



## **Attacks on Private Insurance Coverage of Abortion Care**

All women should have access to abortion care regardless of their zip code, employer, or source of health insurance. However, some insurers are prohibited from including coverage of abortion services in their health plans. Unable to ban abortion outright, anti-choice politicians and activists have worked to make abortion inaccessible to as many women as possible by banning insurance coverage for the procedure. At the national level, anti-choice lawmakers have successfully enacted bans on coverage of abortion services in government health-care programs and they try relentlessly to expand these bans to the private insurance market.<sup>1</sup> Although they have not succeeded in passing a nationwide ban on private abortion coverage, anti-choice politicians are undeterred, and have successfully imposed such laws on a number of states.<sup>2</sup>

### **Impact of Private Abortion-Coverage Bans**

Absent political interference, 87 percent of private insurance plans cover abortion services.<sup>3</sup> This is unsurprising given that abortion is a common medical procedure that one in three women will choose in her lifetime.<sup>4</sup> Consequently, restrictions on private insurance coverage of abortion have immediate, widespread, and devastating effects on the availability of comprehensive insurance coverage and on women seeking abortion care. The type and extent of the restrictions imposed on the private marketplace vary but the goal is always the same – to end insurance coverage for abortion.

At the state level many of these laws are outright bans; they prohibit insurance companies from covering abortion services for public employees, in the state insurance exchanges, and even in the state's entire private insurance market. State governments that ban abortion coverage in health plans for public employees penalize civil servants solely because they can – because they chose to work in public service. While an exchange ban might appear narrower than a statewide private insurance ban, the impact of the restriction is not limited to the state exchanges. Health-policy experts have concluded that abortion-coverage restrictions in the exchanges will have a detrimental impact on abortion coverage across the private insurance market. As the exchanges continue to grow, they will have a greater effect on the health-insurance industry as a whole, eventually becoming the de facto standard for benefits packages. Over time, abortion-coverage

bans in the exchanges could cause the elimination of coverage of abortion services for most women—not just those in the health-insurance exchanges.<sup>5</sup>

These bans effectively deny women their constitutional right to choose based on where they work or in which state they live. Some of these abortion-coverage bans allow women to purchase a separate policy and pay an extra premium to receive abortion coverage. However, offering women the “option” to pay extra for supplemental abortion coverage is a false promise because no one plans for an unplanned pregnancy, and furthermore, there is no evidence that such separate abortion policies even exist. These restrictions can be especially damaging because their existence often isn’t known until a woman needs coverage that she assumes is already included in her health plan. And, even if these separate policies did exist, the very purpose of insurance is to provide protection against an unforeseen occurrence, such as an unintended pregnancy; people are unlikely to purchase a separate abortion-coverage policy because they don’t think they’ll need it... until they do.

### **Federal Attacks on Private Insurance Coverage of Abortion**

Anti-choice efforts in Congress to reiterate and expand abortion-coverage bans are part of a larger strategy to eliminate abortion coverage – public and private – nationwide. There are multiple examples in recent years of anti-choice legislators trying to ban coverage of abortion services by interfering in the private insurance market, such as the Stupak amendment that lawmakers tried to attach to the Affordable Care Act (ACA) and the No Taxpayer Funding for Abortion Act.<sup>6</sup> Pro-choice champions in Congress have successfully beaten back these efforts; nevertheless, anti-choice extremists continue to introduce the same bills again and again. Below are just few examples.

#### ***Stupak-Pitts Amendment to the ACA***

In 2009, during debate on the ACA, anti-choice Reps. Bark Stupak (D-MI) and Joe Pitts (R-PA) proposed an amendment to the health-reform bill that would have effectively ended abortion coverage in state health-insurance exchanges and jeopardized the availability of private insurance coverage of abortion for all women. The amendment prohibited subsidized individuals from purchasing health plans that included abortion coverage, even if they used their own money to pay most of their premium cost. The amendment forbade any plan in the exchange offering abortion coverage from accepting even one subsidized customer. Since it was estimated that more than 85 percent of the participants in the exchange would be subsidized,<sup>7</sup> it was likely that all health plans would seek and accept these individuals. In other words, the Stupak-Pitts amendment would have forced 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 customers in the exchange. It seems clear which choice they would have made.<sup>8</sup> Although the amendment passed the House, the Senate defeated it and it was not included in the final bill. However, that did not mean that this line of attack ceased.

