



Written by [Michael Tennant](#) on October 5, 2022

## States Not Interested in Biden's Offer to Use Medicaid to Pay for Abortion Tourism

The Biden administration's efforts to use Medicaid to help women from states with restrictive abortion laws travel to other states for abortions have thus far been met with little interest.

According to [Politico](#), "In the two months since President Joe Biden signed an executive order encouraging states to use the health insurance program to expand abortion access, no state has applied to do so."

POLITICO contacted 24 state Medicaid agencies where abortion is legal and its status is not in jeopardy. Health officials in 10 of those states said they are reviewing the federal government's proposal and haven't decided whether to apply.

Massachusetts and Minnesota are waiting on additional federal guidance. North Carolina is not pursuing the policy and 11 states did not respond to requests for comment.



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At this point, there isn't much to the administration's proposal. Biden's August 3 [order](#) merely states that the Secretary of Health and Human Services (HHS) "shall consider actions to advance access to reproductive healthcare services, including, to the extent permitted by federal law, through Medicaid for patients traveling across state lines for medical care." HHS Secretary Xavier Becerra sent an August 26 [letter](#) to governors saying that the directive "is a priority for HHS, and states interested in federal Medicaid funding to expand access to care ... for women traveling from a state that has restricted or prohibited abortion are encouraged to engage with the Centers for Medicare & Medicaid Services [CMS]."

"We remain in uncharted territory without further guidance from CMS. We don't have any of the typical legal precedents that might help clarify this," Dianne Hasselman, interim executive director of the National Association of Medicaid Directors, told *Politico*. "We aren't aware of any statement from CMS that it won't give further guidance, but we also don't know if they will."

The feds counter that telling states what the administration will or will not approve would discourage them from coming up with their own solutions.

Following Biden's lead, you see, is not as simple as, e.g., New York's declaring that it will use Medicaid



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funds to pay for “birthing people” from Texas to travel to the Empire State to avoid giving birth. Albany would have to apply to CMS for a Medicaid waiver for experimental programs — a “byzantine, monthslong process,” in *Politico*’s words — and then cross its fingers and hope that Becerra approves it.

“It might be easier — and faster — for states to use their own tax dollars to help local organizations facilitate travel for out-of-state residents instead of jumping through the hoops needed to access federal Medicaid funds,” observed *Politico*. Indeed, several deep-blue states, and even some localities, have already done so.

The other major hurdle is the Hyde Amendment, which, despite vocal Democratic opposition, remains in force. According to the [Daily Caller](#):

The Hyde Amendment prevents federal funding for abortions except to protect the life of the mother and in cases of rape and incest, making it unlikely that funding could support abortion-related expenses outside these rare cases.... Approximately 1% of abortions are sought due to being a victim of rape, and less than 0.5% are due to incest; women would presumably not need to cross state lines to have abortions in life-threatening instances since no state abortion restriction bans the procedure when the mother’s life is at stake.

As Connecticut official Deidre Gifford told *Politico*, “The number of women that will be impacted in that specific circumstance ... would be a pretty small number.”

In the event that a state did obtain a waiver for abortion tourism, it would face additional hurdles in the form of advertising to eligible out-of-state residents and beating back legal challenges. Why go to all this trouble for such a vanishingly small return?

In short, while the Biden administration would dearly love to make taxpayers fund abortion travel, its options are extremely limited even in the “living Constitution” era.

“There’s no question that part of the challenge here is there are real limits to executive branch authority,” National Institute for Reproductive Health president Andrea Miller told *Politico*. “They continue to try to find creative solutions, and they also continue to butt up against the limits of their authority, and that’s frustrating for everyone.”



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