



**The Stupak-Pitts Amendment Goes Far Beyond Current Law,
Imposes Unprecedented Restrictions on Abortion Coverage for Millions of Women**

The Stupak-Pitts amendment to the Affordable Health Care for America Act¹ goes far beyond existing law, imposing unprecedented limitations on abortion access and extending restrictions to a much larger share of the population than any current law. It is more than just a ban on public funding of abortion:

- It makes it virtually impossible for insurance companies in the health-insurance exchange to offer abortion coverage even to women paying entirely with their own funds (i.e., where there are no federal funds involved);
- It forbids abortion coverage for women using their own funds to pay for part of their premiums in the exchange. As such, it extends abortion coverage restrictions to millions of middle-income and lower-income individuals who will enter the exchange;² and
- It restricts abortion coverage in private insurance plans in the exchange,

These sweeping new restrictions will have a vast impact. Not only will this amendment impose restrictions where there have never been any before, but millions of women who already have abortion coverage (through a small employer, for example) will lose that coverage upon entering the health-insurance exchange – violating a core principle of health reform. Furthermore, given the anticipated market impact of the health-insurance exchange, it is expected that women who receive their insurance coverage through large employers will probably lose abortion coverage in the future – regardless of whether their employer enters the exchange.

**Even Women Paying Insurance Premiums Entirely With Their Own Funds Will Be Denied
Abortion Coverage in the Exchange**

Supporters of the Stupak-Pitts amendment claim that private-pay individuals will be able to buy insurance with abortion coverage in the exchange.³ However, the amendment is crafted to make it highly unlikely that the insurance plans will opt to offer this coverage. The amendment forbids any plan offering abortion coverage from accepting *even one subsidized customer*. Since more than 85 percent of the participants in the exchange will be subsidized,⁴ it is logical to expect that all health plans will seek and accept these individuals. In other words, the Stupak-Pitts amendment forces plans in the exchange to make a choice between offering their product without abortion coverage to the entire universe of consumers in the marketplace or offering abortion services in their benefits package but making it available to only about 15 percent of the consumers in the exchange. It seems clear which choice they will make.

Even if an insurance company wished to offer a plan with abortion coverage to private-pay individuals, the amendment is written so that companies will be discouraged from doing so. First, there are high costs and technical complexities.⁵ The plans would have duplicative administrative costs – imposing a major burden on companies that wish to offer this coverage. In addition, if an insurance company wanted to offer a plan with abortion coverage, it would also be required to offer a second, identical plan without abortion coverage – yet another administrative burden. Further, it is unclear what kind of market there would be for these plans.⁶ Because unintended pregnancies and pregnancies with health complications are unplanned, it is illogical to expect many women to purchase plans in anticipation of these circumstances. Moreover, because abortion coverage will be the only difference between the two plans, women who choose plans with that coverage will be easily identifiable. Thus, they may be suspicious that their health data will not remain confidential and therefore discouraged from buying these plans.

The totality of these restrictions will mean that women who currently have insurance plans with abortion coverage in the private market using their own money will no longer be able to obtain this coverage. This will include the 3 million individuals who will participate in the exchange without subsidies as well as those women receiving their insurance from an employer who is among the 9 million employers that will participate in the exchange without subsidies.⁷

In the Exchange, All Low-Income and Middle-Income Women Receiving Subsidies Will Be Banned from Obtaining Abortion Coverage

While supporters of the amendment claim that it simply maintains current restrictions on federal funding for abortion, in fact the impact goes much further. The Stupak-Pitts amendment would forbid coverage even for women in the new system who use their own funds to pay for part (or even most) of their premiums. Many of these women likely have insurance coverage of abortion now – through a small employer, for example. Under the Stupak-Pitts amendment, in order to accept the financial assistance that is at the heart of this health-care reform effort, these women will have to forfeit their abortion coverage. As the vast majority of those purchasing insurance through the exchange will receive subsidies⁸ – both the Senate and House bills includes middle-class Americans up to 400 percent of the poverty level – this could cause many women to actually lose coverage under health-care reform – even in cases where they are paying most of the premium themselves.