### ***No Taxpayer Funding for Abortion Act***

Over the last five years, anti-choice lawmakers, led by Rep. Chris Smith (R-NJ), have launched multiple attacks on private insurance coverage of abortion care via the deceptively titled “No Taxpayer Funding for Abortion Act” (H.R.7 in the 114th Congress).<sup>9</sup> Although the bill does reiterate harmful, current-law bans on abortion services in government health-care programs, it also goes significantly further. The Smith bill would extend unprecedented restrictions on abortion access to a much larger share of the population and impose radical changes to tax policy. Specifically, it would impose the failed Stupak-Pitts abortion coverage-ban on all state exchanges, which jeopardizes the availability of private abortion coverage nationwide, and impose tax penalties on any small business that provides comprehensive health coverage to its employees. Although the House passed the bill in 2011, 2014, and again in 2015, the Senate has never taken it up. (For more information, please see the fact sheet *Smith Bill Represents Extreme Attack on Access to Abortion Care.*)

### ***Multi-State Plan Abortion-Coverage Ban Amendment***

For the last several years, Rep. Andy Harris (R-MD) has offered an amendment to the Financial Services and General Government appropriations bill that would ban coverage of abortion services for women with private health insurance by prohibiting abortion coverage in the multi-state plans (MSP) created by the ACA.<sup>10</sup> This amendment is based on a freestanding bill authored by Rep. Alan Nunnelee (R-MS) in 2013.<sup>11</sup> To add insult to injury, the ACA already requires that at least one of the MSPs in each state exchange must exclude abortion coverage in most cases – presumably satisfying those who argue that the exchanges should make at least one “abortion-free” option available for participants who feel strongly on this matter.<sup>12</sup> Although the anti-choice-controlled House Appropriations Committee has passed this amendment multiple times, it has not been included in the final budget bills. Nonetheless, this amendment is yet another anti-choice attempt to expand current-law bans and interfere with the private health-insurance market.

## Private Abortion-Coverage Bans in the States

Although anti-choice lawmakers failed to enact a federal ban on private abortion coverage through the Stupak-Pitts amendment, the ACA did include a number of anti-choice provisions, including one that reiterated a state's ability to enact its own, Stupak-like restriction in its state health-insurance exchanges.<sup>13</sup> (For more information, please see the fact sheet *Nelson Provisions in Health-Care Law Jeopardize & Stigmatize Women's Access to Abortion*.) Before enactment of the ACA, 17 states prohibited private coverage of abortion care in some way. In the last five years, that number has nearly doubled: now, 29 states have private abortion-coverage bans.

As noted above, these bans impact public employees, state insurance exchanges, and entire statewide insurance markets. Some of these laws ban even the nonexistent separate abortion-only policies.<sup>14</sup> Even more absurd, some states that already had in place a statewide ban on private insurance coverage of abortion services enacted laws that would explicitly ban coverage of abortion care in their state exchange – this is the perfect example of a completely redundant and unnecessary abortion-coverage ban.<sup>15</sup> It also exemplifies the temerity of anti-choice politicians whose only goal is to end access to abortion for as many women as possible by cutting off access everywhere possible. Below is a summary of the bans on private insurance coverage of abortion care in the states.

Twenty-nine states prohibit insurance plans from covering abortion services for all or some residents of the state (AL, AZ, AR, CO, FL, GA, ID, IL, IN, KS, KY, LA, MA, MI, MS, MO, NE, NC, ND, OH, OK, PA, RI, SC, SD, TN, UT, VA, WI).<sup>16</sup>

- 11 states expressly prohibit abortion coverage in the entire private insurance market: ID, IN, KS, KY, MI, MO, NE, ND, OK, RI, UT.
  - 1 of these laws is unconstitutional: RI.
- 23 states expressly prohibit abortion coverage in state insurance exchanges: AL, AZ, AR, FL, GA, ID, IN, KS, LA, MI, MS, MO, NE, NC, OH, OK, PA, SC, SD, TN, UT, VA, WI.
- 17 states expressly prohibit abortion coverage for public employees: AZ, AR, CO, GA, IL, KS, KY, MA, MS, NE, NC, ND, OH, PA, RI, SC, VA.

## Conclusion

The purpose of bans on private insurance coverage of abortion care is to insert anti-choice politicians into the private insurance market so that they can control women's reproductive-health decisions. In addition to harming women, these bans are a direct contradiction to small

government – a stated goal of anti-choice lawmakers. This is unsurprising, however, because women’s reproductive rights always seem to be the exception to that purported principle. Instead, anti-choice extremists have imposed radical bans on abortion coverage at the state level and are working to impose these restrictions on the private health-care market nationwide. Women have a constitutional right to choose; however, insurance coverage bans jeopardize the availability of this right by restricting how women can use their private health-insurance coverage.

