

H.R. 3: A Dangerous and Misleading Bill that Threatens Women's Health

H.R. 3 is a dangerous and misleading bill that imposes a devastating tax increase on some families and small businesses that want to keep their comprehensive insurance plans that include coverage of abortion. Though the bill's sponsors argue that it "merely codifies" federal law—which itself is already highly restrictive—such claims are false. H.R. 3 will increase specific taxes and costs in order to prevent women from obtaining abortion care and will eliminate abortion coverage for millions of women.

H.R. 3 Could Increase Taxes and Costs on Millions of Individuals and Small Businesses that Keep the Insurance Plans They Currently Have

H.R. 3 imposes significant tax increases on specific purchasers of insurance plans that include coverage of abortion. Right now, most insurance plans include coverage of abortion. H.R. 3 would impose substantially increased costs—and will likely force individuals and businesses to drop abortion coverage from their otherwise comprehensive insurance plans to avoid these potentially devastating increases. Discussed below are a number of hypothetical examples of the harm that millions of individuals and businesses would face if they keep their abortion coverage.

➤ *H.R. 3 Could Raise Taxes on Millions of Small Businesses*

H.R. 3 makes any small business that has an insurance plan that includes coverage of abortion ineligible for the small business health tax credit, thereby raising taxes on potentially millions of otherwise-eligible small business owners. The tax credit is worth up to 35 percent of an eligible small business's premium costs in 2010 and will be worth up to 50 percent in 2014.¹ The Council of Economic Advisors estimates that 4 million small businesses are eligible for the credit if they provide health care to their workers.² The inability to claim this credit would have a serious impact on various types of small businesses. For example:

- Right now, a restaurant with forty half-time employees, wages totaling \$500,000, and \$240,000 per year in health care costs will be eligible for the Small Business Health Tax Credit. If the restaurant's health insurance plan covers abortion, **H.R. 3 would raise the restaurant's taxes by \$28,000 a year.**
- A non-profit organization that provides support to children in foster care has nine employees with an average wage of \$22,000 per worker and a total of \$72,000 in health care costs. Right now, under the Small Business Health Tax Credit, this small non-profit organization would be eligible for a tax credit worth 25% of the costs of their health premiums up to the amount of payroll

taxes they paid. If the restaurant's health insurance plan includes coverage of abortion, **H.R. 3 would raise the non-profit organization's annual taxes by \$18,000.**

- Right now, an air conditioning manufacturer with twelve employees, each earning \$35,000 per year, and health care costs totaling \$90,000 is eligible for the Small Business Health Tax Credit. If the manufacturer's health insurance plan includes coverage of abortion, **H.R. 3 would raise the business's taxes by \$14,700 a year.**

➤ ***H.R. 3 Would Take the Premium Assistance Promised by Health Reform Away from People With Plans that Cover Abortion Services***

H.R. 3 will prohibit the use of a premium assistance tax credit for purchase of a health insurance plan that covers abortion. Under current law, certain individuals will become eligible for "premium assistance credits" beginning in 2014 to help pay for health insurance.³ H.R. 3 makes an otherwise eligible individual with an insurance plan that includes coverage of abortion ineligible for premium assistance, thereby raising costs on potentially millions of women and their families. For example:

- A single mother with two young children struggled to find insurance coverage in the individual market. Because the family earned just \$24,000 per year and was not offered health insurance through her employer, the family would be eligible in 2014 to buy health insurance through an Exchange and would be eligible for premium assistance credits to help defray its cost. If the family's health insurance plan includes coverage of abortion, **H.R. 3 would cost a single mother earning \$24,000 per year \$3,173 in premium assistance.**

➤ ***H.R. 3 Would Impose Other Tax Increases on Women Who Need Abortion Care***

H.R. 3 would also impose tax increases on women who use their tax preferred savings accounts, which include Flexible Spending Arrangements under cafeteria plans, health savings accounts and Archer Medical Savings Account, to pay for abortion care.

Under current law, individuals or employers can contribute to these accounts, which are exempt from taxation so that such funds will be available for medical needs.⁴

Under H.R. 3, the amount paid, or any reimbursement for, an abortion would have to be included in the individual's gross income, meaning that the individual would lose this tax benefit.

