

Why the Affordable Care Act Matters for Women: Understanding Restrictions on Abortion Coverage

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Abortion is one of the most common medical procedures for women: An estimated one in three women will have an abortion in her lifetime. Yet since 1976, the federal government has included a provision in each year's budget, referred to as the "Hyde Amendment," that bars abortion coverage for women who receive their health coverage through Medicaid, except in cases of rape, incest or to save the life of the woman.

The Hyde Amendment and similar bans on insurance coverage for abortion care are discriminatory, restrict many women's ability to make their own health care decisions and, in some cases, severely jeopardize their health. Opponents of safe, legal abortion tried to apply these restrictions to the Affordable Care Act (ACA) by banning abortion coverage in all plans sold in the health insurance marketplace. While private coverage of abortion services was ultimately preserved, abortion care unfortunately remains the only health service singled out by the ACA for less favorable treatment.

Availability of Abortion Coverage

Abortion care is treated differently from all other health services in the ACA.

The ACA requires segregation of funds for abortion coverage. Congress agreed to a provision, referred to as the "Nelson Amendment" for its author, former Senator Ben Nelson (D-NE), that requires insurance plans in the marketplace to segregate funds paid for abortion coverage from funds paid for coverage of all other care. Plans must establish two separate accounts into which enrollees' premiums are placed: One for abortion coverage and a second for all other health benefits covered by the plan.¹ This provision stigmatizes abortion by treating it differently from other health care services and places burdens on both insurance companies and consumers.

As of August 2015, 25 states have enacted laws restricting insurance coverage of abortion in the marketplace serving their state. Ten of those apply their restriction on abortion coverage to all insurance plans sold in the state.

The ACA allows states to ban abortion coverage in their insurance marketplaces. Although the federal government did not prohibit insurance plans that cover abortion care from being offered in the marketplace, the ACA does allow states to prohibit insurance plans from providing coverage for abortion in the marketplace that serves their own state. Some states have gone beyond prohibiting abortion coverage in plans sold through the marketplace and applied a ban on abortion coverage to the state's entire private insurance market. As of August 2015, 25 states (Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia and Wisconsin) have enacted laws restricting insurance coverage of abortion in the marketplace serving their state. Ten of those states (Idaho, Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, North Dakota, Oklahoma and Utah) apply the restriction on abortion coverage to *all* insurance plans sold in the state.²

The ACA prohibits the U.S. Department of Health and Human Services (HHS) from identifying abortion as an essential health benefit. HHS is tasked with identifying a core set of essential health benefits that every insurance plan sold in the marketplace must provide. However, HHS is prohibited from including abortion care – even for pregnancies resulting from rape or incest or that endanger the woman's life – in this core set of benefits.

The ACA allows health care providers and facilities to refuse to provide, pay for, cover or refer for abortion. This provision incorporates federal refusal provisions into the ACA, further separating abortion care from other health services. This means that even if a woman's health plan covers abortion care, a health care facility can refuse to provide the service or even refer her elsewhere.

1 Guttmacher Institute. (2015 Winter). *Abortion Coverage Under the Affordable Care Act: Advancing Transparency, Ensuring Choice and Facilitating Access*. Retrieved 31 August 2015, from <https://www.guttmacher.org/pubs/gpr/18/1/gpr1801415.html>

2 Guttmacher Institute. (2015 August). *Restricting Insurance Coverage of Abortion, State Policies in Brief*. Retrieved 31 August 2015, from: http://www.guttmacher.org/statecenter/spibs/spib_RICA.pdf