

Facts on Stupak-Pitts Amendment and the Threat to Women's Health

The Stupak-Pitts abortion ban, which passed the House of Representatives as part of the healthcare reform bill, is damaging to women's healthcare.

Below, we make six key points:

- 1. The Stupak-Pitts abortion ban is an unwarranted intrusion into the private insurance market.**
- 2. The Stupak-Pitts abortion ban would break the President's promise to American women that they can keep the health insurance they have.**
- 3. The Stupak-Pitts abortion rider requirement would grossly violate the privacy and safety of policyholders.**
- 4. The Stupak-Pitts abortion rider requirement is a de facto ban and violates the core purpose of insurance, which is to provide for unexpected.**
- 5. The Stupak-Pitts conscience clause provisions are unfair, imbalanced, and bad policy.**
- 6. The Capps Amendment compromise is more than enough. No federal money would flow to abortion services under Capps.**

Members of Congress should vote against language that is similar to Stupak-Pitts in the Senate.

1. The Stupak-Pitts abortion ban is an unwarranted intrusion into the private insurance market.

For the first time, a federal ban would restrict the terms of private insurance purchased by privately employed policyholders. The majority of private health plans today cover abortion, and abortion is a fundamental healthcare service. Indeed, abortion is one of the most common surgical procedures: one in three women will have an abortion during her lifetime, according to the Guttmacher Institute.

The Stupak-Pitts abortion ban, which passed the House in the health reform bill, not only bars coverage for abortion under the federal government-funded public option, but also prohibits the use of public funds in connection with any private health insurance plan that provides coverage for abortion. That means that a healthcare plan participating in the Exchange cannot cover abortion if any of its insureds receive government subsidies, described in the healthcare bill as "affordability credits."

Because a majority of the people participating in the Exchange will receive some level of government subsidies, private insurers may cater to the market forces and simply opt not to cover abortion services at all; thus the Stupak-Pitts Amendment may have the effect of banning, or at least severely limiting, the availability of private insurance coverage for abortion.

2. The Stupak-Pitts abortion ban would break the President's promise to American women that they can keep the health insurance they have.

Currently, most women with private health insurance have coverage for abortion. During the first two years the healthcare reform plan is in effect, the Exchange will be available not only to people without health insurance, but also to people who purchase their own healthcare insurance and to people who are insured by their small business employers. However, if an insurance plan is available to a mix of people receiving and not receiving government subsidies – as will be true for most or all of the plans offered through the Exchange – that plan will be subject to the ban on abortion coverage.

Thus, the Stupak-Pitts Amendment raises the significant possibility that people who currently have private insurance coverage for abortion will

lose their benefits, for example if their employer chooses to switch to a lower-cost plan offered through the Exchange. This goes against one of the President's core promises about healthcare reform: that it will not force people to give up healthcare benefits that they currently enjoy.

3. The Stupak-Pitts abortion rider requirement would grossly violate the privacy and safety of policyholders.

The proposal to require women to purchase riders for abortion coverage raises significant privacy and safety concerns. The Stupak-Pitts abortion ban fails to clarify who would elect to have an abortion rider – the individual woman or her employer. Thus it leaves open the possibility that an individual woman will need to notify her employer if she wishes to purchase supplemental abortion coverage, a situation which clearly compromises her right to privacy.

Even if the decision is left to the individual, a woman receiving health insurance benefits as a dependent will likely have to notify her spouse or partner if she wishes to purchase supplemental insurance coverage, and thus may place herself at risk of physical, sexual, or psychological abuse from an abusive partner who opposes her choice. Thus, the Stupak-Pitts abortion ban threatens to seriously compromise women's privacy and safety interests.

4. The Stupak-Pitts abortion rider requirement is a *de facto* ban and violates the core purpose of insurance, which is to provide for unexpected.