The Abortion-Coverage “Rider” Policy is a False Promise

The amendment purports to offer a solution for women seeking abortion coverage who cannot obtain it through their general health-insurance plan: abortion rider policies. However, the same barriers that will effectively bar insurance companies from offering plans that include abortion coverage will likely prevent them from offering rider policies or making them affordable to women in the exchange. Like general plans that include abortion coverage, the rider plans would have to be able to cover all of their additional administrative costs, a major

hindrance to insurance companies. Furthermore, women are unlikely to opt to buy these plans. Low-income people receive subsidies because, by definition, they cannot afford to purchase insurance. Therefore, these individuals are unlikely to be able to afford a supplemental policy for any service, including abortion care. Moreover, even women who can afford to purchase a rider policy are unlikely to use their own funds to pay for additional coverage when the need for abortion care is never anticipated.

Finally, existing data on “rider” policies suggest that they simply do not work. Five states require a separate rider for abortion coverage, and the experiences in those states is not promising. For example, according to the National Women’s Law Center, in North Dakota (which has this policy) the private plan that holds the state’s overwhelming share of the health-insurance market (91 percent) does not offer such a rider.⁹ Furthermore, the state insurance department has no record of abortion riders from any of the five leading individual insurance plans from at least the past decade.

The Stupak-Pitts Amendment Goes Beyond Current Law By Restricting Private Insurance Plans

Although the amendment’s proponents claim that are simply applying Hyde amendment and Federal Employees Health Benefits (FEHB) Program restrictions to the exchange,¹⁰ they are in fact creating new restrictions for private insurers. Under current law, most private insurance plans (other than those contracted by the federal government) are not subject to any federal restriction on offering coverage for abortion services.¹¹ In fact, 87 percent of private plans do offer this coverage.¹² If the Stupak-Pitts amendment becomes law, private insurance plans in the exchange will be subject to federal restrictions on when they can and cannot offer this coverage for the first time.

Currently, abortion coverage is banned only in federally administered programs (like the Hyde amendment’s prohibition on abortion coverage in Medicaid) and programs in which the federal government is the employer contracting with the plan (like the FEHB ban on abortion coverage for federal employees). Neither the Hyde amendment nor the FEHB restriction applies to the benefit packages available from private insurance plans for private individuals or employers. The Stupak-Pitts amendment will impose restrictions on transactions where no federal funds are involved for the first time.

Over Time, More Women Will Be Unable to Receive Insurance Coverage for Abortion – Both Inside and Outside the Exchange

The Congressional Budget Office estimates that approximately 30 million people would receive their insurance through the exchange under the Senate plan.¹³ The health-insurance exchange is designed to grow in the coming years. As it does, if the Stupak-Pitts amendment became law, more and more women would be unable to receive coverage for abortion services. The House and Senate health-care reform bills both envision more private plans joining the exchange in the

future.¹⁴ As that happens, the new plans – including those offered to employees at large companies – would also become subject to the Stupak-Pitts regulation.

Further, a report from the George Washington University Medical Center School concluded that as the exchange grows it will have a greater effect on the health-insurance industry as a whole, until the exchange will become the standard for benefits packages.¹⁵ The report states that “the treatment exclusions required under the Stupak/Pitts Amendment will have an industry-wide effect, eliminating coverage of medically indicated abortions over time for all women, not only those whose coverage is derived through a health-insurance exchange.”¹⁶ If the Stupak-Pitts amendment becomes law, it is possible that ultimately insurance coverage for abortion services will become a thing of the past.

The Senate Patient Protection and Affordable Care Act Already Has a Mechanism to Prohibit Federal Funding of Abortion

It should be stated from the outset that the pro-choice community believes that the right to choose should not be dependent on one’s income level and that all funding bans on abortion are discriminatory and unfair. That said, if legislators simply want to impose the Hyde amendment on the exchange, then they should support the Senate bill;¹⁷ the Stupak-Pitts amendment goes much farther.