H.R. 3 would also raise taxes on a woman who spends a large percentage of her income on health needs if part of her health care includes abortion. Currently, medical expenses that exceed 7.5% of a taxpayer's gross income are deductible.⁵ Under H.R. 3, a woman with serious medical complications who requires an abortion that costs tens of thousands of dollars would not be able to deduct the cost of her abortion. She would have to pay higher income taxes than a person with a similarly serious and

expensive medical problem because her treatment required that her pregnancy be terminated.

H.R. 3 Would Threaten States' Rights

Under current law, states can decide for themselves what kinds of abortion coverage should be allowed or required in the private insurance market. H.R. 3 undermines a state's ability to allow or require abortion coverage within its own state, even for abortions in extreme circumstances. Under H.R. 3 however, all purchasers of health care plans are subject to the same tax penalties, regardless of state law.

- For example, Utah recently passed a ban on all private insurance coverage of abortion in the state, except in certain circumstances. The Utah legislature, through careful compromise, decided to allow health care plans to cover abortion in two cases beyond what is allowed under H.R. 3 – certain severe health risks to the woman and the existence of a fatal fetal anomaly. If H.R. 3 became federal law however, individuals and small businesses in Utah's exchange that have plans that cover abortion in cases of severe health risks or a fatal fetal anomaly, as allowed under Utah law, would be denied their premium assistance credit under the Affordable Care Act. Utah's deliberate decision to preserve the option for abortion coverage under specific circumstances would be eviscerated by the federal law.
- H.R. 3 also undermines a state's decision to require abortion coverage, even if it is only under certain circumstances. Maryland and New Jersey already require abortion coverage in certain health plans.⁶ States may choose to enact similar coverage requirements for comprehensive coverage or coverage in certain cases. Under H.R. 3 however, a state requirement to include abortion coverage beyond H.R. 3's limited exceptions would result in individuals with private insurance becoming ineligible for tax credits under the ACA. States would be precluded from requiring coverage beyond H.R. 3's limited exceptions or risk raising taxes on their residents.

H.R. 3 Could Shut Down the Entire Private Market for Insurance Coverage that Includes Abortion

H.R. 3 prohibits consumers from receiving certain tax credits if the private insurance plan they purchase covers abortion. This creates incentives for insurers to exclude coverage of abortion in order to accept customers who receive federal subsidies.⁷ It also pushes individuals and small businesses to switch to plans that do not cover abortion. The Joint Committee on Taxation testified that they expect that the tax provisions of H.R. 3 would cause small employers to choose a health plan that excludes abortion coverage in order to keep their subsidy under the Affordable Care Act.⁸ By driving customers away from plans that include abortion coverage, which would likely result in plans dropping abortion coverage, H.R. 3 distorts the private market. Some have also argued that H.R. 3 could result in the entire private market dropping abortion coverage, eliminating abortion coverage from the private insurance market altogether and making such coverage unavailable to anyone.⁹

Any decrease in the availability of coverage could have substantial effects on women. The Joint Committee on Taxation testified that in determining the economic impact of H.R. 3, the Committee assumed that some women would be forced to carry their pregnancies to term due to lack of coverage.¹⁰

H.R. 3 Prevents Women from Purchasing Abortion Coverage with their Own Money

Contrary to the misleading bill title, H.R. 3 puts limits on abortion coverage that go far beyond so-called “federal funding;” it also limits the ability of individuals and small businesses to spend even their own private premium dollars on insurance that includes coverage of abortion.

- For example, a small business can currently choose a health insurance plan for its employees. The employer and the employees each make contributions to pay the premium out of their private dollars. At the end of the year, the employer can claim the Small Business Health Tax Credit, which refunds a portion of the employer’s contributions. Under H.R. 3, the employer would not be eligible for the tax credit if the plan included coverage of abortion—even though the premiums were paid entirely by the employer and employee with their own, private dollars.

