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## Hyde @ 40

ANALYZING THE IMPACT  
OF THE HYDE AMENDMENT

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## ANALYZING THE IMPACT OF THE HYDE AMENDMENT

### **Executive Summary**

- Over 20 studies in a variety of peer-reviewed academic journals demonstrate the Hyde Amendment and other laws to limit public funding of abortion reduce abortion rates and protect unborn children.
- Multiple studies show that when the Hyde Amendment took effect, the birthrate among women on Medicaid increased by an average of about 13 percent. That means in U.S. states that do not fund abortion through Medicaid, one in every nine people born to a mother on Medicaid owes his or her life to the Hyde Amendment.
- Since 1976, the best research indicates that the Hyde Amendment has saved over two million unborn children.

\*The author would like to thank Charlotte Lozier Institute intern Sally Fowler for her excellent work as a research assistant this summer.

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## Introduction

Congress enacted the first Hyde Amendment on September 30, 1976. It was named after its sponsor Congressman Henry Hyde (R-IL) and was a rider to the annual HHS Labor appropriations bill. The Hyde Amendment has been passed every year since 1976 and has largely prevented federal Medicaid dollars from paying for abortions. The Hyde Amendment has played an important role in the history of the national debate on abortion. Its passage was one of the pro-life movement's first major legislative victories. Additionally, the Supreme Court's *Harris v. McRae* decision in 1980, which upheld the Hyde Amendment, was one of the pro-life movement's first judicial victories. Scholars and analysts from a range of ideological perspectives agree that the Hyde Amendment has had a significant impact on the incidence of abortion in the United States. As such, now is an apt time to look back on the amendment's history and analyze its impact during the past 40 years.

### History of the Hyde Amendment

As abortion became legal in several states in the late 1960s and early 1970s, policymakers started to grapple with questions about whether and to what extent abortions should be subsidized for low-income women. Evidence indicates that Medicaid reimbursed for eligible women who obtained abortion under those states' laws. That is, Medicaid originally treated abortion the same as any other medical procedure (Merz, Jackson, and Klerman 1995).

In the late 1960s and early 1970s pro-life lobbying efforts focused on preventing additional states from legalizing abortion and repealing state laws that had legalized abortion. At first the question of public funding for abortion received relatively little attention from pro-life activists. However, after the Supreme Court's *Roe v. Wade* decision in 1973, a number of states took steps to restrict payment eligibility under state Medicaid programs. This resulted in a variety of legal challenges, which culminated in the *Beal v. Doe*, *Maher v. Roe*, and *Poelker v. Doe* cases decided by the U.S. Supreme Court in 1977. These cases held that the government is not required to fund elective abortions either under terms of the federal statute or under the U.S. Constitution (Merz, Jackson, and Klerman 1995).

However, throughout the 1970s, the federal government was providing reimbursement for abortions through Medicaid. On September 30, 1976, Congress passed, over a presidential veto the first of a long line of budgetary acts – each subsequently referred to as the Hyde Amendment – restricting federal Medicaid funds for abortions. On the same day, several lawsuits were brought challenging the constitutionality of the Hyde Amendment and a Temporary Restraining Order (TRO) was issued on October 1, barring enforcement of the Hyde Amendment. After a hearing, the district court in *McRae v. Mathews* entered a preliminary injunction on October 22, 1976. Under the injunction, the federal government continued to fund abortions through 1976 (Merz, Jackson, and Klerman 1995).

Extensive litigation over the constitutionality of the Hyde Amendment continued throughout the 1970s. A trial court dissolved the TRO and starting August 4, 1977 the federal government only reimbursed for abortions performed to save the life of the woman. Starting in February 14, 1978 the Hyde standard was expanded to include abortions in cases of rape, incest, and long-term physical health damage to the woman.

Lower court rulings continued to be appealed and the Supreme Court agreed to rule on the constitutionality of the Hyde Amendment in 1980. On February 19, 1980 the U.S. Supreme Court denied a stay of the injunction and the federal government resumed funding therapeutic abortions. On June 30, 1980, the U.S. Supreme Court upheld the constitutionality of the Hyde Amendment by a 5-4 vote in *Harris v. McRae*. Federal funding for therapeutic abortions was finally eliminated on September 19, 1980 after the U.S. Supreme Court declined a rehearing in the *McRae* case (Merz, Jackson, and Klerman 1995).

