



Extreme Abortion Coverage Ban Introduced

Rep. Smith's Bill Goes Too Far

Jessica Arons January 2011 (*updated March 1, 2011*)

No one should be fooled by the No Taxpayer Funding for Abortion Act, or H.R. 3, which was introduced in January in the House of Representatives and revised yesterday. Rep. Chris Smith (R-NJ), the main sponsor, claimed that his bill would “only” codify, or make permanent, the Hyde Amendment, which is the annual appropriations rider that restricts Medicaid funding for abortion. But it would do much more than that. Rep. Smith’s bill would go far beyond current law, seriously compromise women’s access to reproductive health care, and hamstring government operations.

The Manager’s Amendment to H.R. 3:

- Removes references to “forcible rape” and “incest with a minor” and reverts back to the standard exceptions for rape and incest in current federal abortion funding restrictions
- Clarifies that the tax provisions of the bill would not affect the current general employer deduction and employer exclusion for health benefits
- Ensures that states and localities will continue to be required to meet their obligations under federal law, including paying for abortions that are allowed under the Hyde Amendment, covering life-saving abortions for their employees, and providing life-saving abortions in public hospitals
- Clarifies that insurance coverage cannot be denied for complications arising from an abortion

Although yesterday’s changes to the bill remove its most egregious elements and respond to the most notable concerns raised to date, it remains an extreme and harmful piece of legislation. A hard look at the bill shows that it would nevertheless:

- **Impose a permanent, blanket prohibition on any and all federal spending for abortion care.** Under current law only specific programs have abortion funding restrictions, and those must be reauthorized every year.
- **Enact the rejected Stupak Amendment by denying federal credits or subsidies to private health insurance plans that cover abortion even when the cost of abortion coverage is paid for entirely with private funds.** This would have the effect of banning abortion coverage in the new health insurance exchanges that will be established by 2014 under the Patient Protection and Affordable Care Act. The Affordable Care Act allows insurers to offer abortion coverage and accept federal offsets for premiums if enrollees make a separate premium payment for the cost of abortion coverage from private funds and if insurers keep those funds separate from federal premium payments and credits.
- **Impose tax penalties on those who pay for abortion care or coverage by:**
 - Denying tax credits to employers or other entities that pay for health plans that cover abortion
 - Denying tax credits to individuals or entities that pay for abortion care
 - Disallowing medical deductions for any medical expenses related to abortion care
 - Treating as income any amounts paid for an abortion from a tax-preferred trust or account, such as a health savings account

None of these restrictions exist under current law.

- **Forbid any facilities owned or operated by the federal government and any individuals employed by the federal government from providing abortion care.** Facilities bans currently apply to the military and the Indian Health Service. But there are no explicit bans on other specific facilities and there is no permanent, blanket prohibition on all federal medical facilities and employees.
- **Deny “home rule” to the District of Columbia by imposing all of the above limitations on the District of Columbia.** Congress voted in 2009 to lift abortion funding restrictions on the District of Columbia budget and allow it to spend its own money on abortion care if it so chooses.

Make no mistake: Each of these provisions represents an *expansion*, not simply a codification, of the abortion funding restrictions that exist in current federal law.

The only exceptions in the bill include instances when:

- The pregnancy results from an act of rape or incest
- The woman suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself

As in current law, there are no exceptions to protect a woman's health in nonlife-threatening situations—for instance, when her pregnancy might cause blindness, might threaten her future fertility, or might worsen a chronic health condition such as heart disease. Nor are there any protections for a woman who is suicidal or in the case of a fetal anomaly, even when the fetus is unlikely to survive.

The bill also would codify the Weldon Amendment, the annual appropriations rider that allows individuals and entities to refuse to perform activities related to abortion care. This provision prohibits “discrimination” by a federal agency or program or any state or local program that receives federal financial assistance against any individual or institutional health care entity that does not provide, pay for, provide coverage of, or refer for abortions.

Current law only limits federal funding for abortion in certain government-run or -managed health programs. But the No Taxpayer Funding for Abortion Act would impose blanket prohibitions on all forms of direct and indirect funding streams that might potentially touch on the provision of abortion care. Rather than securing the ostensible goal of shielding citizens who object to the use of taxpayer money for abortion—a questionable objective given that taxpayers are not similarly protected in other areas of controversial funding such as the death penalty or war—Rep. Smith's bill would accomplish the unstated end of making abortion as difficult to obtain as possible without actually criminalizing it.

What's more, H.R. 3 would redefine the concept of government funding far beyond the current common understanding. It does not simply prohibit the use of federal funds to directly pay for abortion. Instead, it would insert itself into every crevice of government activity and prohibit even private and nonfederal government funds from being spent on any activity related to the provision of abortion any time federal money is involved in funding or subsidizing other, nonabortion-related activities.

Taken to its logical conclusion, this line of thinking would prohibit roads built with federal funds from passing by abortion clinics, drugs developed by the National Institutes of Health or approved by the Food and Drug Administration from being used at abortion clinics, or medical students with government loans from receiving abortion training—all because such uses could be viewed as “subsidizing” abortion with federal dollars.

Even those who agree with the notion that the government should not fund abortion should be wary of the Smith bill, as it would set a dangerous precedent for government spending in areas well beyond abortion. For instance, if its reasoning were extended, religious institutions and faith-based organizations could not obtain tax-exempt status, receive government vouchers to run schools, or accept government funding to carry out secular activities because such government involvement could be viewed as “subsidizing” religious activities and violating the constitutional doctrine of the separation of church and state.

This bill is radical and extreme. It is a far cry from any kind of middle ground or compromise on abortion policy. It would enact the rejected Stupak Amendment that nearly brought down health reform, as well as encroach on areas previously untouched by abortion restrictions, such as our tax code. This bill overreaches in every possible way and only inflames an already intense and intractable debate. More importantly, it penalizes rather than helps taxpayers, impedes basic government functions, and discriminates against women who are struggling to do their best in a difficult situation.

Tellingly, the bill number indicates that it is the third-highest priority of the new House majority right after its attempts to repeal the Affordable Care Act and defund essential safety-net government services. Clearly conservatives are much more interested in dismantling health reform and playing politics with divisive social issues than creating jobs and fixing our broken economy.