The Senate Patient Protection and Affordable Care Act includes a section that bans federal funding of abortion services without the extreme ramifications of the Stupak-Pitts amendment. The language in the Senate bill reflects a compromise struck between pro-choice and pro-life lawmakers alike to maintain current law regarding federal funding for abortion. Again, while the pro-choice community believes that it would be best to lift the ban on low-income women’s access to needed funding for abortion care, the Senate compromise language at least follows current law by actually applying the Hyde amendment to the health-care exchange (unlike the Stupak-Pitts amendment). The Senate bill also respects differing views on abortion coverage by requiring that there is at least one plan in the exchange that offers abortion coverage and one plan that does not. In addition, the Senate bill, unlike the Stupak-Pitts amendment, establishes a “firewall” to make sure that no federal funds are used for abortion coverage. In fact, there are many examples of programs that already exist where federal funds are walled off from private funds.

Unlike the Stupak-Pitts Amendment, the Senate Bill Actually Applies the Hyde Amendment to the Health-Insurance Exchange

Section 1303(a)(1)(B)(i) of the Senate bill states: “The services described in this clause are abortions for which the expenditure of Federal funds appropriated for the Department of Health and Human Services is not permitted, based on the law as in effect as of the date that is 6 months before the beginning of the plan year involved.”¹⁸ This means that the same restrictions on federal funds in Medicaid (the Hyde amendment) and other federal health programs will be

applied to the health-insurance exchange. The Hyde amendment has efficiently ensured that no federal funds are used to cover abortion services in Medicaid for over 30 years. If Hyde is the standard that legislators wish to follow, the Senate bill already follows this model. As discussed above, the Stupak-Pitts amendment goes far beyond it.

The Senate Bill Respects Differing Views on the Coverage of Abortion Services By Requiring that There is At Least One Plan That Covers These Services in the Exchange and One That Does Not

The Senate bill creates a level playing field for both pro-choice and pro-life consumers by requiring that at least one plan in each market within the exchange must cover abortion services and at least one plan must not.¹⁹ This is a new provision offered through health-care reform so that individuals who feel very strongly against joining a plan that offers abortion can choose one. In fact, this requirement represents an improvement for pro-life consumers. Today, there is no guarantee that a pro-life person can buy insurance without abortion coverage, as 87 percent of private plans currently cover abortion care.²⁰ In fact, some of the strongest foes of the Senate language would benefit from this provision. Press reports recently revealed that anti-choice group Focus on the Family purchases insurance coverage for its employees from a company that covers abortion services – as did the Republican National Committee until November 12!²¹

The Senate Bill Includes a Mechanism To Wall Off Federal Funds From Abortion Coverage, Including a New Provision to Guarantee that No Federal Funds are Used for Abortion Care in the Public Plan

Section 1303(a) sets forth rules that ensure that federal funds are not used to pay for the coverage of abortion – thus creating a “firewall” that guarantees no commingling of funds. It stipulates that the secretary of the Department of Health and Human Services must determine the amount of private funds each insurance plan opting to cover abortion must set aside for this purpose, and requires insurance plans to “segregate an amount equal to” the amount determined by the secretary. Furthermore, the Senate bill contains a new provision that was not included in the House base bill that states that, if the secretary of the Department of Health and Human Services would like the public plan to include abortion coverage, he or she must guarantee, by three accounting processes, that no public funds are used to cover these services. This change absolutely guarantees that a “firewall” will be in place.

There Is No “Fungibility” Issue: There Are Many Examples of Programs That Successfully Segregate Federal Funds from Private Funds

Some argue that if the federal government provides a subsidy to an individual who purchases a plan with his or her own funds that covers abortion services, then the government is indirectly paying for such services.²² This is incorrect. In fact, there are many programs that receive federal funds that already effectively segregate private funds used for abortion services. In addition, there are several other circumstances where “firewalls” are used to ensure that federal funds are not used for unauthorized purposes. There is no reason that the “firewalls” that are so effective in these circumstances will not be effective in the new health-insurance exchange.