H.R. 3 Contains No Exceptions for Circumstances Where a Woman Faces Even Serious Health Consequences

H.R. 3 does not make any exceptions for abortions that are necessary to save a woman’s health, such as in cases where continuing the pregnancy could result in permanent damage to a woman’s heart, lungs or kidneys. Pregnancy can worsen some serious health conditions as well as prevent treatment of other conditions, such as cancer. Under H.R. 3, women would be left without coverage for pregnancy termination necessitated by medical complications, which can cost thousands of dollars.

Eliminating insurance coverage for these often expensive procedures makes a difficult situation even worse.¹¹ Families without coverage for abortion could be pushed into bankruptcy if they try to pay for the procedure out of pocket. Alternatively, financial constraints could force women to remain pregnant at great risk to themselves. Even worse, they could be forced to risk their lives by going to unsafe providers because they cost less.

H.R. 3 Could Force Rape Victims to Prove Rape to IRS Agents

H.R. 3 provides an exception to the restrictions on tax benefits for abortions in cases of rape. This exception allows women who were raped to include the costs of the abortion if they claim the deduction for high medical expenses, or to pay for the abortion with funds from a tax-preferred account. In practice, for this exception to be enforced, a woman could have to demonstrate to the IRS that she was raped and had an abortion during an audit. In discussing how the rape exception in H.R. 3 would operate, the Joint Committee on Taxation testified that the burden of proof would be on the taxpayer. An audit could

therefore force a rape victim to produce documents such as a police report or a detailed doctor's bill to an IRS agent.

H.R. 3 Would Make Dangerous Restrictions on Abortion Coverage Permanent

H.R. 3 codifies restrictions on abortion coverage for the tens of millions of women who depend on the government for their health care. This includes women currently covered under Medicaid, women who will become newly eligible for Medicaid under the Affordable Care Act, women serving in the U.S. military, federal employees, residents of the District of Columbia, women in federal prisons and women covered by the Indian Health Service. These harmful restrictions endanger women's health and place particular burdens on low-income women and women in vulnerable places in the service of their country, such as women in the military and the Peace Corps, for whom coverage restrictions present insurmountable barriers to obtaining abortion services

➤ *Bans on Federal Funding for Abortion Endanger Women's Health*

Like the restrictions on private insurance, the restrictions on federal funding for abortion in H.R. 3 do not include an exception for women's health. This means that all women, even those with serious health conditions, will be denied insurance coverage for abortion if they depend on the government for their health care. In Florida, for example, Medicaid refused to cover the abortion of a woman with cancer who needed chemotherapy but could not receive treatment because she was pregnant. Although delaying chemotherapy would likely cause her death, death was not considered "imminent" so her case did not fit within the narrow life exception.¹² H.R. 3 makes permanent this unconscionable restriction on the millions of women with government-provided health insurance.

➤ *Bans on Federal Funding for Abortion Particularly Burden Low-Income Women*

Restrictions on public funding for abortion disproportionately affect low-income women. The average cost of a first-trimester abortion is \$468.¹³ Poor women denied abortion coverage may have to postpone paying for other basic needs like food, rent, heating and utilities in order to save the money needed for an abortion. Moreover, such restrictions cause some women to have their abortions two to three weeks later than they otherwise would have.¹⁴ The greater the delay in obtaining an abortion, the more expensive and less safe the procedure becomes, catching poor women in a vicious cycle. By the time they raise enough funds for a first-trimester abortion, they are in their second trimester and need even more money. The average cost of the procedure increases to \$774 at 16 weeks and to \$1,179 at 20 weeks.¹⁵ Women who cannot pay for an abortion may resort to self-inducing an abortion or seeking unsafe, illegal abortions from untrained, unlicensed practitioners.¹⁶

H.R. 3 Bans Washington, D.C. from Using Local Funds to Pay for Abortion

H.R. 3 permanently prohibits Washington, D.C. from using locally raised funds to offer abortion care for women who otherwise could not afford it, regardless of the opinion of local taxpayers. All other states are allowed to spend their own locally raised revenue on abortion care for women facing financial hardship. H.R. 3 would permanently take away D.C.'s power to ensure that all D.C. residents, regardless of income, are able to make decisions regarding abortion care—power that the residents of every state in the nation currently have.