From that time up until October 1, 1993, federal matching funds were available only for abor-

tions performed to save the life of the woman. However, effective October 1, 1993, the federal Hyde standard was extended, providing reimbursement for abortion when pregnancy results from an act of rape or incest (Rovner 2009). Most states altered their state plans to match the federal standard, but many states did not because of state laws, regulations, or constitutional provisions limiting the use of states funds to pay for abortions performed only to save the life of the mother (Merz, Jackson, and Klerman 1995).

Since the Hyde Amendment took effect, the federal government has paid for abortions only under limited circumstances. However, states have always had the ability to pay for or subsidize abortions with their own Medicaid funds. Currently 15 states pay for abortions for low-income women through their state Medicaid program.<sup>1</sup> Interestingly, 11 of those 15 states are funding abortion through Medicaid because of a judicial ruling or a court order. Only four states have enacted legislation requiring the government to fund abortion using state-originated funds through Medicaid (Guttmacher Institute 2016).

### **Impact of the Hyde Amendment**

There has been a considerable amount of research on the impact of Medicaid funding restrictions on the incidence of abortion. A 2009 Guttmacher Institute literature review identified 22 studies on this topic (Henshaw et al. 2009). These methodologically diverse studies used abortion data from a variety of sources. Overall, of the 22 studies they considered, 19 found statistically significant evidence that abortion rates fell after Medicaid funding was reduced.

This finding held for studies using time-series cross-sectional data to analyze overall abortion rates (Blank, George, and London 1996; Haas-Wilson 1993; 1997; Hansen 1980; Levine, Trainor, and Zimmerman 1996; Matthews, Ribar, and Wilhelm 1997; Medoff 2007; Meier et al. 1996; Meier and McFarlane 1994). It also held for studies using time-series cross-sectional data to analyze teen abortion rates specifically (Haas-Wilson 1996; Lundberg and Plotnick 1990; Medoff 1999; 2007). This held as well for studies that analyzed abortion rates in smaller groups of states (Korenbrodt, Brindis, and Priddy 1990; Trussell et al. 1980) and for two studies that specifically analyzed the impact of public funding restrictions on pregnancy outcomes in Illinois (Sheier and Tell 1980), Texas (Chrissman 1980), and North Carolina (Cook et al. 1999; Morgan and Parnell 2002).

The studies that analyzed data from North Carolina were especially interesting. From 1980 to 1995, North Carolina publicly funded abortion for low-income women—not through Medicaid but through a state abortion fund that periodically ran out of money. Whenever funds were depleted, the researchers found there were statistically significant decreases in the abortion rate, and months later, statistically significant increases in the birthrate (Cook *et al.* 1999; Morgan and Parnell 2002). These findings were statistically stronger when the pregnancy outcomes for African-American women were considered. Overall, Cook *et al.* concluded that 37 percent of the women who would have otherwise had an abortion carried their child to term when public funding was not available. Overall, the authors of the Guttmacher literature review acknowledge that the best research indicates that Medicaid funding limits reduce the incidence of abortion. In the discussion that follows

the literature review, they state that:

the best studies . . . used detailed data from individual states and compared the ratio of abortions to births both before and after the Medicaid restrictions took effect. These found that 18-37 percent of pregnancies that would have ended in Medicaid funded abortions were carried to term when funding was no longer available. (Henshaw et al. 2009, 27)

They state that the Cook *et al.* study analyzing data from North Carolina had the “best design.” They conclude by stating that “[c]onsidering the case studies collectively, a reasonable estimate is that a lack of funding influences a quarter of Medicaid-eligible women to continue unwanted pregnancies” (Henshaw *et al.* 2009, 27). Overall the research paints a clear picture. By limiting public funding for abortion, the Hyde Amendment reduced the incidence of abortion and saved lives.

