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P R E S C R I P T I O N S

ABORTION: CONTROVERSY AND COMPROMISE

A brief from the Department of Health Policy at George Washington University posits that the proposed limitation on coverage of medically indicated abortions within health care reform legislation will have industry-wide effects.

Current federal law prohibits any use of federal funds for abortion, with the exception of the case where a pregnancy is a result of an act of rape or incest, or where "a woman suffers from a physical disorder, physical injury or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would place the woman in danger of death unless an abortion is performed." Similar to Medicaid restrictions, federal employees also are subjected to limitations of coverage, unless "the life of the mother would be endangered if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest." Within Medicaid, states are preserved the right to fund additional abortion services using only state and local monies, with 23 states currently paying for some abortion services beyond that permitted under the federal law. Private employers also have no mandatory exclusion of payment for certain types of medically appropriate abortions. In fact, 87 percent



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of employer-based insurance plans cover medically indicated abortions and 46 percent of workers have coverage that includes some level of abortion services.

The Stupak-Pitts Amendment seeks to continue the prohibition of federal funding for abortion in Medicaid and the proposed national health insurance exchange. The Amendment would:

- prohibit the use of funds either to directly pay for abortion or to buy an exchange product that covers abortions other than a narrow range of services (i.e., a case of life-endangering physical condition)

- prohibit companies from offering supplemental coverage or plans that cover abortions unless they also offer an exchange plan that is identical in every respect except that no prohibited abortion coverage is provided.

- prohibit use of federal funds for that supplemental coverage, with administrative costs and all services offered through such supplemental coverage or plan to be funded only by premiums collected for such coverage.

The authors make the point that the health benefit services industry depends on standardization and norms, with a preference for products that can be offered in all markets. The new large market as created through a health exchange program is expected to include 30 million

people within the first six years of implementation, taking into account that small employers are expected to migrate into the exchange system. As in other industries, with the exclusion of certain types of products from large markets, the market itself will shift over time as the insurers accommodate their products through redesign. Under this Stupak-Pitts Amendment, the default coverage will become a product that excludes all but a limited number of abortion procedures, as the industry will seek to meet the lowest common denominator.

In addition, the development of supplemental plans that cover abortion services will be limited due to the extensive difficulty of plan administration. Costs of supplemental coverage will be high as the supplemental premiums must alone cover all administration and the risk of cost for certain abortions that are connected with serious health conditions cannot be shared in the larger risk pool. Individual coverage determinations will differ for women based on their procedures, severity of health conditions and medical evidence in the case. Complex decisions will be difficult as the abortion might not always be the immediate subject of the claim, i.e. part of a broader treatment for a serious health condition. Coverage determinations and grievance and appeals procedures will have to be separately administered to respond to

Key Points

- Stupak-Pitts Amendment prohibits use of federal funds for most abortions
- Insurers may seek to standardize products
- 87% of ESHI plans pay for abortion services

[An Analysis of the Implications of the Stupak/Pitts Amendment for Coverage of Medically Indicated Abortions](#)

different coverage rules. The legal risks involved will also be high as the commingling of plan administration duties between the prohibited and non-prohibited plans is difficult to avoid. Indeed this reasoning accounts for the lack of availability of such supplemental products currently in states that enforce the same sort of limitations on abortion coverage.

The authors also describe a potential for spillover effects from the administration of an exclusion that imposes a life-threatening coverage standard that will eventually consume the entire industry. Plan administrators will have difficulties with the complex decisions about whether a certain condition is life-threatening.

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They will be more likely to deny treatment altogether, rather than face the prospect of legal violation for paying for excluded abortions.

Commentary

Indeed, there will be significant standardization of insurance products as the health insurance exchange will include a large portion of our citizenry. As insurance companies join the exchange, incentives must be created to maintain their competitive nature through differing services. At the same time, the conversation must also turn towards the regulation of all

insurance companies and their ability to apply unfettered subjectivity within their claims approval process. There are currently no sanctions for improper claims denials - the consumer has no recourse or apology after a long appeals process and the insurer has no incentive to prevent such action in the future. There must be a forum within the determination process that will force insurers to be subjected to a level

of standardization that is appropriately reactive to medical evidence and that applies priority to fairness as opposed to the insurer's profit margin. Among other results, such a forum might mitigate the spillover effects of excluded treatments in order to allow for the intent of the proposed Amendment to be realized.