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“Medicare for All” Means “Abortion for All”

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Introduction

Advocates for taxpayer-funded abortion likely underestimated the backlash they would face when they attempted to include abortion funding and coverage in healthcare reform in 2010. Ultimately, the Affordable Care Act's (ACA) abortion-related provisions and accompanying federal regulations marked a massive deviation from the long-standing Hyde amendment by allowing abortion-on-demand in federally subsidized insurance plans. However, the abortion funding in the ACA applied only to the ACA, while Medicare for All goes even further to override longstanding prohibitions on abortion in other federal programs.

Fast forward nearly a decade. The ACA is not meeting expectations, and some Democrats in Congress are now promoting "Medicare for All," a single-payer government-run insurance plan. While the House and Senate bills do not use the word abortion, they mandate abortion coverage through the phrase reproductive care. Sponsors and supporters have affirmed this by publicly stating that abortion will be covered as part of reproductive care.

This document provides a brief history of abortion funding in federal healthcare programs and an explanation of how the U.S. House and Senate "Medicare for All" proposals will pay for abortions, override the Hyde Amendment, and prohibit future efforts to exclude abortion providers from the program.

I. Federal healthcare programs cover abortion unless it is excluded.

After Medicaid began covering abortions shortly following the U.S. Supreme Court decision in *Roe v. Wade*, pro-life advocates learned that if abortion is not explicitly excluded from a federal healthcare program, it is included. The Hyde Amendment, first passed in September 1976, prohibits federal funds or state matching funds in the Medicaid program from being used to pay for abortions or health plans that include abortion coverage, with certain exceptions. The Hyde Amendment is the most well known of a patchwork of federal funding restrictions on abortion, many of which must be passed annually. Congress has never succeeded in passing a law that comprehensively prohibits the use of federal funds for abortion.

II. "Medicare for All" will pay for abortions for all.

Representative Pramila Jayapal (D-WA) introduced H.R. 1384, the "Medicare for All Act," on February 27, 2019. Senator Bernie Sanders (D-VT) introduced S. 1129, also titled the "Medicare for All Act," on April 10, 2019. While neither proposal explicitly states that federal tax dollars will pay for abortions, sponsors for both include abortion coverage as part of "comprehensive reproductive care." Both bills provide:

Title II. Sec. 201. Comprehensive Benefits.

(a) ... [I]ndividuals enrolled for benefits under this Act are entitled to have payment made by the Secretary to an eligible provider for the following items and services if **medically necessary or appropriate** for the maintenance of health or for the diagnosis, treatment, or rehabilitation of a health condition....

(7) **Comprehensive reproductive ... care** [emphasis added].

The term “**comprehensive reproductive care**” is not defined anywhere in either bill. Further, the term is not in the U.S. Code or federal regulations.¹ However, the Executive Summary for S. 1804, the 2017 version of S. 1129, states “[t]his legislation will provide comprehensive health care coverage that includes . . . [c]omprehensive reproductive, maternity, and newborn care, **including abortion.**”²

The summaries for H.R. 1384 and S. 1129 do not include the word abortion;³ however, news articles discussing H.R. 1384 state that abortion is also included in the House bill,⁴ and there is no indication that Senator Sanders intended to remove abortion coverage from the 2019 version of his bill.

It is also clear that by limiting coverage of care to that deemed “**medically necessary or appropriate,**” sponsors do not intend to limit the number of enrollees eligible to obtain free abortions. “Medically necessary or appropriate” is defined in section 1101(4) of H.R. 1384 to require coverage of services determined “necessary or appropriate for such individual **by the physician or other health care professional** treating such individual...” [emphasis added]. Abortion providers will therefore be permitted to determine that any abortion for any patient should be covered.

III. “Medicare for All” will eliminate the Hyde Amendment.

Medicare for All eliminates protections provided by the Hyde Amendment and similar provisions. The bills provide:

Title VII. Sec. 701. Universal Medicare Trust Fund

¹ The Affordable Care Act requires participating health plans to cover “preventive services for women,” which includes contraception but not abortion. Other statutes and regulations reference “family planning” services.

² Medicare for All Act of 2017, Executive Summary (emphasis added), <https://www.sanders.senate.gov/download/medicare-for-all-act-of-2017-executive-summary?id=943E7DB5-FCCA-4EA4-B215-A92F6642BA2C&download=1&inline=file>.

³ Medicare for All Act of 2019, Summary, https://jayapal.house.gov/wp-content/uploads/2019/02/Medicare-for-All-Act-of-2019_Summary-002.pdf.

⁴ See, e.g., <https://www.refinery29.com/en-us/2019/02/225565/medicare-for-all-explained-pramila-jayapal-single-payer>.