**Table 1: Analyses of How Medicaid Funding Restrictions Impacted Abortion Rates**

Author	Years Considered	Dataset Used	Impact on Abortion Rate
Blank, George, and London (1996)	1974-1988	GI	-1.2 to -3.4
Levine, Trainor, and Zimmerman (1996)	1977-1978	GI	-1.44 to -1.63
Matthews, Ribar, and Wilhelm (1997)*	1978-1988	GI	-1.57
New (2011)	1985-2005	CDC	-1.54
New (2011)	1985 -2005	GI	-1.44
New (2014)	1985-2005	CDC	-3.30 to -3.43
New (2014)	1985-2004	GI	-2.12 to -2.27

Note: GI means state abortion rate data came from the Guttmacher Institute; CDC means state abortion rate data came from the U.S. Centers for Disease Control

\*Matthews, Ribar, and Wilhelm found that public funding restrictions reduce state abortion rates by approximately 5.6 percent. Since the average abortion rate for the years they studies was 28.12, I calculated their model predicts a rate decline of 1.57 (expressed as the number of abortions obtained per 1,000 women of childbearing age for the year in question).

### Analyzing the Overall Impact of the Hyde Amendment

Even though consensus exists that the Hyde Amendment has stopped abortions and saved lives, there is little research on how many lives the Hyde Amendment has actually saved. In 2010, the Center for Reproductive Rights released a report entitled “Whose Choice? How the Hyde Amendment Harms Poor Women.” The report includes a quote by Stephanie Poggi, executive director of the National Network of Abortion Funds, which states that, “Because of the Hyde Amendment, more than



a million women have been denied the ability to make their own decisions.” A number of journalists and commentators have used this one million figure in their reporting on the impact of the Hyde Amendment (Nance 2016; Faulkner 2016).

The 2010 Center for Reproductive Rights report cites some studies which show that the Hyde Amendment reduces the incidence of abortion and makes it more likely that a woman on Medicaid will carry her pregnancy to term. However, the report provides absolutely no information about the methodology behind the 1 million figure. Furthermore, when contacted this summer, the Center for Reproductive Rights was unable to provide any information about the methodology used in their 2010 report. They suggested that we contact Stephanie Poggi directly. However, Ms. Poggi no longer works for the National Network of Abortion Funds and could not be reached.

As the Hyde Amendment reaches its 40th anniversary this year, it is worthwhile to have more reliable figures on how many lives it has saved. Methodologically, the best way to analyze the impact of the Hyde Amendment is to look at the impact of Medicaid-funding restrictions on either the abortion rate of women on Medicaid or the birthrate of women on Medicaid. Indeed, three separate studies that analyzed Medicaid recipients in Illinois, Texas, and Ohio found that after the Hyde Amendment took effect, the birthrate among women on Medicaid increased by anywhere from 11 percent to 15 percent. The average increase in the Medicaid birthrate was almost 13 percent.

So if the number of Medicaid births in a given state increased from 1,000 to 1,130 after the Hyde Amendment took effect, 130 people or approximately 11 percent of those born to a mother on Medicaid would owe their lives to the Hyde Amendment. Alternatively, one of every nine people born to a mother on Medicaid in a state not funding abortions through Medicaid owes his or her life to the Hyde Amendment.

This nicely demonstrates the lifesaving impact of the Hyde Amendment. However, obtaining state-level data dating back to the 1970s on the number of women of childbearing age on Medicaid proved to be logistically difficult. A more feasible way to analyze the number of abortions prevented by the Hyde Amendment is to look at the impact of public funding restrictions on either the overall abortion rate (abortions per 1,000 women of childbearing age) or the overall abortion ratio (abortions per 1,000 live births). The abortion rate tends to be a more reliable measure than the abortion ratio. That is because population numbers tend to be fairly stable from year to year, while the birthrate tends to fluctuate. Consequently, analyzing the effect of the Hyde Amendment on the abortion rate is a more reliable way to gauge its impact.

The 2009 Guttmacher Institute literature review on public funding of abortion identified seven peer-reviewed studies which analyzed the impact of public funding restrictions on state abortion rates (Hansen 1980; Haas-Wilson 1993,1997; Meier et al. 1996; Blank, George, and London 1996; Levine, Trainor, and Zimmerman 1996; Mathews, Ribar, and Wilhelm 1997). Two additional academic studies on the subject were published after 2009 (New 2011; New 2014). Unfortunately, some of these studies are limited in their ability to properly analyze the impact of the Hyde Amendment. Two

studies only analyze one year of abortion data (Hansen 1980; Haas-Wilson 1993). Another study interacts the Medicaid funding restriction variable with the state poverty rate and hence does not provide a standalone estimate on the impact of Medicaid funding restrictions (Haas-Wilson 1997). Another study looked at the publicly funded abortion rate instead of the presence of public funding as an independent variable (Meier et al. 1996).