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<sup>1</sup> Jon O. Shimabukuro, *Abortion: Judicial History and Legislative Response*, Congressional Research Service, Mar. 24, 2014, at 12, available at [www.fas.org/sgp/crs/misc/RL33467.pdf](http://www.fas.org/sgp/crs/misc/RL33467.pdf) (last visited Oct. 28, 2014); 1999 Omnibus Appropriations Act. 112 STAT. 2681–362 (1998); 107 STAT. 1084, 1113 (1994); 10 U.S.C. § 1093(a) (2013); 109 STAT 468, 495 (1995), Annie L. Mach & Ada S. Cornell, *Laws Affecting the Federal Employee Health Benefits Program (FEHBP)*, Congressional Research Service, Feb. 18, 2014, at n. 4-5, available at <http://www.fas.org/sgp/crs/misc/R42741.pdf> (last visited Oct. 28, 2014); Indian Health Service, *Current Restrictions on Use of Indian Health Service Funds for Abortions*, SGM 96-01 (Aug. 12, 1996), [http://www.ihs.gov/ihtm/index.cfm?module=dsp\\_ihm\\_sgm\\_main&sgm=ihtm\\_sgm\\_9601](http://www.ihs.gov/ihtm/index.cfm?module=dsp_ihm_sgm_main&sgm=ihtm_sgm_9601) (last visited Oct. 28, 2014); 92 STAT. 1591, 1597 (1978); 106 STAT. 4943, 4947 (1992); Sidath Viranga Panagala & Erin Bagalman, *Health Care for Veterans: Answers to Frequently Asked Questions*, Feb. 25, 2014, at 7, available at <https://www.fas.org/sgp/crs/misc/R42747.pdf> (last visited Oct. 28, 2014).

<sup>2</sup> NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women’s Reproductive Rights in the United States* (26th ed. 2017), at [www.WhoDecides.org](http://www.WhoDecides.org).

<sup>3</sup> Adam Sonfield et. al., *U.S. Insurance Coverage of Contraceptives and the Impact of Contraceptive Coverage Mandates, 2002*, 36 PERSPECTIVES ON SEXUAL & REPRODUCTIVE HEALTH 2, 72–79 (2004), available at <http://www.guttmacher.org/pubs/journals/3607204.html> (last visited Sept. 23, 2015).

<sup>4</sup> Guttmacher Institute, *Fact Sheet: Induced Abortion in the United States*, (July 2014), available at [https://www.guttmacher.org/pubs/fb\\_induced\\_abortion.html](https://www.guttmacher.org/pubs/fb_induced_abortion.html) (last visited Oct. 8, 2015).

<sup>5</sup> Sara Rosenbaum et. al., *An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions* 9 (2009), available at [https://publichealth.gwu.edu/departments/healthpolicy/DHP\\_Publications/pub\\_uploads/dhpPublication\\_FED314C4-5056-9D20-3DBE77EF6ABF0FED.pdf](https://publichealth.gwu.edu/departments/healthpolicy/DHP_Publications/pub_uploads/dhpPublication_FED314C4-5056-9D20-3DBE77EF6ABF0FED.pdf) (last visited Sept. 23, 2015).

<sup>6</sup> HR.7, No Taxpayer Funding for Abortion Act.

<sup>7</sup> Congressional Budget Office, 111th Congress, Letter to Congressmen Dingell (2009) at [http://www.cbo.gov/ftpdocs/107xx/doc10710/hr3962Dingell\\_mgr\\_amendment\\_update.pdf](http://www.cbo.gov/ftpdocs/107xx/doc10710/hr3962Dingell_mgr_amendment_update.pdf)

<sup>8</sup> NARAL Pro-Choice America Foundation, *The Stupak-Pitts Amendment Goes Far Beyond Current Law, Imposes Unprecedented Restrictions on Abortion Coverage for Millions of Women* (July 2010).

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<sup>9</sup> Subsequently, Sen. Roger Wicker (R-MS) introduced a companion bill (S.946). However, the content in the House version of the bill was altered dramatically in early 2014, departing significantly from the Senate version.

<sup>10</sup> House Committee on Appropriations, H.R.5016, FY'15 Financial Services and General Government Appropriations Act, (2014); H.R.2995, FY'16 Financial Services and General Government Appropriations Act, (2015).

<sup>11</sup> H.R.346, Stop Abortion Funding in Multi-State Exchange Plans Act, (2013).

<sup>12</sup> Alina Salganicoff et al., *Coverage for Abortion Services and the ACA*, Kaiser Family Foundation, Sept. 19, 2014, available at <http://kff.org/womens-health-policy/issue-brief/coverage-for-abortion-services-and-the-aca/> (last visited Oct. 9, 2015).

<sup>13</sup> P.L. 111-148, 111th Cong. (2010), at § 1303(a)(1).

<sup>14</sup> NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (26th ed. 2017), at [www.WhoDecides.org](http://www.WhoDecides.org).

<sup>15</sup> NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (26th ed. 2017), at [www.WhoDecides.org](http://www.WhoDecides.org).

<sup>16</sup> NARAL Pro-Choice America & NARAL Pro-Choice America Foundation, *Who Decides? The Status of Women's Reproductive Rights in the United States* (26th ed. 2017), at [www.WhoDecides.org](http://www.WhoDecides.org).