

The Rubio-Manchin Bill Would Allow Any Employer to Take Away Women's Insurance Coverage of Contraception, Harming the Health of Women and Their Families

The Rubio-Manchin Bill, S. 2092, introduced in the Senate on February 9, 2012, allows any corporation of any type, any other entity of any type, or any individual to refuse to provide contraceptive coverage and related services on the basis of religious beliefs or moral convictions. The bill would take away the right of millions of women to have *any* insurance coverage for contraception, based on an employer or health plan's religious or moral beliefs – whether affiliated or not with any religious entity.

The Rubio-Manchin Bill Eliminates the Affordable Care Act's Guarantee that Insurance Plans Cover Key Preventive Health Care By Exempting Any Type of Company or Entity From the Obligation to Cover Contraception

Under the new health care law, the Department of Health and Human Services has required that all new health plans cover certain “preventive services” for women without cost-sharing, including contraceptives. The Administration included an exception from the contraceptive coverage requirement for specific religious entities (estimated to be over 330,000 houses of worship). The Rubio-Manchin Bill removes the guarantee by allowing “any individual or entity” that is “opposed on the basis of religious belief or moral conviction” to refuse to provide any coverage of a contraceptive service.

Because “religious beliefs or moral convictions” is undefined, it creates a huge loophole in the new health care law's contraceptive coverage requirement. Any group plan could refuse to include coverage of contraception based on a moral or religious belief. Any employer could deny its employee insurance coverage of these services. For example, any corporation whose CEO opposes contraception based on his “moral convictions” could deny all coverage of contraception to the company's employees. This right to refuse applies whether the company or other entity or individual has any connection to a religious organization or whether its employees share the same religious beliefs. The result of the bill is that millions of women would lose coverage of this vital preventive health service, even a woman who faces a life-threatening circumstance were she to become pregnant.

The Rubio Bill Discriminates Against Women, Endangering Their Health

The Rubio-Manchin Bill singles out a basic health care service – contraception – that women need to protect the health of themselves and their family. As recognized by the Equal Employment Opportunity Commission, the exclusion of prescription contraception from health insurance unfairly disadvantages women by singling out for unfavorable treatment a health insurance need that only women have.ⁱ And 28 states require coverage of contraception in health insurance.ⁱⁱ

Failure to cover contraception forces women to bear higher health care costs to avoid pregnancy, and exposes women to unique physical, economic and emotional consequences that can result from unintended pregnancy. The ability to plan a pregnancy can prevent a range of pregnancy complications that can endanger a woman's health, including gestational diabetes, high blood pressure, and placental problems, among others.ⁱⁱⁱ Contraception is also critical to helping women achieve healthy pregnancies. Women who wait for some time after delivery before conceiving their next child lower their risk of adverse perinatal outcomes, including low birth weight, preterm birth, and small-for-size gestational age.^{iv} These important health outcomes are among the reasons the independent, nonprofit Institute of Medicine recommended including contraception as a required preventive service under the new health care law.^v

Additionally, women also use contraception for reasons other than birth control, such as regulation of cycles and endometriosis. Similarly, sterilization can be medically appropriate for women who would face a life-threatening condition were they to become pregnant. By allowing any individual or entity to take away women's right to this critical health care, the Rubio-Manchin Bill threatens the health of women and their families.

The Rubio-Manchin Bill Undermines the Basic Principle of Insurance

In addition to allowing plans and entities offering plans to undermine contraceptive coverage, the Rubio-Manchin Bill would allow an individual to do the same. If one individual claims that contraception is contrary to his or her religious or moral beliefs, the plan does not have to cover it, even though required to by the new health care law. By allowing each individual to decide whether the plan covers contraception, the Rubio-Manchin Bill radically undermines the basic principle of insurance, which involves pooling the risks for all possible medical needs of all enrollees. The language is vague enough that insurers may be able to sell to an entire market plans that do not cover contraception because one individual objects, so all consumers in a market lose their right to contraceptive coverage.

The Rubio-Manchin Bill Creates a Private Right of Action for “Threatened” Violations

The Rubio-Manchin Bill allows “any person or entity” protected by the refusal provisions to file a lawsuit in federal court for “actual or threatened violations.” The ability to sue for “threatened” violations is a troubling addition to private cause of action language, and is not found in any civil rights law. Even more troubling is that the bill provides no definition of what constitutes “threatened.” This language could be interpreted to allow anyone, including a health plan or a potential beneficiary, to sue, leading to costly litigation and potentially delaying the implementation of this important health benefit for women.

For more information on contraceptive coverage please visit

<http://www.nwlc.org/contraceptivecoverage>

ⁱ U.S. Equal Employment Opportunity Commission Decision (Dec, 14, 2000), *available at* <http://www.eeoc.gov/docs/decision-contraception.html>.

ⁱⁱ Eight of those states have no exception at all for religious employers (CO, GA, IA, MT, NH, VT, WA, WI). Four states have an exemption for religious employers that is virtually identical to the one provided by the Department of Health and Human Services for houses of worship (AZ, CA, NY, OR).

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- ⁱⁱⁱ March of Dimes, Pregnancy After 35 (May 2009), http://www.marchofdimes.com/Pregnancy/trying_after35.html.
- ^{iv} U.S. Dep't of Health and Human Servs., Healthy People 2010 9-14 (2nd ed. 2000), <http://www.healthypeople.gov/2010/Document/pdf/Volume1/09Family.pdf>.
- ^v Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* (July 19, 2011), *available at* <http://www.iom.edu/Reports/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps.aspx>.