That said, the Guttmacher literature review includes three studies which analyzed the impact of public funding restrictions on state abortion rates for an extended period of time. My two *State Politics and Policy Quarterly* studies also analyzed state abortion data for a span of 20 years. Table 1 lists each of these five studies, the datasets they used, the years that were analyzed, and their findings on how public funding restrictions impacted abortion rates. The results indicate that Medicaid funding limits reduce state abortion rates anywhere from 1.4 to 3.4 abortions per thousand women of childbearing age. However, a closer look at datasets and methodologies used in each of the various studies might allow for a more precise estimate of the impact of Medicaid funding limits on state abortion rates.

For instance, the Blank, George, and London study (1996) predicts that public funding limits reduce abortion rates by as much as 3.4 abortions per thousand women of childbearing age. However, this study includes abortion data from the mid-1970s when abortion rates were lower and the data was perhaps less accurate. Hence, the findings appear to be outliers. In my 2014 *State Politics and Policy Quarterly* study, I ran a series of regressions using abortion data from the Centers for Disease Control (CDC). CDC data on the incidence of abortion tends to be less reliable than data from the Guttmacher Institute. Therefore, these findings can also be excluded as a statistical outlier.

Four of the five remaining analyses find that public funding restrictions reduce abortion rates from 1.44 to 1.63 abortions per thousand women of childbearing age. The findings from my 2014 *State Politics and Policy Quarterly* study using abortion rate data from the Guttmacher also appear to be something of a statistical outlier. Now, my 2014 study is a stronger study methodologically than my 2011 study. It includes a better dataset of state-level informed consent laws. It also correctly categorizes Illinois as a state that does not publicly fund abortion. That said, since it predicts a significantly larger abortion rate decline than the other four studies, it is probably best to exclude it as an outlier. The remaining studies are fairly consistent in their predictions of how Medicaid funding restrictions impact abortion rates. If we average the results of the four remaining studies, we can predict that Medicaid funding restrictions lower the abortion rate by 1.52 abortions per thousand women of childbearing age. This will allow us to calculate how many lives the Hyde Amendment has saved since 1976.

### **Methodology**

Even though the Hyde Amendment was first passed in 1976, the federal government continued to fund abortions for much of the rest of the 1970s because of legal challenges to the Amendment. Furthermore, even after the Hyde Amendment was upheld in *Harris v. McRae* in 1980, many states continued to fund abortion through their own state Medicaid programs. Tables 3 and 4 provide detailed information about the years for which the federal government and states were funding abortion through their respective Medicaid programs.

**Table 2: Eras when the Federal Government Paid for Elective Abortions via Medicaid 1976-2015**

Pre-passage and implementation of the Hyde Amendment:	January 1, 1976 - August 4, 1977
<i>McRae</i> Injunction	February 19, 1980 – September 19, 1980

**Table 3: States where Medicaid paid for Therapeutic Abortions, 1976-2015**

State	Year	State	Year
Alaska	January 1, 1976 – 1998, 2000-2015	Michigan	January 1, 1976 – December 12, 1988
California	January 1, 1976 – 2015	Minnesota	January 1, 1976 – March 24, 1978
Colorado	January 1, 1976 – June 4, 1985		July 17, 1979 – <i>McRae</i> Injunction
Connecticut	July 17, 1979-February 15, 1981		June 16, 1994 – 2015
	October 8, 1981, 2015	Montana	1995-2015
D.C.	January 1, 1976 – October 1, 1988	Nebraska	January 25, 1980 – <i>McRae</i> Injunction
	October 29, 1993 – 1997	New Jersey	July 7, 1978 – 2015
	December 9, 2009 – April 13, 2011	New Mexico	December 1, 1994 – 2015
Georgia	June 4, 1979-March 15, 1981	New York	January 1, 1976 – 2015
Hawaii	January 1, 1976 – 2015	North Carolina	February 1, 1978 – 1995
Idaho	January 1, 1976-April 1, 1977	Ohio	September 12, 1979 – Nov. 12, 1980
Illinois	January 1, 1976 – December 15, 1977	Oklahoma	January 1, 1976 – June 2, 1978
	January 11, 1978 – May 1, 1978	Oregon	January 1, 1976 – 2015
	May 15, 1978 – February 13, 1979	Pennsylvania	January 1, 1976 – February 15, 1985
	April 29, 1979- <i>McRae</i> Injunction	Vermont	September 28, 1985 – 2015
Iowa	October 20, 1977 – July 1, 1978	Virginia	April 21, 1978 – <i>McRae</i> Injunction
Louisiana	November 27, 1978 – <i>McRae</i> Injunction	Washington	January 1, 1976 – 2015
Maryland	January 1, 1976 – 2015	West Virginia	January 1, 1976 – 2015
Massachusetts	January 1, 1976 – 2015	Wisconsin	January 1, 1976 – April 22, 1978
			Sept. 13, 1979 – <i>McRae</i> Injunction

