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Abortion Riders: Women Living in States with Insurance Restrictions Lack Abortion Coverage Options

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For many women, the extent of their abortion coverage under their health insurance plan is now dependent on the state in which they reside. While federal policy has significantly restricted the circumstances in which Medicaid and other public programs will pay for abortion services since the Hyde Amendment was first enacted in 1976, state policies to restrict abortion coverage in the private insurance market have gained momentum in recent years. Today, 10 states restrict abortion coverage in state-regulated private plans, and in April 2018, a new law in Texas restricting abortion coverage will go into effect. In contrast, three states (CA, NY, OR) require most plans to cover abortion services in the same manner that health insurance covers pregnancy-related care.

Supporters of abortion coverage bans argue that abortion is not a health service or object to making policy holders “subsidize” abortion coverage, regardless of their views. Some argue that women who live in states that ban private plans from covering abortion could buy such a product if they want coverage.¹ In most of the states with abortion coverage bans, the laws allow insurers to sell abortion riders to private plans, but the availability of such products has not been systematically reviewed. This data note explores the extent to which abortion riders are available in the states that restrict abortion coverage in state-regulated private plans and permit insurance carriers to sell abortion riders.

BACKGROUND

Before the Affordable Care Act (ACA) was passed in 2010, four states had laws on the books that banned the inclusion of abortion coverage in state-regulated private plans. Since then, seven more states have passed similar laws, banning abortion coverage in their state-regulated private plans, outside of the ACA Marketplaces. State laws apply to all individual plans and fully-insured group policies -- essentially any insurance product that is bought and sold in the state. Self-insured group policies, also referred to as self-funded plans, are not overseen by state agencies, rather they are regulated by the Department of Labor under the Employer Retirement Income Security Act (ERISA). While the majority of covered workers (60%) are insured by such arrangements, states do regulate many group plans and all individually-purchased policies.

Key Findings

- 10 states currently restrict insurance companies from covering abortion in state-regulated private plans, and a new Texas law will take effect April 2018.
 - Most of these state laws lack exceptions for pregnancies resulting from rape or incest, more restrictive than federal policy under the Hyde Amendment.
- In plan year 2018:
 - 9 of the 10 states permit abortion riders.
 - No abortion riders are available in the individual market.
 - An abortion rider is offered by one insurance company in one state (KY) in the small group market for HMO and PPO policies.
 - No abortion riders are available to purchase in the large group market.
- In states that ban abortion coverage, riders are practically nonexistent, and women policy holders have no option to obtain abortion coverage.

Ten states currently ban abortion coverage in all state-regulated private plans, with few exceptions, and Texas passed a similar law that will become effective in April 2018 (**Table 1**). Nine of these states allow insurers to sell riders for abortion coverage on the private market presumably making abortion coverage available to women who would like to purchase it. Utah does not allow any riders to be sold for abortion coverage.

Table 1: State laws prohibiting abortion coverage in private plans

State (<i>date effective</i>)	Exceptions to law				
	Rape	Incest	Life endangerment	Severe health endangerment	Fetal impairment
Idaho (1983)			X		
Indiana (2015)	X	X	X	X	
Kansas (2011)			X		
Kentucky (1984)			X		
Michigan (2014)			X		Fetal reduction
Missouri (1983)			X		
Nebraska (2012)			X		
North Dakota (1979)			X		
Oklahoma (2011)			X		
Texas [^] (2018)			X	X*	
Utah [*] (2012)	X	X	X	X**	Lethal fetal anomaly

NOTES: [^]Effective April 2018. ^{*}Utah does not allow riders to be sold for abortion coverage. ^{**} “substantial and irreversible impairment of a major bodily function.” [¥] “serious risk of substantial impairment of a major bodily function.”

SOURCE: Kaiser Family Foundation analysis of state laws.

In the run up to the passage of the ACA, abortion coverage was one of the most hotly debated elements of the legislation. A final compromise resulted in rules that allow states to determine whether or not abortion may be covered in plans available through their Marketplaces. In addition to the eleven states that ban coverage in all state-regulated private plans, fifteen additional [states](#)² restrict abortion coverage in ACA Marketplace plans but not in those private plans sold outside of the Marketplace. Federal law prohibits Marketplace plans from offering any riders.³ This means women in 26 states have no option to purchase a plan that includes abortion coverage or a rider to supplement that plan through the ACA Marketplace – the only place where consumers can receive tax subsidies to help pay for the cost of health insurance premiums.

It is impossible for women to anticipate they will need coverage for abortion services. Half of pregnancies in the United States are unintended. Women who seek an abortion may have had an unplanned pregnancy, been a victim of rape or incest, or they may have discovered a fetal anomaly where the fetus would not survive outside the womb, or experience a health problem that can make pregnancy unsustainable. In most states, laws banning abortion coverage in private insurance have exceptions in certain circumstances, but most are significantly narrower than the federal standard set by the Hyde Amendment (**Table 1**). Although all the state laws include an exception for life endangerment of the woman, nine out of the eleven states that restrict private insurance coverage of abortion do not include an exception for rape or incest. Two states include exceptions in very limited circumstances beyond those set out by the Hyde Amendment: Utah allows for coverage in the case of a lethal fetal anomaly, and Michigan allows for coverage if the abortion is necessary to “increase the

probability of a live birth, to preserve the life or health of the child after live birth,” (i.e. a fetal reduction in the cases of multiple pregnancy). In all other cases, abortion cannot be a covered service.