- For example, 17 states cover the cost of abortion services beyond those permitted under the Hyde amendment.²³ The Department of Health and Human Services has long recognized that states provide this coverage by paying for it from an account that is completely separate from any federal funds or the state's Medicaid matching funds.²⁴ As long as there is no crossover between state funds used to pay for abortion coverage and federal monies, no commingling occurs.
- In addition, because the Constitution mandates separation of church and state, the federal government cannot fund sectarian activities. However, many religious organizations receive federal funding for secular activities that they provide to the community. For example, the Catholic Church has a long history of seeking government funding streams, including support for Catholic schools, hospitals, and programs run by Catholic Charities.²⁵ In those arrangements, the church is able to manage funds from separate sources to ensure that tax dollars do not finance religious practices. If separation of federal funds and private dollars works for the church hierarchy, then it should also work for women's reproductive-health care.

Public Opinion Supports the Approach Taken in the Senate Bill

In a Washington Post-ABC poll released on November 17, a majority of Americans polled supported the approach to addressing abortion coverage taken by the Senate bill: "With segregated private money used to cover abortion procedures, 56 percent say insurance offered to those using government assistance should be able to include such coverage."²⁶

Conclusion

The Stupak-Pitts amendment's effective ban on abortion coverage in the exchange is an unacceptable policy and, for women, utterly upends the promise of health reform. Further, it is not necessary because the Senate bill already assures that no federal funding will go to abortion. If health-care reform is truly going to open up the doors to insurance coverage for all Americans, the barriers of the Stupak-Pitts amendment must not be included.

November 30, 2009

Notes

¹ H.R.3962, 111th Cong. (2009)

² The Stupak-Pitts amendment does allow federal funds to be used for abortions in cases of rape or incest, or in a narrow set of circumstances that threaten the life of the woman. *See*, H.R.3962, 111th Cong. § 265(a). (2009)

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- ³ Website of Representative Bart Stupak, *Health Care Questions and Answers*, at http://www.house.gov/stupak/initiatives_healthcare_questionsandanswers.shtml (last visited Nov. 18, 2009)
- ⁴ CONGRESSIONAL BUDGET OFFICE, 111TH CONGRESS, Letter to Congressmen Dingell (2009) at http://www.cbo.gov/ftpdocs/107xx/doc10710/hr3962Dingell_mgr_amendment_update.pdf
- ⁵ See, Sara Rosenbaum et. al., *An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions*, at 25 (Nov. 16, 2009), at http://www.gwumc.edu/sphhs/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_FED314_C4-5056-9D20-3DBE77EF6ABF0FED.pdf (last visited Nov. 24, 2009)
- ⁶ Sara Rosenbaum et. al., *An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortion*, at 25 (Nov. 16, 2009), at http://www.gwumc.edu/sphhs/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_FED314_C4-5056-9D20-3DBE77EF6ABF0FED.pdf (last visited Nov. 24, 2009)
- ⁷ CONGRESSIONAL BUDGET OFFICE, 111TH CONGRESS, Letter to Congressmen Dingell (2009) at http://www.house.gov/apps/list/speech/mi01_stupak/morenews/20091107healthcare.html.
- ⁸ CONGRESSIONAL BUDGET OFFICE, 111TH CONGRESS, Letter to Majority Leader Reid (2009) at http://www.cbo.gov/ftpdocs/107xx/doc10731/Reid_letter_11_18_09.pdf; CONGRESSIONAL BUDGET OFFICE, 111TH CONGRESS, Letter to Congressmen Dingell (2009) at http://www.house.gov/apps/list/speech/mi01_stupak/morenews/20091107healthcare.html.
- ⁹ NATIONAL WOMEN'S LAW CENTER, *Oppose Amendments to Ban Coverage of Abortion in Private Health Insurance Except by Optional "Riders"* at <http://nwlc.org/reformmatters/pdf/HCROpposeAmendmentswithOptionalRidersFINAL.pdf> (last visited Nov. 24, 2009)
- ¹⁰ Website of Representative Bart Stupak, *Health Care Reform*, at http://www.house.gov/stupak/issues_healthcare_update.shtml (last visited Nov. 24, 2009). ("My amendment does one very simple thing: It applies current law (the Hyde Amendment), which bars federal funding for abortion except in the case of rape, incest or life of the mother, to the health care reform bill. The Hyde Amendment has been the law of the land on federal funding of abortion since 1977 and applies to all other federally-funded health care programs such as Medicare, Medicaid, the VA and the Federal Employees Health Benefits Program (FEHBP). My amendment is not new federal abortion policy but continues current law.")
- ¹¹ Sara Rosenbaum et. al., *An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions*, at 3-4 (Nov. 16, 2009), at http://www.gwumc.edu/sphhs/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_FED314_C4-5056-9D20-3DBE77EF6ABF0FED.pdf (last visited Nov. 24, 2009)
- ¹² Adam Sonfield et. al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates*, 2002, *Perspectives on Sexual Reproductive Health*, 36(2):72-79 (2004)
- ¹³ CONGRESSIONAL BUDGET OFFICE, 111TH CONGRESS, Letter to Majority Leader Reid (2009) at http://www.cbo.gov/ftpdocs/107xx/doc10731/Reid_letter_11_18_09.pdf
- ¹⁴ H.R.3962, 111th Cong. § 302(e)(4) (2009); Patient Protection and Affordable Care Act, S.3590, 111th Cong., § 1312(f)(2)(b). (2009)