Sources Merz, Jackson, Klerman (1995); *NARAL Who Decides?* (Various Years)

Notes:

-There is some evidence that some counties in Arizona were paying for abortions during the 1970s (Merz, Jackson, and Klerman 1995). However, I am still predicting the Hyde Amendment had an impact on the abortion rate in Arizona when it was in effect.

-Between 1978 and 1995 North Carolina funded abortion not through Medicaid, but through a state appropriation fund, which periodically ran out of funds. I included these intermittent funding cutoffs in my calculations about the impact of the Hyde Amendment on North Carolina.

-There is evidence that Kansas, North Dakota, Rhode Island, South Dakota, and Wyoming were not funding abortion through Medicaid during the *McRae* injunction in 1980. However, since the federal government was providing reimbursements through Medicaid during this time, I am predicting the Hyde Amendment had no impact on the abortion rate in these states during this period of time (Merz, Jackson, Klerman 1995).

In order to determine the overall impact of the Hyde Amendment we will consider data from all 50 states plus the District of Columbia for every year from 1976 to 2015. The methodology will be as follows:

1) If either the federal government or a state government was funding abortion for Medicaid recipients for the entire year, we predict that the Hyde Amendment would have no impact on the abortion rate.

2) If neither the federal government nor the state government was funding abortion for Medicaid recipients for the entire year, we predict the Hyde Amendment would lower the state abortion rate by 1.52 abortions per thousand women of childbearing age.

3) If neither the federal government nor the state government was funding abortion for Medicaid recipients for part of the year, we predict the Hyde Amendment would lower the state abortion rate by 1.52 abortions per thousand women of childbearing age multiplied by the percentage of the year where abortion was unfunded.

The following examples will further illustrate how the overall impact of the Hyde Amendment will be calculated.

**Scenario 1:** In 1976, the Hyde Amendment was not in effect due to legal challenges, therefore it saved no lives in any state in 1976. Similarly, in California in 2015, the state was funding abortions through the state Medicaid program. Therefore, the Hyde Amendment saved no lives in California in 2015.

**Scenario 2:** In Texas in 2015, neither the state nor the federal government was funding abortions through Medicaid. According to the U.S. Census, there were 5,748,631 women of childbearing age living in Texas in 2015. As such, we predict the Hyde Amendment saved  $(1.52/1000) \times (5,748,631) = 8,738$  lives in Texas in 2015.

**Scenario 3:** In Pennsylvania an injunction on a law limiting Medicaid funding for abortions was lifted on February 15, 1985. As such, Medicaid funding for abortions was limited for 87.4 percent of the year (319 days/365 days). According to the U.S. Census, there were 2,690,543 women of childbearing age living in Pennsylvania in 1985. As such, we predict the Hyde Amendment saved  $(1.52/1000) \times (2,690,543) \times (.874) = 3,574$  lives in Pennsylvania in 1985.

Using this methodology for every state for every year from 1976 to 2016 we predict that the Hyde Amendment routinely saves over 60,000 lives a year and thus cumulatively has saved 2.13 million lives since 1976. Table 4 lists how many lives the Hyde Amendment has saved in each state. Table 5 lists how many lives the Hyde Amendment has saved in each year since 1976.