How Much Does an Abortion Cost?

The cost of an abortion depends on many factors including gestation, anesthesia, procedure, and type of provider (clinic vs. hospital or office-based). A clinic-based abortion at 10 weeks' gestation is estimated to cost between \$400 and \$550, whereas an abortion at 20-21 weeks' gestation is estimated to cost \$1,100-\$1,650 or more.⁴ Most women pay at least some out of pocket costs for their abortion. A 2011 study of women seeking an abortion in six urban clinics, found that about one-third of the women included in the study had private health insurance but less than one in ten women used their private insurance to pay for their abortion.⁵ Of those who had private health insurance but did not use it to pay for their abortion, about half reported their insurance did not cover it, and a quarter reported they did not use it because they were not sure if it was covered.⁶

WHAT IS A RIDER AND HOW WOULD AN ABORTION RIDER WORK?

A health insurance rider is a limited scope supplemental benefit policy that covers certain services, such as dental and vision benefits, which are not included in a standard health insurance plan. For example, consumers with a high deductible plan might try to lessen their risk for an unexpected large medical expense by buying a cancer rider to help pay for care if they are diagnosed with cancer. Riders are typically offered as an optional amendment to a policy. These riders can be offered by insurers in the group market and purchased by an employer to include in their benefit package provided to employees. They can also be offered in the individual market and purchased by individuals who would like supplemental coverage for services that are not included in their health insurance plan. Insurers charge separate premiums for a rider and sometimes have a separate deductible for the services included in the rider. They may also impose a waiting period before the policyholder is covered. The financial viability of an insurance product counts on the fact that a large pool of consumers will pay into the policy, spreading the risk, but that not everyone will use the services. Therefore, a separate policy offered in the individual market that covers one specific condition or procedure would typically be purchased by those that anticipate needing that coverage. As a result, the insurers would likely charge very high premiums for these supplemental policies in order to cover the costs associated with the lack of a diverse risk pool.

These affordability and logistical issues were particularly salient with maternity care riders. Before the ACA, many insurance issuers excluded maternity care from their individual market health plans. Some insurers sold separate maternity riders for policies that excluded maternity care. Because only women who planned to become pregnant in the near future would buy such a rider, they were often prohibitively expensive, and imposed waiting periods while providing only limited coverage.⁷ Therefore, unless a woman could afford the high premiums and successfully time her pregnancy for when the rider's coverage became effective, most women purchasing coverage through the individual market were essentially left without a viable option for coverage. When the ACA was passed, it established a minimum floor of benefits for all private plans that included maternity care as a required essential health benefit, which effectively eliminated the need for maternity riders.

An abortion rider would operate in essentially the same manner. In order for a woman in the individual market to obtain coverage in a state that bans it, she would need to recognize that abortion is not a covered benefit under her standard health insurance plan and purchase the separate coverage, assuming that her insurer offers

an abortion rider as an amendment to her plan. In the group market, an employer would be responsible for identifying the gap in coverage for abortion services, and subsequently purchase a separate rider for their employees if available.

How Much Does Abortion Coverage Cost Insurers?

For insurers, the additional cost to provide abortion coverage as a benefit in a standard health policy is minimal. The actual cost of an abortion benefit for plans operating on the ACA Exchanges (where payments for abortion coverage are required to be segregated from the other services) was estimated to add between 11 and 33 cents per member per month (PMPM) in 2012, significantly less than the minimal additional premium charge for abortion coverage that is required by law, \$1 PMPM.⁸ Insurers that include abortion coverage pay for abortion services for their policy holders, but the additional cost is minimal because it is spread over all enrollees.

METHODOLOGY

In order to determine the availability of abortion riders in states that ban abortion coverage, we focused our study on the nine states that have restrictions effective in 2017 in private plans offered outside the ACA Marketplace (ID, IN, KS, KY, MI, MO, ND, NE, OK) and do not have policies restricting the sale of abortion riders.⁹

We accessed the [System for Electronic Rate and Forms Filing \(SERFF\)](#) on the National Association of Insurance Commissioners' website. This system is an online platform that allows the public to view rate, form, rule, and health plan binder filings submitted by insurance companies to state health insurance departments. Forty-one states currently participate in SERFF Filing Access. Between August and December 2017, we searched the SERFF databases of eight states that restrict abortion coverage in the private insurance market and do not prohibit the sale of abortion riders. The ninth state, Kentucky, does not currently participate in SERFF Filing Access. Under the "Life, Accident/Health, Annuity, Credit" business type category, we searched for insurance products containing the terms "pregnancy" or "abortion." We looked at all filings that resulted from these searches for all plan years. We then contacted the Department of Insurance for each of these eight states to confirm our findings about the availability of abortion riders in their state for plan years 2017 and 2018. We also contacted the Kentucky Department of Insurance, and they searched their database for abortion riders offered in 2017 and 2018.