It is inherently irrational to ask women to plan for an unplanned pregnancy; but by requiring women to pay for separate, supplemental coverage in order to have health insurance coverage for abortion, this is exactly what the Stupak-Pitts abortion ban requires women to do.

Even if women were inclined to exercise the option to purchase an abortion "rider," it seems likely that most healthcare providers participating in the Exchange will not offer them. Currently, there are five states that prohibit private insurers from covering abortions other than in cases of life endangerment, rape, or incest; in all five states, private insurers have not exercised the option to make abortion coverage available to women by offering abortion "riders". Similarly, out of the twelve states that restrict public insurance coverage of abortion, only one state – Ohio – allows insureds the option to purchase a supplemental abortion rider.

Based on some research, however, it appears that such abortion riders are not, in practice, actually available to people insured through the Ohio public health plan. Moreover, there is no financial incentive either for health insurance providers to offer abortion riders or for employers to purchase abortion riders for all of their employees. As a practical matter, therefore, abortion "riders" are a false option, and the Stupak-Pitts restrictions on private insurance will amount to a *de facto* ban on insurance coverage for abortion.

5. The Stupak-Pitts conscience clause provisions are unfair, imbalanced, and bad policy.

The conscience clause, as altered by the Stupak-Pitts abortion ban, violates a fundamental principle of American law by allowing viewpoint-based discrimination. Under the Stupak-Pitts amendment, health insurance providers may not discriminate against healthcare providers or facilities because of their unwillingness to provide, pay for, provide coverage of, or provide referrals for abortion care; however, the amendment is silent on whether it is permissible to discriminate against healthcare providers and facilities that support the right to access abortion.

Thus, the Stupak-Pitts amendment puts the support of the federal government behind those that would deny women access to abortion, while leaving unprotected and vulnerable those who believe with equal fervor that women should have access to comprehensive reproductive healthcare, including abortion. This lopsided protection is inconsistent with the concepts of fairness and balance that run throughout our legal system. It is also a stark contrast to the balanced approach adopted in the very first federal legislation to deal with conscientious belief in the context of abortion (the Church Amendment), which protected those who either perform or refuse to perform an abortion.

6. The Capps Amendment compromise is more than enough. No federal money would flow to abortion services under Capps.

The blanket insurance ban created by the Stupak-Pitts Amendment is not necessary to prevent federal funds from being spent on insurance coverage for abortion, which was one of the central objectives of the Capps Amendment, the original abortion compromise language included in the House health reform bill. Indeed, there are many examples of plans that comfortably co-exist while offering separate options on abortion services coverage.

Massachusetts, which adopted a public health insurance reform in 2006, provides an apt example. Massachusetts offers two insurance exchanges: Commonwealth Care, which is designed for low-income working adults who do not qualify for Medicaid and do not receive health insurance through an employer, and Commonwealth Choice, which is aimed at adults whose income level disqualifies them for Commonwealth Care or the State Medicaid program. All of the health insurance plans offered through both Commonwealth Choice and Commonwealth Care cover abortion.

At least two of the health insurance providers participating in Commonwealth Choice also offer separate insurance plans specifically for federal employees, which, in keeping with the restrictions of the FEHB program, do not cover abortion except in extremely limited circumstances. Thus the federal government already contracts with healthcare providers that cover abortion through their other plans, without concern about the commingling or unlawful use of federal funds.

Similarly, while conservative Christian organization Focus on the Family does not provide its employees with insurance coverage for abortion, the health insurance company it uses, Principal, covers abortion in the healthcare plans it offers to its other clients. Presumably Focus on the Family, which opposes abortion in all cases other than endangerment of a pregnant woman's life, does not regard its use of Principal insurance as a means of funding or endorsing abortion.

Thus, by voting for the Stupak-Pitts abortion ban, Congress has endorsed restrictions on abortion coverage that are even more extreme than those acceptable to Focus on the Family, and has rejected compromise language (the Capps Amendment) which was sufficient to meet the needs of those anti-choice legislators who want to ban public funding of abortion.