**Table 4: State Data on the Number of Lives Saved by the Hyde Amendment Since 1976**

Alabama	54,565	Montana	4,634
Alaska	203	Nebraska	20,465
Arizona	56,736	Nevada	21,362
Arkansas	31,147	New Hampshire	14,913
California	0	New Jersey	2,159
Colorado	43,559	New Mexico	8,534
Connecticut	2,801	New York	0
Delaware	9,560	North Carolina	65,484
District of Columbia	4,872	North Dakota	8,100
Florida	171,514	Ohio	137,555
Georgia	99,350	Oklahoma	40,687
Hawaii	0	Oregon	0
Idaho	14,977	Pennsylvania	119,899
Illinois	144,721	Rhode Island	13,077
Indiana	74,668	South Carolina	49,438
Iowa	34,273	South Dakota	8,957
Kansas	32,001	Tennessee	68,954
Kentucky	50,629	Texas	258,265
Louisiana	54,979	Utah	27,568
Maine	15,160	Vermont	1,430
Maryland	0	Virginia	85,569
Massachusetts	0	Washington	0
Michigan	86,186	West Virginia	0
Minnesota	22,938	Wisconsin	62,597
Mississippi	34,772	Wyoming	6,110
Missouri	67,356		
<b>Total</b>	<b>2.13 million</b>		

**Table 5: Annual Data on the Number of Lives Saved by the Hyde Amendment Since 1976**

1976*	0	1996	59,050
1977**	15,834	1997	59,190
1978	37,484	1998	59,423
1979	33,479	1999	59,630
1980**	16,037	2000	60,984
1981	44,943	2001	61,126
1982	46,081	2002	61,184
1983	45,896	2003	61,208
1984	46,425	2004	61,321
1985	51,177	2005	61,499
1986	52,639	2006	61,666
1987	52,974	2007	61,883
1988	52,890	2008	61,931
1989	56,902	2009	61,682
1990	58,366	2010	61,938
1991	58,324	2011	62,242
1992	58,737	2012	62,635
1993	58,885	2013	62,932
1994	59,697	2014	62,262
1995	57,349	2015	63,549

**Total 2.13 million**

\*Hyde Amendment not in effect for entire year due to legal challenges.

\*\*Hyde Amendment not in effect for part of the year due to legal challenges.

### Conclusion

Ever since the U.S. Supreme Court upheld the constitutionality of the Hyde Amendment in 1980, the abortion rate in the United States has fallen almost every year. The Hyde Amendment is not the only reason for this consistent decline in the abortion rate. Valid research shows that other pro-life laws, shifts in public opinion, and the fact that a higher percentage of unintended pregnancies are being carried to term in recent years are all playing roles in America's abortion decline. That said, the substantial body of research which shows that public funding restrictions lead to reductions in the abortion rate demonstrates that the Hyde Amendment has certainly played an important role in the long-term reduction in America's abortion rate.

The Hyde Amendment has been passed every year since 1976 as a rider to the federal Labor/Health and Human Services Appropriations Bill. It has typically enjoyed strong bipartisan support and has been signed into law by both Democratic and Republican U.S. presidents. Even Bill Clinton and Barack Obama, who publicly supported legal abortion, signed the Hyde Amendment into law during their respective presidential administrations. In recent years, however, the Democratic Party has become increasingly supportive of legal abortion and hostile to the Hyde Amendment. In fact, this summer for the first time ever, the Democratic Party's presidential platform explicitly calls for the Hyde Amendment's repeal (Richardson 2016).

Numerous polls and surveys show that majorities of Americans continue to oppose having their tax dollars used to pay for abortion. A Marist/Knights of Columbus poll that was released this past January found that 69 percent of Americans oppose taxpayer funding of abortion. Additionally, even 51 percent of people who identify as "pro-choice" oppose public funding of abortion (Knights of Columbus 2016). More importantly, this analysis shows that the Hyde Amendment is one of the most effective tools our nation has to protect the unborn. During the past 40 years, it has saved literally millions of lives. It merits continued support.

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<sup>1</sup> Some media reports indicate 17 states fund abortion through Medicaid. However, these reports include Arizona and Illinois. There are court orders requiring both states to pay for medically necessary abortions through their respective state Medicaid programs. However, in both states, very few abortions are paid for by the state Medicaid program (Gutmacher 2016).