H.R. 3 Expands the Reach of and Makes Permanent a Dangerous Refusal Law

H.R. 3 significantly expands the reach of and makes permanent the Weldon Amendment, which prohibits any federal agency or program or any state or local government from “discriminating” against a wide range of health care entities, including insurance plans, if they refuse to provide, pay for, cover, or even refer for abortion care. Currently, the Weldon Amendment is an annual appropriations rider, and is attached only to funds made available through the Department of Labor, Health and Human Services and Education, and Related Agencies appropriations bill.

H.R. 3 also creates a new private right of action that would allow individuals or entities that believe discrimination has occurred because of a refusal for abortion services to go to federal court more easily than an individual who is discriminated against because of religious beliefs unrelated to abortion. The particular right of action in H.R. 3 is troubling because it includes the ability to sue for “threatened” violations, language far broader than that seen in the enforcement remedies available under existing federal civil rights law.

¹ I.R.C. § 45R (2010).

² See Council of Econ. Advisors, Health Insurance Reform Will Help Small Businesses (Feb. 26, 2010), available at <http://www.whitehouse.gov/blog/2010/02/26/health-insurance-reform-will-help-small-businesses>. (CEA estimates indicate that more than 60 percent of small employers would be eligible for the new \$40 billion small business tax credit in the President's proposal. This represents a total of nearly 4 million small firms eligible for the credit.).

³ I.R.C. § 36B (2010).

⁴ 26 U.S.C. § 106 (2011).

⁵ I.R.C. § 213 (2010).

⁶ Md. Code Regs. 31.11.06.03(A)(25) (2009) (small employer comprehensive standard health plan); Md. Code Regs. 31.11.12.03(A)(26) (2009) (small employer limited benefit plan); Md. Code Ann. Ins. § 15-1204 (2009) (requiring all insurance carriers to offer at least the standard plan); N.J. Stat. Ann. §§ 52:14-17.29(B)(1)(a)(iii); 52:14-17.46.6(b)(1)(a)(iii) (West 2009)(requires state employee health coverage to include abortion).

⁷ See *No Taxpayer Funding for Abortion Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 112th Cong. (2011) (testimony of Sara Rosenbaum, Chair, Dept. of Health Pol'y, George Washington Univ. Sch. Pub. Health and Health Servs.).

⁸ See *No Taxpayer Funding for Abortion Act: Hearing on H.R. 3, As Reported By The H. Comm. on the Judiciary, before the Subcomm. on Select Revenue Measures of the H. Comm. on Ways and Means* 112th Cong. (2011) (testimony of Thomas A. Barthold, Chief of Staff, Joint Comm. on Taxation).

⁹ See generally, *id.*

¹⁰ *No Taxpayer Funding for Abortion Act: Hearing on H.R. 3, As Reported By The H. Comm. on the Judiciary, before the Subcomm. on Select Revenue Measures of the H. Comm. on Ways and Means*, 112th Cong. (2011) (Dr. Barthold's answer to a question posed by Rep. Thompson).

¹¹ For example, D.J. Feldman learned when she was 11 weeks pregnant that her fetus had anencephaly, meaning it had almost no brain, a condition which is always fatal. Because she was a federal employee, her health plan was prohibited from covering her pregnancy termination, which cost \$9,000. Joe Davidson, *A Woman Who Had Little Choice Enlightens Health-Care Debate*, Wash. Post, Dec. 1, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/11/30/AR2009113004065.html>.

¹² Carol Cohan, *A Grandmother's Commitment to Abortion Rights*, MIAMI HERALD, Oct. 17, 2006.

¹³ Shawn Towey, Stephanie Poggi & Rachel Roth, *Abortion Funding: A Matter of Justice*, Nat'l Network of Abortion Funds Pol'y Report (Nat'l Network of Abortion Funds, Boston, MA), Apr. 2005, at 6.

¹⁴ Stanley J. Henshaw et al., *Restrictions on Medicaid Funding for Abortions: A Literature Review 1* (Guttmacher Inst. 2009).

¹⁵ *Id.*

¹⁶ Nat'l Abortion Fed'n, *Public Funding for Abortion: Medicaid and the Hyde Amendment* (2006), available at http://www.prochoice.org/about_abortion/facts/public_funding.html.