CENTER FOR REPRODUCTIVE RIGHTS

FACT SHEET

New Abortion Ban Bill Would Deny Abortion Coverage to Millions of Women and Allow Healthcare Providers to Deny Life-Saving Care to Women in Emergencies

On January 20, 2011, Representative Joe Pitts (R-PA) introduced an extreme anti-choice bill for consideration by Congress. Subsequently, on February 3, 2011, Rep. Pitts made public a revised bill. Key problems with the bill include:

- The bill would ban abortion coverage for millions of women. A majority of employer-based health plans currently include abortion coverage,[1] and many of these private plans will become part of the new health insurance marketplaces (called "exchanges") and would be barred from offering insurance coverage for abortion.
- The bill would also allow a broad refusal provision to trump core patient protections contained in the Emergency Medical Treatment and Active Labor Act ("EMTALA") – **meaning that hospitals could refuse life-saving treatment to women on religious or moral grounds, thus causing their death inside the hospital despite their treatable condition.**
- The Pitts ban includes a subtle but insidious provision that would undermine the integrity of the healthcare law far beyond the abortion compromise. **The proposal's broad carve-out for any state law on refusal could allow insurers to refuse to offer important preventive services otherwise required by the Affordable Care Act.** For example, health plans could refuse to cover screening and counseling for HIV and other sexually transmitted infections, the human papilloma virus vaccine, or even cervical cancer screenings.
- The proposal would also codify in permanent law harmful one-sided refusal provisions that undermine women's access to essential care and information.

The Pitts Proposal Would Undermine Healthcare Reform and Threaten Insurance Coverage

Part of a larger effort to overturn healthcare reform and take away essential coverage from millions of American families, the Pitts abortion ban is an attempt to revive last year's failed Stupak-Pitts ban.

Like prior efforts, the bill creates a fiction about federal funding to bar coverage in the private insurance market. Healthcare reform allows every insurer to choose whether to provide such coverage in private plans.[2] Burdensome and elaborate restrictions on insurers required by the so-called "Nelson Amendment" ensure no federal dollar will flow to coverage of abortion.

Moreover, the troubling and burdensome restrictions in the Hyde Amendment also apply to federal funds in healthcare reform.[3] A federal court in Virginia recently noted that the Affordable Care Act "**contains strict safeguards at multiple levels to prevent federal funds from being used to pay for abortion services** beyond those in cases of rape or incest, or where the life of the woman would be endangered," concluding that any claim to the contrary was not "plausible."[4]

The Pitts ban would bar insurance plans in the new exchanges from providing abortion coverage if a single person receiving premium assistance credits enrolls. Because a great majority of individuals on the exchanges will receive subsidies, the Pitts ban would therefore essentially ban coverage of abortion in the exchanges for everyone – including those paying for coverage entirely with private dollars.

The Pitts ban would also decrease – or even eliminate – abortion coverage in the private market. A George Washington University Medical Center School report found after analyzing the Stupak-Pitts ban that "the treatment exclusions required . . . 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."[5]

Although the bill offers up the ability for women to purchase "abortion riders," it is irrational to

ask women and families to plan for an unplanned pregnancy by purchasing separate, supplemental coverage. Moreover, women receiving premium assistance cannot afford healthcare insurance, let alone a second insurance policy. Most importantly, history shows that insurers simply do not offer "rider" coverage even when they are able to do so.[6]

The Pitts ban would forsake the fundamental promises of healthcare reform. It would deny women abortion coverage despite stringent restrictions that already assure that federal funding is segregated from payments for coverage, and would threaten or eliminate coverage that women already have for abortion in the private insurance marketplace.

The Pitts Bill Expands the Culture of Refusal and Intensifies a Discriminatory Refusal Policy

Current law amply protects healthcare providers who entertain religious or moral objections to the provision of abortion services.[7] Since 1973, the Church Amendment has provided that no individual may be discriminated against because they performed or refused to perform an abortion based on their religious beliefs or moral convictions. Other federal laws bolster those opt-outs specifically for those who refuse to provide abortions services. The Affordable Care Act left all of these laws intact, and as well as adding a new, one-sided provision barring health plans from discriminating against healthcare providers or facilities because of their refusal to "provide, pay for, provide coverage of, or refer for abortions."[8]

Despite the policy attention to refusal, those who choose to provide abortion services are routinely harassed, intimidated, and discriminated against, as documented in our 2009 report.[9]

