

FACT SHEET

State Politicians Want Bosses to Make Women's Health Care Decisions

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The health care law moved women's health a huge step forward by requiring insurance plans to cover birth control for women without co-pays.¹ Yet some state politicians want to ensure that women never receive this important benefit. State politicians are introducing bills that would allow a boss to trump women's health and women's access to the health care they need by refusing to comply with the birth control benefit.

Although state lawmakers claim that they are seeking to protect religious liberty, the truth is that these bills are not about protecting religious freedom. Almost all of the bills would allow bosses to refuse to cover birth control based on reasons beyond religion – or for no reason at all.

These bills are not about protecting religion. They are unconstitutional attempts to take away women's decision making, threatening women's health and equality.

Politicians are Introducing Bills That Would Take Away Women's Birth Control Coverage

So far in the 2013 legislative session, state politicians have introduced 13 bills to target the birth control benefit of the health care law. These bills would allow bosses to refuse to provide insurance coverage of birth control. Two bills would even go so far as to offer financial incentives to bosses who refuse to provide the birth control benefit.² In addition, state politicians have introduced four bills that target separate state laws requiring insurance plans to cover contraception.³

Anti-Birth Control Benefit Bills Would Give Women's Health Care Decisions to Their Bosses

These bills take away women's health care decisions. The birth control benefit allows women to make their own decisions about whether or not to access birth control services. The bills would take that decision away from a woman and give it to her boss.

Anti-Birth Control Benefit Bills Are Not about Protecting Religious Freedom

The health care law only applies to what insurance plans cover. No one will be forced to buy or use contraception. Real religious freedom gives everyone the right to make personal decisions, including whether and when to use birth control, based on their own beliefs. Employers should not be allowed to use their religion to discriminate against employees or to impose their religious beliefs upon employees who typically come from all different faiths.

To justify these bills under the guise of religious freedom is misleading. In fact, 8 bills allow refusals to provide

insurance coverage of contraception for any reason at all, while an additional 5 allow refusals for reasons beyond religion, such as undefined "moral" or "ethical" reasons.

Anti-Birth Control Benefit Bills Threaten Women's Health and Equality

The birth control benefit is critical to women's health. Contraception is highly effective at reducing unintended pregnancy, which can have severe negative health consequences for both women and children. Yet, prior to the birth control benefit, the high costs of contraception affected whether women used contraceptives consistently and whether women used the most appropriate or effective forms of birth control for their circumstances.

Also, women rely on prescription contraceptives for a range of medical purposes in addition to birth control, such as regulation of cycles and endometriosis. Almost all of these anti-birth control benefit bills would allow bosses to refuse to provide insurance coverage of contraception even when it is needed for medical reasons.

Requiring no-cost birth control coverage also promotes gender equality, addressing gender gaps in the provision of health care. Before the health care law, costs associated with women's health care – and specifically birth control – disproportionately burdened women. These high costs negatively affected women's health and well-being, since women often lacked access to care or skipped necessary care in order to keep costs down. Access to contraception is also key to progress and equal opportunity in other aspects of women's lives, improving women's social and economic outcomes more generally.⁴

By allowing bosses to refuse to implement the birth control benefit, state politicians would jeopardize these important benefits, threatening women's health and equality.

Anti-Birth Control Benefit Bills are Unconstitutional

The birth control benefit is part of the federal health care law, the Affordable Care Act. States cannot override this federal requirement. These anti-birth control benefit bills are unconstitutional because they would conflict with, and would be preempted by, federal law. A federal judge in Missouri has already struck down an anti-birth control benefit law passed there.⁵ The court held that the Missouri law is preempted by federal law and unenforceable under the Supremacy Clause of the U.S. Constitution.⁶

Conclusion

Supporters of the anti-birth control benefit bills have made clear that they will not be satisfied until no company, whether secular or religious, is required to cover birth control. The fight they are waging is not about religious liberty, but about whether women should have access to birth control. These bills are part of a broader attack on a woman's ability to make her own reproductive health care decisions.

- 1 For more information about this benefit, visit *Preventive Services, Including Contraceptive Coverage, Under the Health Care Law*, NATIONAL WOMEN'S LAW CENTER, <http://www.nwlc.org/preventive-services-including-contraceptive-coverage-under-health-care-law>.
- 2 These bills give businesses that refuse to comply with the federal birth control benefit a tax credit, deduction, or refund equal to the amount of any penalty or fines assessed against them for non-compliance.
- 3 These laws are known as contraceptive equity laws. They require insurance plans to provide coverage of contraception if the plan otherwise provide comprehensive prescription drug coverage. Twenty-six states currently have state contraceptive equity laws. For more information, visit *Contraceptive Equity Laws In Your State: Know Your Rights – Use Your Rights, A Consumer Guide*, NATIONAL WOMEN'S LAW CENTER, <http://www.nwlc.org/resource/contraceptive-equity-laws-your-state-know-your-rights-use-your-rights-consumer-guide-0>.
- 4 For more information on the benefits of the contraceptive coverage requirement in the health care law, see *NWLC Amicus Briefs Supporting the Contraceptive Coverage Benefit*, NATIONAL WOMEN'S LAW CENTER, <http://www.nwlc.org/resource/nwlc-amicus-briefs-supporting-contraceptive-coverage-benefit>.
- 5 S.B. 749, 2012 Gen. Assemb., Reg. Sess. (Mo. 2012) (codified at MO. REV. STAT. § 376.119).
- 6 Missouri Insurance Coalition v. Huff, No. 4:12CV02354 AGF (E.D. Mo. Mar. 14, 2013).

