

# Abortion Coverage in the Bipartisan Health Care Stabilization Act of 2018 (S.1771)

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The Bipartisan Health Care Stabilization Act of 2018 does not directly ban plans from covering abortions, however, it disqualifies all individual plans on and off the Marketplace that offer abortion coverage from receiving federal assistance for reinsurance, invisible high-risk pools, and cost-sharing reductions. This would serve as a major financial disincentive for plans to continue to offer abortion coverage to their policyholders and would conflict with laws in 4 states that currently require plans to cover abortion services.

The role of government in regulating abortion coverage began to be debated shortly after the landmark Supreme Court ruling in *Roe v Wade*. Since 1976, the Hyde Amendment has blocked federal funds under Medicaid and other federal programs from being used to pay for abortion, allowing exceptions only for pregnancies that endanger a woman's life, or that result from rape or incest. The Affordable Care Act (ACA) interpreted the federal abortion-funding ban to include the federal tax credits that functioned as premium subsidies to help individuals afford Marketplace plans. This issue brief reviews current federal and state policies on private insurance coverage of abortion services, and how the Bipartisan Health Care Stabilization Act of 2018 would affect abortion coverage for women enrolled in the individual market.

## State Laws on Abortion Coverage

### Private Plans

States have the responsibility to regulate fully insured individual, small, and large group health insurance policies issued in their state, whereas self-insured plans are regulated by the federal government under the Employee Retirement Income Security Act (ERISA). States can choose to regulate whether abortion coverage is included or excluded in private plans that are not self-insured.

Four states, California, New York, Oregon, and Washington, require all state-regulated private health insurance policies to include abortion coverage. California requires all fully insured plans, including individual and employer plans to treat abortion coverage and maternity coverage neutrally. As all plans are required to include maternity coverage, all plans must also include abortion coverage.<sup>1</sup> [New York](#) requires all fully insured insurance policies that provide hospital, surgical, or medical expense coverage to cover "medically necessary" abortions without copayments, coinsurance, or annual deductibles, unless the policy is a tax-qualified high deductible health plan. Oregon's [Reproductive Health Equity Act](#) requires state-regulated health plans to cover abortion without cost sharing. Washington recently enacted a [law](#),

effective January 2019, requiring state-regulated health plans to treat abortion and maternity coverage equally.

[Eleven states](#) (Idaho, Kentucky, Missouri, North Dakota, Oklahoma, Indiana, Kansas, Michigan, Nebraska, Texas, and Utah) restrict abortion coverage in private plans. Some states follow the same restrictions as the federal Hyde Amendment for their private plans, while others are more restrictive. Nine of the eleven states allow insurers to sell riders for abortion coverage on the private market; however, these riders are [not available](#), and there is no documentation of their cost or impact on access. Utah bans abortion riders.

## ACA Marketplace Plans

Under the Affordable Care Act (ACA), abortion is not included in the required an “essential health benefit” list, and federal premium tax credits and cost sharing reductions (CSR) are prohibited from subsidizing abortion. Furthermore, the ACA allows states to ban [coverage of abortions](#) in the plans that are available through the ACA Marketplace, and 25 states have done so. In 2016, in an additional six states without an abortion coverage ban, the Marketplaces nonetheless did not offer any plans that included abortion coverage.<sup>2</sup> In the states that permit Marketplace abortion coverage, plans that include abortion coverage must collect separate premium payments from individuals, and the plans must segregate those funds to ensure no federal tax subsidy dollars are applied to abortion coverage. In addition, federal reimbursement to insurers that receive CSR payments is restricted to claims for essential health benefits, and so does not subsidize abortion coverage.

## Abortion Coverage Restrictions under S. 1771

The Bipartisan Health Care Stabilization Act of 2018 would provide funding for reinsurance and invisible high-risk pools to states that have implemented 1332 waivers. The Act also appropriates cost-sharing reduction payments for plan years 2017-2021. The bill prohibits states from allocating any funds provided under either reinsurance, invisible high-risk pools or cost sharing reductions to health plans that include abortion coverage. An exception is made for abortions for pregnancies resulting from rape or incest, or if the pregnancy endangers the woman’s life. This Act would go further than current law in limiting abortion coverage in private plans. Plans that operate in states that receive these federal funds for cost-sharing reduction payments, invisible high-risk pools or reinsurance to stabilize premiums and reduce costs for high cost enrollees would not be permitted to include abortion coverage, even if it is paid for with private dollars. This bill would (**Table 1**):

- Disqualify insurers that cover abortion in circumstances beyond the Hyde exceptions for rape, incest, or life endangerment of the woman from receiving **cost-sharing reduction payments** to assist low-income individuals enrolled in **Qualified Health Plans on the Marketplace**.
- Disqualify insurers that cover abortion in circumstances beyond Hyde exceptions from receiving **federal reinsurance or invisible high-risk pool funding** to reduce premiums in the **individual market, both on and off the Marketplace**.

