

ISSUE BRIEF

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Obamacare's Abortion Surcharge and Taxpayer Funding of Abortion Coverage

Sarah Torre

Obamacare will entangle taxpayer funds in abortion coverage offered on state and federal exchanges and could force many Americans to unwittingly pay a surcharge for elective abortion.

This system could potentially place many Americans in an unwanted and unnecessary dilemma, forced to choose between violating their values by directly subsidizing abortion coverage or forfeiting the health care coverage that most closely meets their families' unique needs.

Federal Dollars Will Be Available for Health Plans That Cover Elective Abortion. Obamacare requires that all individuals obtain health insurance by January 1, 2014, either through their employers or elsewhere, that meets minimum federal benefits requirements. Millions of Americans will look to state and federally run health insurance exchanges to purchase such qualified health plans and avoid federal fines.

For the first time, the federal government will provide an "affordability tax credit" to millions of low- and middle-income individuals and families to help subsidize the purchase of health plans on the exchanges.¹ These federal tax credits could facilitate the purchase of overall health plans for millions of

Americans who did not have such coverage previously. Many of these plans could cover elective abortion.

Majority of States Will Allow Abortion Coverage. Obamacare allows health insurers selling plans on exchanges to cover abortion. In response, some states have passed "opt-out" laws, barring insurers participating in their exchanges from offering health plans that include coverage of elective abortion. However, 27 states and the District of Columbia have taken no final action to prevent insurers from covering elective abortion.²

Not every plan offered on those exchanges of those 27 states and D.C. will necessarily include such coverage, and Obamacare states that at least one of the plans in each exchange must exclude elective abortion coverage by 2017. The decision to include coverage is ultimately left to the insurer.³ But federally subsidized tax credits will remain available even for the plans that do cover elective abortion, potentially sending taxpayer funds to pay for health coverage that includes elective abortion.

An All-but-Invisible Abortion Surcharge. Individuals and families who live in states that allow abortion coverage in their exchanges could find themselves paying directly for elective abortions through a separate premium, possibly without their knowledge.

Every individual enrolled in a plan that is eligible for federal tax credits and includes coverage of abortion will be forced to pay an additional abortion premium of at least \$12 per year with private dollars. Obamacare mandates that insurance companies then "segregate" any federal affordability tax credit it receives from the individual premiums used to pay for abortions. The law provides no opt-out for

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Produced by the Richard and Helen DeVos
Center for Religion and Civil Society

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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individuals or families who may want to buy a particular plan that fits their health needs but does not include abortion coverage.

Limiting Transparency and Restricting Consumer Choice. It is possible that many individuals and families who would otherwise object to paying for abortion coverage may not even be aware of the surcharge on their insurance. Obamacare regulations allow insurers to disclose the existence and amount of the abortion surcharge only at the time of enrollment, and that warning may be as little as a single sentence in a massive plan document.⁴ The rules also prohibit issuers from itemizing the additional charge for abortion coverage on premium bills.

For those living in the 27 states without opt-out laws, individuals and families wishing to avoid health plans with abortion coverage could have few or no options in their state's exchanges. In general, they could either:

- **Enroll in a health plan that includes abortion coverage.** Many individuals and families enrolled in such plans will be forced to pay an additional abortion surcharge, with limited disclosure of the additional payment's existence.
- **Enroll in an exchange plan or private plan that does not include abortion coverage—if one is available.** Some individuals may be able to enroll in exchange plans in which the issuers have chosen not to cover elective abortion. Individuals and families could ostensibly also enroll in private coverage in an exchange that does not

include abortion. But there is no guarantee that those abortion-free plans will provide overall benefits comparable to the plans that include abortion coverage.

- **Enroll in the federally run multi-state plan that will not include abortion coverage.** One of the multi-state plans sponsored by the Office of Personnel Management (OPM) is required to exclude abortion coverage. However, OPM is required to offer those plans in only 60 percent of state exchanges in 2014, eventually offering coverage in every state by 2017.⁵ There is no guarantee that this option will be available in every state during the first few years of Obamacare implementation or remain an attractive option thereafter.

State and Federal Remedies. State and federal governments can still act. The 27 states (and the District of Columbia) currently without "opt-out" laws should pass legislation prohibiting insurers from offering coverage of elective abortion on the state's exchange.

At the federal level, Congress can enact broad protections against taxpayer funding of abortion and abortion coverage. The No Taxpayer Funding for Abortion Act (H.R. 7) would assure that no funds authorized or appropriated by federal law could be used to pay for abortion or health benefits plans that cover abortion. Congress could also demand transparency in Obamacare exchange plans. The Abortion Insurance Full Disclosure Act (H.R. 3279)

1. Brian Blase and Paul L. Winfree, "Obamacare and Health Subsidies: Expanding Perverse Incentives for Employers and Employees," Heritage Foundation *WebMemo* No. 3112, January 20, 2011, <http://www.heritage.org/research/reports/2011/01/obamacare-and-health-subsidies-expanding-perverse-incentives-for-employers-and-employees>.

2. Charlotte Lozier Institute, "Update on Abortion Coverage Limitations: States Take Action," September 11, 2013, <http://www.lozierinstitute.org/abortion-coverage-limitations/> (accessed October 23, 2013).

3. An e-mail communication from unidentified federal officials to the *Roll Call* newspaper on July 22, 2013, indicated that it was the intention of the Obama Administration to "ensure" that each exchange include at least one insurance plan that does cover elective abortion. Obamacare does not require the inclusion of such a plan, and other provisions of the law make plain that insurers enjoy rights of conscience with respect to the provision of induced abortions. See, for example, the Consolidated Appropriations Act of 2012, Public Law 112-74, Division F, Section 507 (d), known as the Hyde-Weldon amendment, which outlaws discrimination by federal officials against, among others, insurance plans that do not "provide coverage of" abortions. Rebecca Adams, "The Question of Abortion Coverage in Health Exchanges," *Roll Call*, July 22, 2013, http://www.rollcall.com/news/the_question_of_abortion_coverage_in_health_exchanges-226547-1.html?pg=2 (accessed October 3, 2013).

4. 42 U.S. Code § 18023(E)(3)(A). According to the statute: "A qualified health plan that provides for coverage of the services described in paragraph (1)(B)(i) [elective abortions beyond those allowed for coverage under the Hyde amendment] shall provide a notice to enrollees, only as part of the summary of benefits and coverage explanation, at the time of enrollment, of such coverage."

5. Robert E. Moffit, "Obamacare and the Hidden Public Option: Crowding Out Private Coverage," Heritage Foundation *WebMemo* No. 3101, January 18, 2011, <http://www.heritage.org/research/reports/2011/01/obamacare-and-the-hidden-public-option-crowding-out-private-coverage>.

would require issuers that include elective abortion coverage on exchange plans to prominently display in marketing and enrollment materials the existence of such coverage and the existence of a separate abortion surcharge.

Protecting Life and Conscience in Health Care. To truly protect taxpayers, individuals, and families, Obamacare must be repealed. Americans

deserve health care reform that increases access, decreases costs, and allows individuals and families to choose health care that meets their needs without violating their beliefs or subsidizing life-ending drugs and procedures.⁶

—*Sarah Torre is a Policy Analyst in the Richard and Helen DeVos Center for Religion and Civil Society at The Heritage Foundation.*

6. Nina Owcharenko, "Saving the American Dream: A Blueprint for Putting Patients First," Heritage Foundation *Issue Brief* No. 3628, June 6, 2012, <http://www.heritage.org/research/reports/2012/06/saving-the-american-dream-a-blueprint-for-putting-patients-first>.