The Pitts refusal provision does nothing to protect the men and women who provide abortion services. Moreover, the lopsided Pitts provision violates a fundamental principle of American law by allowing discrimination based on viewpoint, and is inconsistent with the concepts of balance and fairness that undergird our legal system. Women seeking abortion services must often overcome significant hurdles in finding a provider – from the Guttmacher Institute: "87% of all U.S. counties lacked an abortion provider in 2008; 35% of women in the U.S. live in those counties."[10] Against this backdrop, the Pitts bill would both dramatically expand and make permanent a dangerous, discriminatory refusal policy that undermines women's access to healthcare.[11]

The Pitts Bill Would Allow the Denial of Emergency Care, Threatening Women's Lives

A late addition to the revised version of the Pitts bill would allow the expansive refusal provision to trump the patient protections in a key health law, the Emergency Medical Treatment and Active Labor Act ("EMTALA"). As the name implies, a particular focus of concern under the law is the health and safety of pregnant women, who must be able to go to the nearest emergency room for adequate care throughout a pregnancy.

Yet allowing refusal objections to interfere with even those emergency measures necessary to save the life of a pregnant woman would mean that women entering a hospital are unwittingly allowing others to play Russian Roulette with their lives. In a related incident last year, the Bishop of an Archdiocese in Arizona excommunicated a nun who had permitted a life-saving pregnancy termination to go forward at St. Joseph's hospital. The Catholic status of the hospital was also subsequently revoked.[12] In a letter about the case, Bishop Olmsted argued that there was no way to provide life-saving treatment for the pregnant woman in question consistent with Church doctrine.[13]

The Pitts Bill Would Give Refusal Rights to Corporations

The refusal provision in the Pitts ban goes far beyond protecting individual conscience. Instead, it would allow corporations – for any reason – to interfere with the doctor-patient relationship, regardless of the doctors' own beliefs or the patients' medical needs. It is a basic tenet of ethical healthcare provision that patients must be presented with accurate and complete information about their medical options in order to make decisions about their healthcare. The Pitts refusal provision denies women that fundamental right.

The Pitts Bill Would Allow Anyone for Any Reason to Obstruct Access to Care

The Pitts refusal provision could allow an endless stream of obstruction by those who would deny women access to abortion services for any reason. Unlike the Church Amendment, the Pitts provision does not limit its scope to those with religious or moral beliefs; instead, it would allow a denial of care by anyone, including those motivated to refuse access to abortion for political or other reasons. What's more, the Pitts provision could allow people with only a tangential connection to the provision of abortion care to interfere with the provision of services in a way that could delay or deny care – such as receptionists who make appointments or claims adjustors at insurance companies.

Preemption Language Would Undermine Access to Essential Health Services – Like Cervical Cancer Screenings and Vaccines – Well Beyond Abortion.

The Pitts ban includes a subtle but insidious provision that would undermine the integrity of the healthcare law far beyond the abortion compromise. The proposal's broad carve-out protection for any state refusal law could allow insurers to refuse to offer important services that are part of the minimum standards for health coverage set by the Affordable Care Act. These standards could include services and supplies related to contraception, infertility, and sexually transmitted infections. Preventive services already required include screening and counseling for HIV and several other sexually transmitted disease, cervical cancer screening, and vaccination for human papilloma virus.

Opponents of comprehensive health services object to a broad range of services – from birth control to genetic testing to end-of-life care to reproductive technologies that allow more and more couples to become parents.[14]

This provision is a back-door attempt to create new exemptions that were considered and rejected by Congress during the health reform debate.

Additional Provisions in Pitts that Undermine Access to Healthcare

The Pitts Ban Would Trample on States' Rights

In the fair balance struck during healthcare reform, the Affordable Care Act does not affect any state law regarding coverage or funding of abortion services – either prohibiting or requiring it.[15] The Pitts ban would destroy this even-handed protection for state policies, and instead would protect only those state laws that restrict or prohibit coverage of abortion, undermining the sovereignty of states that may choose to treat abortion services like other healthcare services.

