

[Section 50. Public funding of abortion forbidden.](#)

No public funds shall be used by the State of Colorado, its agencies or political subdivisions to pay or otherwise reimburse, either directly or indirectly, any person, agency or facility for the performance of any induced abortion, PROVIDED HOWEVER, that the General Assembly, by specific bill, may authorize and appropriate funds to be used for those medical services necessary to prevent the death of either a pregnant woman or her unborn child under circumstances where every reasonable effort is made to preserve the life of each.

Source: Initiated 84: Entire section added, effective upon proclamation of the Governor, **L. 85**, p. 1792, January 1, 1985.

Editor's note: Although this section was not numbered and did not contain a headnote as it appeared on the ballot, for ease of location it has been numbered as "Section 50", and the headnote which appeared in the original submission by the proponents has been added.

Cross references: For statutory provisions concerning the public funding of abortion under certain circumstances, see § [25.5-4-415](#).

ANNOTATIONS

Law reviews. For article, "Abortion in Colorado: If Roe v. Wade is Reversed", see 19 Colo. Law. 807 (1990). For a discussion of recent Tenth Circuit decisions dealing with questions of health law, see 73 Den. U. L. Rev. 767 (1996).

Scope of the prohibition of the use of public funds to pay for abortions. This section expresses the intention of the people that no induced abortion shall be paid for by public funds unless necessary to prevent the death of the pregnant woman and unless every reasonable effort also has been made to preserve the life of the unborn child. This section also makes clear, however, that medical services other than abortions may be publicly funded when necessary to prevent the death of either the pregnant woman or the unborn child under circumstances where every reasonable effort is made to preserve the life of each. *Urbish v. Lamm*, 761 P.2d 756 (Colo. 1988).

Rule promulgated by department of social services which provided that when a pregnant woman's life is endangered, public funds may be used for an abortion of a viable unborn child before term only in circumstances where every reasonable effort has been made to preserve the lives of both the mother and the unborn child is within the scope of the exception to the prohibition on the use of public funds to pay for abortions. In contrast, a rule which allowed the public funding of abortions of unborn children who would die of natural causes at or before birth even if the mother's life was not threatened by carrying the unborn child for a longer period was beyond the scope of the exception. *Urbish v. Lamm*, 761 P.2d 756 (Colo. 1988).

Where the only evidence presented was that which indicated that an ectopic pregnancy inherently involved life-endangering risks to the mother, a rule which provided that "treatment for" an ectopic pregnancy was not included within definition of abortion is not inconsistent with the provisions of this section. *Urbish V. Lamm*, 761 P.2d 756 (Colo. 1988).

Statutory authority for rules interpreting the exception to the expenditure of public funds for abortions exists where legislation, found at § 26-4-104.5 (2) and § 26-15-104.5 (2) specifically states that "if every reasonable effort has been made to preserve the lives of a pregnant woman and her unborn child, then public funds may be used pursuant to this section to pay or reimburse for necessary medical services, not otherwise provided by law". *Urbish v. Lamm*, 761 P.2d 756 (Colo. 1988).

Colorado's limit on medicaid abortion funding to those instances when the expectant mother's life is at stake violates the requirements of federal law - requirements that Colorado is compelled to follow as a

condition of its participation in medicaid. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).

Colorado's medicaid program as amended by the abortion funding restriction to those instances when the expectant mother's life is at stake impermissibly discriminates in its coverage of abortions on the basis of a patient's diagnosis and condition. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).

Colorado's restriction on medicaid funding for abortions to those instances when the expectant mother's life is at stake violates title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396a(a)(17) because it is inconsistent with the basic objective of title XIX, that is, to provide qualified individuals with medically necessary care. A state law that categorically denies coverage for a specific, medically necessary procedure except in those rare instances when the patient's life is at stake is not a "reasonable standard[] . . . consistent with the objectives of [the Act]", 42 U.S.C. § 1396a(a)(17), but instead contravenes the purposes of title XIX. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).

Colorado's abortion funding restriction violates federal medicaid law insofar as it denies funding to medicaid-eligible women seeking abortions to end pregnancies that are the result of rape or incest. So long as Colorado continues to participate in medicaid, the state is enjoined from denying medicaid funding for abortions to qualified women whose pregnancies are the result of rape or incest. *Hern v. Beye*, 57 F.3d 906 (10th Cir. 1995).