The Bipartisan Health Care Stabilization Act would not block State Medicaid programs from using their own state funds to cover abortion beyond the limited Hyde circumstances.

<b>Table 1: Summary of Proposed Changes to Abortion Coverage Restrictions in the Marketplace and Individual Insurance Market</b>		
	<b>The Affordable Care Act (ACA)</b>	<b>The Bipartisan Health Care Stabilization Act of 2018</b>
<b>Who regulates abortion coverage in fully insured private plans sold in states?</b>	<p>States regulate fully insured private plans.</p> <ul style="list-style-type: none"> <li>• Eleven states ban abortion coverage in private fully insured plans sold in their state.</li> <li>• Four states require abortion coverage in all fully insured private plans.</li> </ul>	States would continue to regulate fully insured plans.
<b>Who regulates abortion coverage in state Marketplace exchanges?</b>	<p>States can choose to ban abortion coverage from plans offered through the Marketplace (25 states have done this).</p> <p>Federal regulations require that at least one Multi-State Plan that excludes abortion coverage must be available in each Marketplace.</p>	States would continue to regulate plans offered through the Marketplace under ACA provisions.
<b>How are federal funds limited for abortion coverage in Marketplace and private insurance plans?</b>	<p>No federal premium and cost-sharing subsidies can be used to pay for abortion. Exceptions are only made for pregnancies resulting from rape, incest, or if it is determined to endanger the life of the woman (Hyde).</p> <p>If a plan offers abortion coverage, premiums paid for that coverage must be segregated from premiums for other services. Every Marketplace must offer an option to enroll in a plan that does not include abortion.</p> <p>Plans that offer abortion coverage are not blocked from receiving cost-sharing reduction payments from the federal government.</p>	<p>Only insurers that exclude abortion coverage would be eligible for federal invisible high-risk pool or reinsurance funding to reduce premiums in the individual market, both on and off the Marketplace.</p> <p>Only insurers that exclude abortion coverage would be eligible for cost-sharing reduction payments to assist low-income individuals enrolled in Qualified Health Plans.</p> <p>For cost-sharing reduction payments and invisible high-risk pool and reinsurance funding, exceptions would only be made for pregnancies resulting from rape, incest, or if it is determined to endanger the life of the woman (Hyde).</p>

## State Laws in Conflict with the Bipartisan Health Care Stabilization Act

California, New York, Oregon and Washington require plans that are not self-insured to cover abortion. If the Bipartisan Health Care Stabilization Act becomes law, these states would not be permitted to allocate any federal funds for reinsurance, invisible high-risk pools, or cost-sharing reduction payments to health plans operating in the individual market.

### Four States Require Individual Plans to Include Abortion Coverage

**California** - In 2014, the [California Department of Managed Care](#) reasserted that the [Knox-Keene Health Care Service Plan Act](#) requires the provision of basic health care services. Several court decisions have confirmed that the California Constitution prohibits discrimination against women who choose to terminate their pregnancy. Therefore, all fully insured health plans in California must cover both maternity services and abortion services.

**New York** – New York [law](#) requires health insurance plans to cover medically necessary abortions without co-pays, coinsurance, or deductibles.

**Oregon** – The [Reproductive Health Equity Act](#), passed in 2017, requires all health plans to cover abortion without cost sharing.

**Washington** – The [Reproductive Parity Act](#), passed in March 2018, requires all health plans that cover maternity services, to provide substantially equivalent coverage for abortion, starting in January 2019.

## The Future of Women’s Abortion Coverage

While the Bipartisan Health Care Stabilization Act of 2018, does not directly ban plans from covering abortions, it disqualifies plans that have abortion coverage from receiving federal assistance for reinsurance, invisible high-risk pools, and cost-sharing reductions. This would serve as a major financial disincentive for plans to continue to offer abortion coverage to their policyholders. Given the direct conflict with state laws in California, New York, Oregon and Washington that require all state-regulated plans to include abortion coverage, there will likely be legal challenges if the Act were enacted with the current abortion coverage restrictions.

## Endnotes

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<sup>1</sup> Michelle Rouillard, Director of Department of Managed Health Care letter to Mark Morgan, California President of Anthem Blue Cross, RE: Limitations or Exclusions of Abortion Services. August 22, 2014. Available: <https://www.dmhc.ca.gov/Portals/0/082214letters/abc082214.pdf>.

<sup>2</sup> Kaiser Family Foundation. [Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans](#). January 2016.