

Nelson Amendment Goes Far Beyond Current Law with New Restrictions on Abortion Services Coverage

New, far-reaching restrictions on abortion services coverage that are now part of the House and Senate bills on healthcare reform threaten to turn back the clock on access to abortion care for millions of women and families. A majority of healthcare plans offered today provide coverage for abortion, yet millions of women and families who are currently insured by small employers or are self-insured will purchase insurance through the new healthcare exchanges and thus lose abortion care coverage.

Insurance coverage for women's full range of reproductive healthcare needs is at risk following passage by the Senate of a manager's amendment containing harmful language proposed by Sen. Ben Nelson (D.-Neb.).

For all practical purposes, the language operates like a "rider" requirement because it requires all enrollees in healthcare plans that provide abortion services coverage to anticipate the need for abortion coverage and opt into coverage using a separate payment at the start of coverage. This runs contrary to the market mechanisms and general practices of insurance, in which coverage generally extends to a set of health conditions regardless of whether a specific policyholder has a need for specific services. The distinction in the law also stigmatizes and burdens the choice of a plan that provides abortion coverage.

Serious problems with the provisions include the following:

1) The Nelson amendment is not even close to current law. It violates the principle that the healthcare bill is not supposed to move the line on women's reproductive rights.

- a) Both the Nelson and Stupak amendments far exceed the reach of current law because they would affect the scope of coverage in the private insurance

market – restricting access to abortion services coverage even for those who pay for coverage using their own funds.

- b) The Nelson amendment imposes a host of new disincentives for insurers to provide coverage.
- c) There is no federal precedent for requiring two separate payments – today, policyholders need not pay separately and insurance companies may cover abortion services with the same funds they use to pay for any other medical service.
- d) The clear intent of the Nelson provisions is to make covering abortion services undesirable for insurance companies, and to stigmatize and burden policyholders who choose coverage for abortion services. Again, this far oversteps current federal policy.

2) The amendment's payment and insurance regulation provisions serve no policy purpose, will stigmatize and burden all policyholders who participate in a plan that provides coverage for abortion services, and will discourage insurers from offering coverage.

- a) The Nelson language requires all enrollees in an insurance plan to pay separately for services – one payment that will cover their contribution for abortion care beyond cases of rape, incest or a threat to the life of the mother, and a second that is the private contribution for all other care.
- b) Because neither payment concerns federal dollars, this policy accomplishes nothing towards the goal of creating a firewall that segregates federal from non-federal funds.
- c) As enrollees are unlikely to anticipate needing abortion coverage, questions are likely to be raised about the need for a second contribution, reducing the number

of policyholders who enroll in an insurance plan that includes abortion care coverage. Moreover, stigmatizing information could be publicized by anti-choice groups about the purpose of this “second payment,” further discouraging enrollment.

- d) The two payment requirement in the Senate bill means that not merely women of childbearing age, but any policyholder of a plan that covers abortion services, must pay twice, which would likely prompt many people to drop coverage and create a very small pool of policyholders, drastically reducing insurance company incentives to provide the coverage at all.
- e) The two payment requirement also raises serious privacy concerns as there is a lack of protection for policyholders' choices of plans, which will be collected in government databases.
- f) Separate provisions in the Nelson amendment would further restrict the use of the accounts created by insurers providing coverage for abortion – including language that appears to prohibit insurance companies from investing funds in the stock market, a typical and profitable use of insurance accounts. These limitations could further discourage insurance companies from providing coverage, as they are unique to plans that offer abortion services coverage.
- g) The Nelson amendment's requirement for auditing standards overseen by each state insurance commissioner would further create regulatory uncertainty for insurers and discourage companies from offering coverage.

3) The lopsided conscience clause provisions in both bills would allow discrimination against providers of abortion services under the guise of “anti-discrimination” principles.

- a) In both the current House and Senate bills, the conscience clause provisions provide anti-discrimination protections only for those who refuse to perform abortions, *but not for those who choose to provide abortion services.*

- b) Discrimination against abortion providers – as well as harassment, intimidation and violence – is a demonstrated and well-known problem. The current trial of Dr. Tiller's alleged murderer shows the reality of threats against providers. Access to services in some states is threatened or non-existent. An even-handed anti-discrimination provision in federal law is the very least these providers are owed.
- c) The language would allow discrimination by insurance plans that exclude providers who choose to provide abortion services – even if this choice was made in a manner unrelated to the scope of coverage by the insurance plan. In other words, it could allow plans to dictate which services doctors provide that are not being compensated by the plan.
- d) The provision would also not protect plans from external political pressure from state regulators, public officials, or others to drop providers who are “willing” to provide abortion care. A more even-handed provision would provide such protection, and is badly needed in the current political climate.
- e) While similar to the present language in the Weldon amendment, the Nelson language would codify an imbalanced annual appropriations rider into permanent law, regulating not just federal dollars but all of the plans on the exchange, which will eventually grow to include much of the private insurance marketplace.
- f) In the healthcare reform bill, the government is acting as a marketplace regulator in the most expansive way – not merely controlling the use of federal funds. This provision will allow open discrimination against healthcare providers who choose to perform abortions in the exchange marketplace.

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