

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

H.R. 3, as modified by the manager's amendment offered in the House Judiciary Committee, 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, with potentially devastating results for them and their families. 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 will increase taxes on small businesses that provide their employees with comprehensive insurance coverage that includes abortion, that are eligible for the Small Business Health Tax Credit, enacted as part of the Affordable Care Act. 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 H.R. 3 makes any 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. 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 would increase costs on individuals who would otherwise be eligible for premium assistance if their health insurance plan includes coverage of 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 any insurance plan that includes coverage of abortion ineligible for premium assistance, thereby raising costs on potentially millions of otherwise-eligible 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 Raise Taxes on Certain Workers Who Lose Their Jobs as a Result of Outsourcing***

Under current law, workers who lose their jobs as a result of outsourcing or shifts in company production to foreign countries may be eligible for a Health Coverage Tax Credit. The Health Coverage Tax Credit pays 65% of the costs of a qualified health plan premium for eligible workers.⁴ H.R. 3 makes any insurance plan that includes coverage of abortion ineligible for the Health Coverage Tax Credit, thereby raising taxes on potentially thousands of displaced workers. For example:

- When a local manufacturing plant closed, a man with a wife and three children working as an assembly lineman became eligible for certain federal support, including significant help paying for his monthly insurance premium through the Health Coverage Tax Credit. Because his insurance plan includes coverage of abortion, however, **H.R. 3 would make him ineligible for the benefit and cost him \$9,129.**⁵

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, such as a flexible spending or a health savings account, to pay for abortion care. Under current law, individuals and employers can contribute to these accounts a portion of their wages, which are exempt from taxation so that such funds will be available for medical needs.⁶ Under H.R. 3, a woman who uses funds from a flexible spending or health savings account to pay for an abortion must pay income tax on the funds she uses to cover the procedure.

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 needed health care is abortion care. Currently, medical expenses that exceed 7.5% of a taxpayer's gross income are deductible.⁷ Under H.R. 3 a woman with serious medical complications requiring an abortion that cost 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 Could Shut Down the Entire Private Market for Insurance Coverage that Includes Abortion

By substantially raising taxes and costs on millions of individuals and employers, H.R. 3 could force not only those individuals and employers to drop abortion from their health insurance plans, but would close down the entire private insurance market coverage of abortion.

If the government uses tax increases and other penalties to destroy the private market for insurance that includes coverage of abortion, women who never thought they would need an abortion will be endangered when they are without coverage for abortion, even in circumstances where an abortion is necessary to preserve their health.

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 cause stroke or paralysis. Pregnancy can worsen some serious health conditions, such as heart disease, 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.⁸ 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 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 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.⁹ 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 \$468.¹⁰ 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, the time needed to save money means that poor women tend to have their abortions two to three weeks later than other women. 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.¹¹ Women who cannot pay

for an abortion may resort to self-inducing an abortion or seeking unsafe, illegal abortions from untrained, unlicensed practitioners.¹²

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

H.R. 3 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. Under current law, the District of Columbia—like all other states—is allowed to spend its own locally raised revenue on abortion care for women facing financial hardship. H.R. 3 would take away D.C.’s power to determine that it wishes 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 I.R.C. §§ 35(a), 7527(b) (2011).

⁵ The average total premium for a family is \$13,770. If the father bought COBRA, he would pay 102% of this, or \$14,045. His credit would be 65% of \$14,045.

⁶ 26 U.S.C. § 106 (2011).

⁷ I.R.C. § 213 (2010).

⁸ 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>.

⁹ Carol Cohan, *A Grandmother’s Commitment to Abortion Rights*, MIAMI HERALD, Oct. 17, 2006.

¹⁰ 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.

¹¹ *Id.*

¹² 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.