The Pitts Ban Interferes with the Private Market Decisions of Insurance Plans

The Affordable Care Act allows insurers to determine whether or not a plan provides coverage of abortion services.[16] It also ensures that there will be at least one multi-state plan that does not provide coverage of abortion services, allowing for a range of options.[17] The Pitts ban would interfere with the private market decisions of insurance plans by barring all such coverage in any multi-state plan.[18]

The Bill Includes Gag Provisions that Would Deny Access to Reproductive Health Information

The Pitts ban prohibits anyone implementing the Affordable Care Act – the Department of Health and Human Services, the state-based exchanges – from ensuring "access" to abortion services.[19] Under this new and far-reaching language in the Pitts ban, therefore, women could be barred from even receiving information about abortion services, including information about whether or not abortion care is covered by a given insurance plan.

The Center for Reproductive Rights urges strong opposition to the Pitts abortion ban.

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Endnotes

1 Guttmacher Institute, *Memo on Private Insurance Coverage of Abortion* (Jan. 19, 2011) at http://www.guttmacher.org/media/inthenews/2011/01/19/index.html.

2 Patient Protection and Affordable Care Act, Pub L. No. 111-148, § 1303, 124 Stat. 119, 168-171 (codified at 42 U.S.C.A. § 18023 (West 2010)).

3 *Id.* § 1303(b)(1)(B)(i).

4 *Liberty University v. Geithner*, 2010 WL 4860299, at *24 (W.D. Va. Nov. 30, 2010) (explaining further that "In plans that do provide non-excepted abortion coverage, a separate payment for non-excepted abortion services must be made by the policyholder to the insurer, and the insurer must deposit those payments in a separate allocation account that consists solely of those payments; the insurer must use only the amounts in that account to pay for non-excepted abortion services. Act § 1303(b)(2)(B), (C). Insurers are prohibited from using funds attributable to premium tax credits or cost-sharing reductions in out-of-pocket maximum limits for individuals with income below 400 percent of the federal poverty level to pay for non-excepted abortion services. Act § 1303(b)(2)(A).").

5 Sara Rosenbaum et. al., *An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions* (Nov. 16, 2009), http://www.gwumc.edu/sphhs/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_FED314C4-5056-9D20-3DBE77EF6ABF0FED.pdf.

6 *See, e.g.*, Kaiser Foundation, "How the House Abortion Restrictions Would Work," Nov. 10, 2009, available at http://www.kaiserhealthnews.org/Stories/2009/November/10/abortion-explainer.aspx (last visited Nov. 11, 2009); Peter Slevin, Insurers report on use of abortion riders, Washington Post, Mar. 14, 2010.

7 *See* Church Amendment, 42 U.S.C. § 300a-7 (2006); Coats Amendment, 42 U.S.C. § 238n (2006); Weldon Amendment, Pub. L. No. 111-8, § 508(d)(1), 123 Stat. 524, 803 (2009).

8 Patient Protection and Affordable Care Act, Pub L. No. 111-148, § 1303(b)(4), 124 Stat. 119, 168-171 (codified at 42 U.S.C.A. § 18023 (West 2010)).

9 Center for Reproductive Rights, *Defending Human Rights: Abortion Providers Facing Threats, Restrictions, and Harassment* (2009), available at http://reproductiverights.org/sites/crr.civicactions.net/files/documents/DefendingHumanRights.pdf.

10 Guttmacher Institute, *Facts on Induced Abortion in the United States* (Jan. 2011), at http://www.guttmacher.org/pubs/fb_induced_abortion.html.

11 Protect Life Act, 112th Cong. § 2(a)(7) (2011).

12 *See* Laurie Goodstein, *Arizona: Hospital Loses Catholic Affiliation*, N.Y. Times, Dec. 22, 2010, at A25.

13 *See* Bishop Thomas J. Olmsted, Statement in Response to Abortion Performed at St. Joseph's Hospital (May 15, 2010).

14 *See, e.g.*, Helen Alvare, *How the New Health Care Law Endangers Conscience* (June 2010), available at http://www.thepublicdiscourse.com/2010/06/1402.

15 Patient Protection and Affordable Care Act, Pub L. No. 111-148, § 1303(c)(1), 124 Stat. 119, 168-171 (codified at 42 U.S.C.A. § 18023 (West 2010)).

16 Patient Protection and Affordable Care Act, Pub L. No. 111-148, § 1303(b)(1)(A)(ii), 124 Stat. 119, 168-171 (codified at 42 U.S.C.A. § 18023 (West 2010)).

17 *Id.* § 1334(a)(6).

18 Protect Life Act, 112th Cong. § 2(b) (2011).

19 Protect Life Act, 112th Cong. § 2(a)(3) (2011).