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## Taxpayer-funded Abortions in High Risk Pools

July 22, 2010



**Q:** Will all legal abortions be covered by federally subsidized health insurance policies in state "high-risk pools"?

**A:** No. The Department of Health and Human Services says the only abortions covered will be those in cases of rape, incest or when the mother's life is endangered.

### FULL QUESTION

Received this e-mail today and wondered if it was true:

\$160 million federal dollars sent into PA high-risk pool that will also fund any legal abortion in PA, which, of course, is any abortion whatsoever.

[http://www.nrlc.org/press\\_releases\\_new/Release071310.html](http://www.nrlc.org/press_releases_new/Release071310.html)

### FULL ANSWER

The claim that the new federal health care law will use taxpayer funds to pay for abortions through "high-risk pools" originated when the National Right to Life Committee issued a [press release](#) July 13. It said that Washington had approved a new insurance program that "will cover any abortion that is legal in Pennsylvania." Abortion foes also raised alarms about similar federally subsidized insurance pools being put together in New Mexico and Maryland.

#### Good Cause

At issue here are insurance policies to be made available under a newly launched, federally funded program that provides coverage for high-risk uninsured people who have been turned away by private carriers.

We can see what caused abortion opponents to be concerned. An [official solicitation](#) issued by the Pennsylvania Insurance Department specified that abortions "will" be covered if they are legal under Pennsylvania law. And according to [news reports](#), a similar document in New Mexico listed "elective" abortions under "covered services."

State and federal officials have since scrambled to clarify their intentions. Pennsylvania officials [issued a statement](#) on July 15 saying that for any abortions performed because of reasons other than rape, incest or a threat to the mother's life, women "will have to pay for them out their own pocket." And New Mexico backed down just as quickly, issuing a [July 15 statement](#) saying "elective abortion is not and has never been intended to be a benefit."

#### The HHS Policy

But that came only after federal officials — who control the money and write the regulations for the high-risk pools — stated on July 14 that no state policy would cover abortions except "in the cases of rape or incest, or where the life of the woman would be endangered." Those are the only exceptions allowed by long-standing federal laws that broadly ban abortion coverage under

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the Federal Employee Health Benefits (FEHB) plans covering federal workers and their families, and under most state-federal Medicaid programs.

The [July 14 statement](#) from the Department of Health and Human Services said in full:

**Statement of HHS Spokeswoman Jenny Backus on the Pre-Existing Condition Insurance Plan Policy**

As is the case with FEHB plans currently, and with the Affordable Care Act and the President's related Executive Order more generally, in Pennsylvania and in all other states abortions will not be covered in the Pre-existing Condition Insurance Plan (PCIP) except in the cases of rape or incest, or where the life of the woman would be endangered.

Our policy is the same for both state and federally-run PCIP programs. We will reiterate this policy in guidance to those running the Pre-existing Condition Insurance Plan at both the state and federal levels. The contracts to operate the Pre-existing Condition Insurance Plan include a requirement to follow all federal laws and guidance.

**'Victory' for Abortion Foes**

In reporting on the HHS statement, the Associated Press wrote: "[Abortion foes have scored a victory.](#)" The [U.S. Conference of Catholic Bishops issued a statement](#) welcoming the policy.

**USCCB:** We welcome this new policy, while continuing to be gravely concerned that it was not issued until after some states had announced that pro-abortion health plans were approved.

Douglas Johnson, the legislative director of the National Right to Life Committee, who first raised the alarm over the Pennsylvania solicitation, cautiously approved the HHS statement. In a July 22 e-mail to FactCheck.org, he said:

**NRLC's Johnson:** If HHS actually does what they say they will do, in the July 14 statement, then that would resolve the issue for this one component of the health care law — unless the courts get involved, which is certainly possible, since the statute does not dictate an abortion policy on this program.

At the same time, some abortion-rights advocates are upset. NARAL Pro-Choice America's president, Nancy Keenan, [issued a statement](#) on July 15 denouncing the HHS' stated policy as "wrongheaded and inexplicable." And the American Civil Liberties Union also [criticized the policy](#). An [article in The Hill newspaper](#) quoted Washington Legislative Office Director Laura W. Murphy saying:

**ACLU's Murphy:** What is disappointing is that there is nothing in the law that requires the Obama administration to impose this broad and highly restrictive abortion ban. It doesn't allow states to choose to cover abortion and it doesn't even give women the option to buy abortion coverage using their own money.

**Footnote: Seeing Through the Smoke**

It would be easy to miss the fact that Pennsylvania's official solicitation called for coverage of all state-legal abortions. The [press release](#) issued by the state insurance department on June 28, announcing the new program, made no mention of abortion at all. Intrepid readers could click through to find the [official solicitation document](#) describing the program more fully, but it contained phrasing the casual reader could interpret as restricting abortion coverage rather than permitting it.

At one point the document states: "Elective abortions are not covered" (page 14). But the term "elective" isn't defined, and so isn't very meaningful.

The operative language starts on page 12, where it says: "The benefit package will include the following core of specific services ..." followed by a long list that includes, on page 14, "only abortions and contraceptives that satisfy the requirements of 18 Pa.C.S. § 3204-3206 and 35 P.S. §§10101, 10103-10105." Those are the sections of Pennsylvania law that cover abortion.

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So — when all the verbal smoke is cleared away — the solicitation states that the program "will" cover "only" abortions that are legal. That doesn't leave out much.

The first section cited, for instance ([Section 3204](#)), allows abortions that a physician deems "necessary ... in the light of all factors (physical, emotional, psychological, familial and the woman's age) relevant to the well-being of the woman." The only abortions that the state law forbids a doctor from finding "necessary" are those "sought solely because of the sex of the unborn child."

We asked the state insurance department how that official document can be squared with its July 15 press release saying women would have to pay for abortions out of their own pocket. Department spokeswoman Melissa Fox told us this, in a July 21 e-mail message:

**Pennsylvania Insurance Department's Fox:** Due to the aggressive timeframe to submit proposals Pennsylvania, as well as other states, I'm sure, needed to insert "placeholder" language absent specific guidance from the federal government on the benefit package. That was the case not just for the abortion issue, but also mental health benefits. Once the clarifying guidelines are issued, the language in the proposal will be adjusted accordingly.

So the story now is that in the haste to meet a deadline, "placeholder" language was inserted, to be adjusted later. But whatever Pennsylvania officials intended, the stated federal policy is now clear: No abortions will be covered by the temporary risk pools except for those in cases of rape or incest, or to save the life of the mother.

— *Brooks Jackson*

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