



What Women Need to Know About Health Care Reform: Abortion

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Unfortunately, the new health care reform law treats abortion care – a key component of reproductive health care for women – differently than all other health care services. The new law requires individuals and health care plans to follow certain administrative requirements if they want to offer or purchase insurance coverage that includes abortion.

The Affordable Care Act Places Unnecessary Segregation Requirements on Health Care Plans in the Exchanges

- The Secretary of Health and Human Services (HHS) cannot include abortion services, even those permitted under the Hyde Amendment (life endangerment, rape, and incest),ⁱ as part of the essential benefits package that is required to be covered by health care plans in an Exchange. It is left to health care plans to determine whether or not to cover abortion services.
- If a health care plan chooses to cover abortion services beyond those currently permitted under the Hyde Amendment,ⁱⁱ the issuer of the plan is prohibited from using federal subsidies to pay for those abortion services and must follow the segregation requirements in the federal health care reform law.
- Specifically, a health care plan that covers abortion services beyond those currently permitted under the Hyde Amendment must collect two payments from individuals in the health care plan – one payment for abortion coverage and another for the remainder of the premium. Additionally, the plan must establish separate accounts in which to deposit the separate payments from individuals who receive federal subsidies.
- In determining the amount to be collected for abortion coverage, the issuer of the health care plan must determine the actuarial value of abortion coverage and cannot take into account any cost reduction estimated to result from such coverage, including the absence of prenatal or postnatal care or delivery costs. The issuer may not estimate the actual cost of the abortion coverage at less than \$1 per month per enrollee, regardless of the actual cost.
- State insurance commissioners must ensure that health plans which cover abortions beyond those permitted under the Hyde Amendment comply with the segregation requirements.

Additional Abortion-related Provisions in the Affordable Care Act

- The law provides that state laws regarding the prohibition or requirement of abortion coverage, funding or procedural requirements on abortions, including parental notification or consent laws for the performance of an abortion on a minor, will not be preempted by the Affordable Care Act. This includes both current laws and laws that

are passed in the future. Certain federal laws related to abortion will also not be preempted by the Act.

- The law requires that there be at least one multi-state plan in each Exchange which does not cover abortion beyond those permitted under the Hyde Amendment, but does not guarantee that there be a plan which will cover abortion.
- The law has a “conscience provision” that protects individual health care providers and facilities that refuse to provide, pay for, cover, or refer for abortion from discrimination by health care plans in an Exchange – but does not include protection for those who are willing to provide such abortion-related coverage and services.
- Qualified health plans that provide coverage of abortion services beyond those permitted under the Hyde Amendment can only provide notice of such coverage as part of the summary of benefits at the time of enrollment. Such notification by the health plan, advertising by the issuer of the plan, or information regarding the plan provided by an exchange or the Secretary must not include information with respect to the separate amount collected for abortion services.

Implementation of the Abortion Provisions: What’s Next?

- The President issued an Executive Order on March 24, 2010, directing the Office of Management and Budget and HHS to develop a model set of segregation guidelines for state insurance commissioners to use when determining whether health care plans in the Exchanges are complying with the law’s segregation requirements.
- The model guidelines were issued on September 20, 2010, and provide a process through which state insurance commissioners can implement certain of the Act’s abortion-related requirements. According to the guidelines, HHS will issue a Notice of Proposed Rulemaking that will ultimately result in a Final Rule to take effect in 2014.
- Five states have already passed laws to ban abortion coverage in their state Exchanges and other states have introduced similar bills.ⁱⁱⁱ Unfortunately, we expect additional states to introduce bills banning abortion coverage in the next legislative session.
- Women’s health advocates are working to mitigate any potential problems stemming from the segregation requirements and encourage plans to continue to cover this basic women’s health service. Advocates are also working to ensure that state legislators and officials are informed about the law’s provisions and to discourage additional states from passing laws prohibiting private insurance coverage of abortion.

ⁱ The Hyde Amendment is a restriction that is attached annually to the Department of Labor, Health and Human Services and Education Appropriations Act which prohibits funds appropriated in the Act from going to abortion or health coverage that includes abortion except in cases of life endangerment, rape, or incest. It explicitly allows the expenditure of funds for abortion by a State, locality, entity, or private person of State, local, or private funds (other than a State’s or locality’s contribution of Medicaid matching funds).

ⁱⁱ The Hyde Amendment does not restrict any funding under the Affordable Care Act since the Act is not funded through the Department of Labor, Health and Human Services and Education Appropriations Act. The Hyde Amendment is however referenced in Section 1303 of the Act and is used to define which abortion services are allowed to be paid for with federal subsidies. The Affordable Care Act allows federal funding for those abortion services that are permitted under the Hyde Amendment and therefore plans that only cover those limited abortion services do not have to follow the Act’s segregation requirements.

ⁱⁱⁱ Five states, Idaho, Oklahoma, Kentucky, Missouri and North Dakota already ban private coverage of abortion except by optional rider. IDAHO CODE ANN. § 41-2142, §41-2210A, §41-3439, §41-3924 (2009); OKLA. STAT. ANN. tit. 63, § 1-741.2 (West 2009); KY. REV. STAT. ANN. § 304.5-160 (West 2009); MO. ANN. STAT. § 376.805 (West 2009); N.D. CENT. CODE § 14-02.3-03 (2009). Three states, Arizona, Louisiana, Mississippi, Missouri and Tennessee, have recently passed laws prohibiting health insurance policies offered through state exchanges from providing abortion coverage.