

The legislative history of PPACA indicates the intent to cover screening and prevention of pathological conditions of women. Yet a broad and unfounded interpretation which mandates contraceptives and abortifacients has occurred.

In a review of the PPACA, specifically, Section 2713(a)(4), it is clear that the PPACA never stipulates the intent to mandate the inclusion of contraceptives, abortifacients, or sterilizations, with no co-pay, within “preventive care and screenings” for women. Furthermore, the Senate floor debate over the addition of Section 2713(a)(4) to the Act indicated no intent to include abortion. Section 2713(a)(4), which requires private insurance plans to cover certain preventive services for women, was added to the PPACA in an amendment offered by Senator Barbara Mikulski (D-MD) who issued a press release describing that amendment as follows:

Services that would be covered under the Mikulski Amendment are likely to include cervical cancer screenings for a broad group of women; annual mammograms for women under 50; pregnancy and postpartum depression screenings; screenings for domestic violence; and annual women’s health screenings, which would include testing for diseases that are leading causes of death for women such as heart disease and diabetes.²

In her prepared floor statement, Senator Mikulski concluded:

Often health care doesn’t cover basic women’s health care like mammograms and cervical cancer screenings. My amendment is about saving lives and saving money to give women access to comprehensive preventive services that are affordable and life saving.³

She stated further, in terms of abortion:

This amendment does not cover abortion. Abortion has never been defined as a preventive service. This amendment is strictly concerned with ensuring that women get the kind of preventive screenings and treatments they may need to prevent diseases particular to women such as breast cancer and cervical cancer. There is neither legislative intent nor legislative language that would cover abortion under this amendment, nor would abortion coverage be mandated in any way by the Secretary of HHS.⁴

It is evident that the legislative intent of Section 2713(a)(4) was to screen for and prevent pathological conditions of women, and not to include abortion. Despite this fact, the Institute of Medicine’s report and recommendations specify as “preventive services” the “well-women preventive visits,” described as including prenatal screening for “genetic or developmental conditions.”⁵ Clearly, such testing will not prevent genetic abnormalities already identified by such testing on the fetus, unless the intent is to “prevent” the fetus from being born through abortion. Furthermore, a number FDA-approved contraceptives mandated to be covered by insurers under the Rule are abortifacients, either by preventing implantation of the conceived human being, or with the potential, as with ulipristal acetate [ella], of inducing an expulsion of the human being from the uterus. Moreover, IUDs are listed as contraceptives by the FDA.

Prescribing information indicates that they can prevent implantation of the conceived human being.⁶ Also, the FDA acknowledges, concerning Levonorgestrel [Plan B], another so-called “emergency contraceptive,” that “If fertilization does occur, Plan B may prevent a fertilized egg from attaching to the womb (implantation).”⁷ Furthermore, the FDA is allowing ulipristal acetate [ella] to be marketed as an “emergency contraceptive.” FDA’s prescribing instructions for the drug admit that it may prevent implantation; and the FDA states that this drug is contraindicated in an existing pregnancy.⁸ The FDA notes, one reason for the effectiveness of ulipristal acetate [ella] is that it “may also work by preventing attachment (implantation) to the uterus.”⁹ This means ulipristal acetate [ella] does more than prevent conception; ulipristal acetate [ella] can kill the conceived human embryo. Furthermore, ulipristal acetate [ella] may kill an embryo even after implantation, as it has a similar chemical make-up to the abortion drug mifepristone (RU-486), which blocks natural progesterone receptors in three critical areas: destroying receptivity of the endometrial glands to embryo implantation;¹⁰ destroying the capacity of the corpus luteum to produce progesterone for initial support of the implanted embryo;¹¹ and destroying the endometrial stromal tissues necessary for the survival of the embryo.¹² In approving ulipristal acetate [ella], the FDA contraindicates ulipristal acetate [ella] for “existing or suspected” pregnancy. The FDA admits, “There are no adequate and well controlled studies in pregnant women.” It cites studies in animals with high rates of pregnancy loss, and it acknowledges that the effects on a fetus that survives ulipristal acetate [ella] are unknown. Furthermore, in animal studies 40% of first trimester fetuses aborted after exposure to high doses of this drug.¹³ Clearly, ulipristal acetate [ella] and any other form of “emergency contraception” that may cause abortions, like surgical and other chemical abortions, should not be included as mandated “preventive services” under Section 2713(a)(4).

Most importantly, the Rule is creating new law in terms of mandating contraceptive, abortifacient, and sterilization coverage with no co-pay by the enrollees. This is well beyond the provisions of the PPACA, and the statutory intent at the time of its adoption. On December 1, 2009, Senator Mikulski clearly stated: “There are no abortion services included in the Mikulski amendment. It is screening for diseases that are the biggest killers for women—the silent killers of women. It also provides family planning--but family planning as recognized by other acts.”¹⁴ [Emphasis added.] No other federal act mandates the provision of contraceptives, abortifacients, and surgical sterilizations, with no co-pay, with so limited a religious exemption that it is virtually meaningless

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² <http://mikulski.senate.gov/Newsroom/PressReleases/record.cfm?id=320304>

³ <http://mikulski.senate.gov/Newsroom/PressReleases/record.cfm?id=320304>

⁴ December 3, 2009 <http://thomas.loc.gov/cgi-bin/query/F?r111:2:./temp/~r111ulsMjy:e77041:>. On December 1, 2009, Senator Mikulski stated: “There are no abortion services included in the Mikulski amendment. It is screening for diseases that are the biggest killers for women—the silent killers of women. It also provides family planning--but family planning as recognized by other acts.” <http://thomas.loc.gov/cgi-bin/query/F?r111:1:./temp/~r111ulsMjy:e58173:>

⁵ Committee on Preventive Services for Women; Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps*, Institute of Medicine (Washington, DC: The National Academies Press, July 20, 2011), p. 112.

⁶ *PRESCRIBING INFORMATION: ParaGard® T 380A Intrauterine Copper Contraceptive*. Accessible at , <http://www.drugs.com/pro/paragard.html>.

⁷ U.S. Food and Drug Administration, "FDA's Decision Regarding Plan B: Questions and Answers." Available at <http://www.fda.gov/drugs/drugsafety/postmarketdrugsafetyinformationforpatientsandproviders/ucm109795.htm>

⁸ http://www.accessdata.fda.gov/drugsatfda_docs/label/2010/022474s000lbl.pdf.

⁹ Ibid.

¹⁰ Jerry R. Reel, Sheri Hild-Petito, and Richard P. Blye, "Antiovolatory and Postcoital Antifertility Activity of the Antiprogestin CDB-2914 When Administered as Single, Multiple, or Continuous Doses to Rats," *Contraception* 58.2 (August 1998): 129.

¹¹ Catherine A. VandeVoort et al., "Effects of Progesterone Receptor Blockers on Human Granulosa-Luteal Cell Culture Secretion of Progesterone, Estradiol, and Relaxin," *Biology of Reproduction* 62.1 (January 2000): 200.

¹² Sheri Ann Hild et al., "CDB-2914: Anti-progestational/Anti-glucocorticoid Profile and Postcoital Anti-fertility Activity in Rats and Rabbits," *Human Reproduction* 15.4 (April 2000): 824.

¹³ http://www.accessdata.fda.gov/drugsatfda_docs/label/2010/022474s000lbl.pdf.

¹⁴ <http://thomas.loc.gov/cgi-bin/query/F?r111:1:./temp/~r111ulsMjy:e58173>.