has to be able to have a defense."*

There are no commonly agreed upon definitions of "life endangerment." Providers reported there is no medical definition of life endangerment and that they are confused about whose certification of life endangerment is needed to secure funding from Medicaid.

> *"Women that we, or possibly another doctor, may believe an abortion is necessary to save the life of a pregnant woman—oftentimes, when it goes to Medicaid, they don't agree with that assessment…when you have a woman who needs to have an abortion right away, you can't sit and wait for a week for Medicaid to decide what to do."*

Many claims were denied in cases providers deemed appropriate for funding. Of the 1,248 reported abortions that should have qualified for federal Medicaid funding in the year prior to the interview, 759 (61%) were not reimbursed.

> *"There are a lot of frustrations for those of us trying to get reimbursed under the Hyde Amendment! The main frustration being that it never happens!"*

CONCLUSIONS

- Providers have to wade through the cultural "stickiness" around definitions of rape and life endangerment to asses women's eligibly for federal Medicaid funding for abortions.
- Abortion providers and women on Medicaid often have different views of what is considered rape or life endangerment.
- Current Medicaid polices and procedures offer little guidance on the circumstances which qualify for Medicaid funding, and don't empower abortion providers to use their professional judgment about what is in the best interest of the woman, leading to rejected claims, protracted "claims wars," and billing disagreements.
- Clarifying Medicaid's definitions of rape and life endangerment is important, but to ensure low-income women can access federal funding for abortions, definitions of qualifying cases must be expansive.

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