(b) (3) RESTRICTIONS SHALL NOT APPLY. Any other provision of law in effect on the date of enactment of this Act restricting the use of Federal funds for any **reproductive health service** shall not apply to monies in the Trust Fund [emphasis added].^[1]^[SEP]

Like the term “comprehensive reproductive care,” the term “reproductive health service” is not defined anywhere in the bills and is not in the U.S. Code or federal regulations. However, media reports, abortion rights organizations, and the sponsors are in agreement that the term includes abortion, and that this provision eliminates the Hyde Amendment and similar restrictions.⁵

The Trust Fund established by Medicare for All legislation folds in funding for the Medicare program, the Medicaid program, the Federal Employee Health Benefits Program, the TRICARE program, the maternal and child health program (Title V), vocational rehabilitation programs, programs for drug abuse and mental health services under the Public Health Service Act, programs providing general hospital or medical assistance, “and any other Federal program identified by the Secretary ... to the extent the programs provide for payment for health services the payment of which may be made under this act.”⁶

In other words, Section 701(b)(3) strips limits on abortion funding from all of these existing programs.

IV. “Medicare for All” will prohibit future efforts to exclude abortion providers from participation in the program.

H.R. 1384 provides:

Title III. Sec. 302. Qualifications for Providers.

(c)(4) ABILITY TO PROVIDE SERVICES. With respect to any entity or provider certified to provide items and services described in section 201(a)(7) [**comprehensive reproductive care**],^[1]^[SEP] the Secretary may not prohibit such entity or provider from participating for reasons other than such entity’s or provider’s ability to provide such items^[1]^[SEP] and services.^[1]^[SEP]

The language in S. 1129, Title III, Sec. 302(b)(4) is substantially the same. Both bills also provide that “**a State** may not prohibit an individual or entity [that provides **comprehensive reproductive care**] from participating in the program under this Act for reasons other than the ability ... to provide such services.”⁷

⁵ See, e.g., <https://rewire.news/article/2019/02/27/medicare-for-all-legislation-end-hyde/>.

⁶ S. 1129, Title VII 701(b)(2); H.R. 1384, Title VII 701(b)(2).

⁷ S. 1129, Title II, Sec. 206(b) (emphasis added); H.R. 1384, Title XI, Sec. 1102(d) (emphasis added).

The sponsors are clearly addressing the concerns of abortion rights advocates, particularly in the wake of state and federal efforts to defund abortion providers such as Planned Parenthood. In a 2019 Guttmacher Policy Review, the authors argue that any “Medicare for All” program would need to ensure that patients can obtain services from providers of their choice:

In order to fully meet patients’ needs, health coverage should allow patients to receive care from any qualified and willing medical provider.... These networks should include ... providers that focus more specifically on aspects of sexual and reproductive health, such as **abortion clinics, family planning providers**.... This broader focus would be in keeping, for example, with a long-standing federal Medicaid requirement that enrollees have unrestricted access to the qualified family planning provider of their choice.

Determining who is considered “qualified” should not be determined by politics or ideology. Rather, qualified providers are those who adhere to the basic rules of medicine: They receive proper training, follow evidence-based medical standards of care developed by major medical associations and government agencies, obtain informed consent for patient care, are transparent and honest about the services they offer, **provide referrals elsewhere when needed, and treat their patients in a respectful, noncoercive and nondiscriminatory manner.**⁸

Conclusion

Despite the clear legislative intent on the part of “Medicare for All” sponsors, abortion rights advocates are concerned that with undefined terms in the legislation, abortion coverage could be excluded. Just as moderate Democrats negotiated changes in the ACA to enable its passage, the vague language in “Medicare for All” leaves room for negotiation, a “concern” voiced by Guttmacher.⁹

However, even if the definition of “comprehensive reproductive care” were modified to include only “medically necessary” abortion as a “compromise,” the definition of “medically necessary or appropriate” would enable an abortion provider to offer any health justification for an abortion.

Fundamentally, this legislation is intended to normalize abortion as reproductive

⁸ Adam Sonfield & Leah H. Keller, *Principles for Reform: New U.S. Health Care Proposals Cannot Overlook Sexual and Reproductive Health*, Guttmacher Policy Review, 2019, Vol. 22, p. 18 (emphasis added), <https://www.guttmacher.org/gpr/2019/02/principles-reform-new-us-health-care-proposals-cannot-overlook-sexual-and-reproductive>.

⁹ “HHS has authority to make policy on benefits covered and what is ‘medically necessary or appropriate,’ which leaves room for abuse.” Adam Sonfield & Leah H. Keller, *Medicare for All Act (H.R. 1384, 116th Congress): Potential Impact on Sexual and Reproductive Health and Rights*, February 2019 Policy Analysis, <https://www.guttmacher.org/article/2019/02/medicare-all-act-hr-1384-116th-congress-potential-impact-sexual-and-reproductive>.

healthcare that should be covered in any government-funded program no differently from prenatal care. Unless the terms “reproductive health service” and “comprehensive reproductive care” are defined to exclude abortion, this legislation will ensure that virtually every American has access to taxpayer-funded abortion.