HOW AVAILABLE ARE ABORTION RIDERS?

For plan years 2017 and 2018, we were unable to find any insurers offering abortion riders in the individual insurance market in the nine states that ban coverage but allow riders. There are an estimated 700,000 women of reproductive age that get their coverage through the individual market in the ten states that ban abortion coverage in all individual plans. An additional 467,000 women of reproductive age in Texas will be affected when their law goes into effect in April 2018. Women purchasing plans in the individual market in these states do not have any option to purchase separate abortion coverage.

Table 2: Riders offered in states that ban on abortion coverage in private plans, 2017–2018

Plan Year	State(s)	Insurance issuer	Market
Effective July 2018 (Pending Approval)	Kansas	UnitedHealthcare	Large Group
2018	Kentucky	UnitedHealthcare	Small Group (HMO and PPO)
2017	Michigan	Priority Health	Group – at the request of one employer

SOURCE: Kaiser Family Foundation analysis of SERFF records and rate filings obtained from the Kentucky Department of Insurance.

For the 2018 plan year, Kentucky approved two abortion riders (for HMO and PPO policies) offered by UnitedHealthcare in the small group market. We were unable to receive information about the premium for these riders or confirmation from UnitedHealthcare about whether any employers purchased either of these riders. UnitedHealthcare has also submitted an abortion rider for the large group market in Kansas, but the Kansas Insurance Department has not approved the rider yet (**Table 2**). Therefore, this rider is currently not available for employers to purchase. No other abortion riders were found to be available in the group market for plan year 2018.¹⁰ In 2017, one Michigan employer purchased an abortion rider from Priority Health to supplement its employee Health Savings Account (HSA) HMO plan; however, this was an employer-specific rider and could not be purchased by other employers.

There is no way to know the total number of women in the group market that are affected by these abortion restrictions and lack of available abortion riders because there are no estimates of the number of women covered by employer plans that are fully-insured or covered by self-insured plans (not subject to the abortion restrictions) in these states. Nonetheless, it is clear that the group riders offered in 2018, if purchased by any employer, would only cover a tiny fraction of women.

CONCLUSION

Women who are enrolled in individually-purchased plans and live in the ten states that restrict abortion coverage have no option for obtaining abortion coverage. Riders are not available on the individual market in these states. Women enrolled in their fully-insured employer group plan are dependent on insurance companies offering riders in the group market and their employer choosing to purchase the rider. We found only one case of an employer that requested and purchased an abortion rider for their HSA HMO plan in 2017, and one insurance company offering two abortion riders in the Kentucky small group market in 2018. As a result, the laws and policies that prohibit abortion coverage but permit riders are, in essence, bans on coverage because abortion riders are virtually nonexistent.

Looking ahead, there will likely be continued efforts to restrict abortion coverage. In 2017, Texas passed a law to restrict abortion coverage in the private insurance market that will take effect in April 2018, and other states may follow. Failed Republican efforts to repeal and replace the ACA tried to block abortion coverage in all Marketplace plans beyond the Hyde limitations, meaning there was no rape or incest exception. These bills would have taken away regulatory authority from every state and conflicted with state laws in California, Oregon, and New York. Although this federal provision would have allowed insurance companies to offer optional abortion riders, as this study has shown, in states that have already banned this coverage, riders are practically nonexistent. As insurance coverage for abortion is increasingly limited by state and federal

regulations, the hundreds of thousands of women seeking abortion services annually will be left without coverage options for this medical procedure in many states--even when they are victims of rape or incest or if the pregnancy is determined to be a threat their health.

Endnotes

¹ Weissert W and Crary D. (2017, August 12). [Texas set to restrict insurance coverage for abortion](#). *Associated Press*.

² Florida, Louisiana, Mississippi, Georgia, South Carolina, North Carolina, Tennessee, Virginia, Ohio, Pennsylvania, South Dakota, Wisconsin, Arizona, Arkansas, Alabama

³ U.S. Government Accountability Office (GAO). (2014, September 15). [Health Insurance Exchanges: Coverage of Non-excepted Abortion Services by Qualified Health Plans](#).

⁴ Jones R and Kooistra K. (2011). [Abortion Incidence and Access to Services in the United States, 2008](#). *Perspectives on Sexual and Reproductive Health*; 43(1), 41-50.

⁵ Jones R, Upadhyay U, and Weitz T. (2013). [At What Cost? Payment for Abortion Care by U.S. Women](#). *Women's Health Issues Journal*; 23(3), 173-178.

⁶ Ibid.

⁷ National Women's Law Center (NWLC). (2012). [Turning to Fairness: Insurance discrimination against women today and the Affordable Care Act](#).

⁸ Schaler-Haynes M, Chesnokova A, Cox C, and Feinstein M. (2012). [Abortion Coverage and Health Reform: Restrictions and Options for Exchange-Based Insurance Markets](#). *The University of Pennsylvania Journal of Law and Social Change*, 15: 323.

⁹ We did not include Utah in our search because the sale of abortion riders is not permitted there.

¹⁰ Utah does not allow abortion riders, and Texas's ban does not go into effect until April 2018.