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- ¹⁵ Sara Rosenbaum et. al., *An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions*, at 9 (Nov. 16, 2009), at http://www.gwumc.edu/sphhs/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_FED314_C4-5056-9D20-3DBE77EF6ABF0FED.pdf (last visited Nov. 24, 2009)
- ¹⁶ Sara Rosenbaum et. al., *An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions*, at 1 (Nov. 16, 2009), at http://www.gwumc.edu/sphhs/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_FED314_C4-5056-9D20-3DBE77EF6ABF0FED.pdf (last visited Nov. 24, 2009)
- ¹⁷ S.3590, 111th Cong. (2009)
- ¹⁸ S.3590, 111th Cong. §1303(a)(1)(B)(i). (2009)
- ¹⁹ S.3590, 111th Cong. § 1303(a)(1)(D). (2009)
- ²⁰ Adam Sonfield et al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, 2002*, 36 PERSP. ON SEXUAL & REPROD. HEALTH 72 (2004), Table 1, at <http://www.guttmacher.org/pubs/journals/3607204.html> (last visited Nov. 24, 2009)
- ²¹ Amy Sullivan, *Does Focus on the Family Fund Abortions*, TIME.COM, at <http://swampland.blogs.time.com/2009/10/28/does-focus-on-the-family-fund-abortions/> (last visited Nov. 4, 2009).; Jonathan Allen and Meredith Shriner, *RNC to Opt Out of Abortion Coverage*, POLITICO (Nov. 12, 2009) at <http://dyn.politico.com/printstory.cfm?uuid=EA3D5170-18FE-70B2-A8C580A892D7765E> (last visited Nov. 25, 2009)
- ²² Shailagh Murray and Lori Montgomery, *Senate Health-Care Bill Diverges From House on Key Provisions*, THE WASHINGTON POST, Nov. 19, 2009, at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/18/AR2009111802014.html> (last visited Nov. 25, 2009)
- ²³ NARAL Pro-Choice America Foundation, *Who Decides? A State-by-State Report on the Status of Women's Reproductive Rights* (19th ed. 2010), at www.prochoiceamerica.org/whodecides.
- ²⁴ Letter from Department of Health and Human Services Health Care Financing Administration to State Medicaid Directors of Feb. 12, 1998. (Re: changes to the Hyde Amendment. "If a state wishes to reimburse managed care providers or organizations to provide additional abortions, it must do so under a separate contract or arrangement using monies unrelated to Federal, state or local Medicaid matching dollars. However, this should not be construed as restricting the ability of any managed care provider to offer abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a state's or locality's contribution of Medicaid matching funds).")
- ²⁵ See, e.g., THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES, *Catholic Health Care in Indiana : A Commitment to Serve*, at <http://www.chausa.org/NR/rdonlyres/DAB38029-6158-4052-A88B-B64187F415C2/0/IN.doc> (last visited Nov. 6, 2009).
- ²⁶ Dan Balz and Jon Cohen, *Deep Divisions Linger on Health Care*, THE WASHINGTON POST, Nov. 17, 2009, at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/17/AR2009111700021.html> (last visited Nov. 25, 2009).