

Public Funding of Abortion for Poor Women: Where Things Stand

By Elizabeth Nash

Since 1977, when the original Hyde Amendment went into effect, federal funding of abortions for indigent women covered by Medicaid has been severely restricted. Until 1993, funds could be used only in cases in life endangerment; the standard was then liberalized slightly to allow funding in cases of rape and incest as well. However, the individual states have always had the option to use their own funds to pay for abortions for Medicaid recipients, and while few have voluntarily chosen to do so, many more have been ordered to pay by their state courts. Currently, 19 states pay the cost of most or all abortions for Medicaid clients, and 29 states pay according to the current federal standard; two states, in violation of federal Medicaid law, continue to fund abortions only when the woman's life is endangered. Because court orders to

fund are being challenged in four states, those numbers could change in the near future (see chart).

Over the last several years, challenges to funding bans on state constitutional grounds have accelerated. Last year alone, five state rulings were issued—albeit by lower courts—and in four of the states funding bans were struck down. In the most recent decision, the Texas Third Court of Appeals in December 2000 struck down that state's policy of barring payment for most abortions for low-income women, ruling that the policy constitutes impermissible sex discrimination against pregnant women under the Equal Rights Amendment to the state constitution. On January 23, the state appealed the court's decision to the Texas Supreme Court; the funding ban will remain in effect until a final ruling is issued.

Whether the recent trend toward more liberal state funding policies will continue is unknown, but the implications seem clear: Numerous studies have shown that in the absence of public funds, women on Medicaid incur severe hardships in accessing abortion. Many sacrifice basic priorities such as rent, food and clothing in order to pay for the procedure and incur health risks by delaying their abortions while raising the necessary funds; a considerable percentage carry their unwanted pregnancies to term, at considerable cost both to themselves and to taxpayers ("Rights Without Access: Revisiting Public Funding of Abortion for Poor Women, *TGR*, April 2000, page 8). Following a 1994–1995 survey of abortion patients conducted by The Alan Guttmacher Institute, the researchers concluded that "Medicaid coverage of abortion has an important effect on the ability of poor women to end unwanted pregnancies."

Also last year, lower courts in Arizona, Alaska and Indiana handed down decisions requiring state funding. In all three states, the courts held that if the state chooses to fund other medically necessary care related to pregnancy, it must also cover medically necessary abortions. In each state, the decision has been appealed to the state's supreme court. Pending a ruling, all three funding orders are effect.

In Florida, meanwhile, an appeals court held in April that while the state constitution provides women with the right to abortion, it does not require the state to fund the abortion. That decision has been appealed to the Florida Supreme Court, but the court has not yet agreed to take the case.

STATES THAT FUND ALL OR MOST ABORTIONS FOR MEDICAID RECIPIENTS

VOLUNTARY	UNDER COURT ORDER
HAWAII MARYLAND NEW YORK WASHINGTON	ALASKA* ARIZONA* CALIFORNIA CONNECTICUT IDAHO ILLINOIS INDIANA* MASSACHUSETTS MINNESOTA MONTANA NEW JERSEY NEW MEXICO OREGON VERMONT WEST VIRGINIA

**Order to fund is on appeal but in effect. Note: A court order directing Texas to fund is on appeal, but the state's previous policy (life, rape, incest) is in effect.*