

[Indian Health Service Publishes Circular No. 22-15 Clarifying Abortion Policies for Indian Country](#)

Category: Policy Blog

written by Anna Schwartz | August 8, 2022

On June 30, 2022, the Indian Health Service (IHS) published [Circular No. 22-15](#) (the Circular) about the agency's policy on the use of IHS funds for abortions in light of [Dobbs v. Jackson Women's Health Organization](#). Although [Roe v. Wade](#) had historically protected the right to abortions, this right has been restricted in Indian Country for decades by the [Hyde Amendment](#), with well-established exceptions. IHS maintains that it will continue to uphold the codified exceptions to the Hyde Amendment, pursuant to authority given to IHS and HHS by Congress over federal health care spending.

The Circular clarifies that IHS funds may be used to pay for or otherwise, provide for abortions if: (1) a physician certifies that "the pregnant person suffers from a physical disorder, injury, or illness that would place that patient in danger of death unless an abortion is performed" or (2) a physician certifies that the pregnancy is the result of an act of rape or incest. Furthermore, the Circular clarifies that federal funds may be used to pay non-IHS providers who perform medical procedures, including abortions, during pregnancy to IHS beneficiaries. Finally, the Circular emphasizes that it does not prevent IHS from providing accommodations to providers who maintain a sincerely held religious objection to abortion.

Background

IHS provides important background and legal reasoning to support the policies in the Circular:

In 1982, the [Hyde Amendment](#) restricted appropriations for the Department of Health and Human Services (HHS) and the agencies within HHS so that federal funds could not be spent on abortions. In compliance with this Amendment, IHS passed [regulations](#) in the same year to prohibit most abortions. Notably, IHS regulations made an [exception](#) to allow abortions when a physician certified that the life of the mother would be endangered if the fetus were carried to term.

Around a decade later, [new exceptions](#) were added to the Hyde Amendment. These included pregnancies that were the result of rape or incest, and cases where the pregnant person suffered from a physical disorder, injury, or illness, and a physician certified that the patient would be in danger of death unless an abortion was performed. Congress also clarified that these exceptions are [applicable to IHS](#). As a result of this update, IHS regulations from a decade earlier were inconsistent with the Hyde Amendment. IHS published the Circular to help resolve this inconsistency.

IHS notes that states cannot interfere with its authority over abortion policies or the use of federal funds toward abortions because this area of regulation is preempted by federal law. In other words, Congress vested the authority to control federal spending for health care in HHS and IHS through the [Snyder Act](#) and [42 U.S.C. § 2001](#); states cannot usurp that authority. In turn, IHS asserts that states cannot (1) compel IHS federal staff to act inconsistently with the scope of their official duties, (2) prohibit the use of IHS funds from authorized services, (3) prevent IHS patients from accessing authorized services, or (4) compel access to IHS records.

NCUIH appreciates the clear, consistent communication from IHS through the Circular and will continue to monitor access to abortion rights in Indian Country.