



## **Congress Should Lift the Statutory Ban that Denies U.S. Servicewomen Coverage for Abortion Care in Cases of Rape and Incest**

**May 13, 2011**

More than 400,000 women currently serve in the Armed Forces. At a time when the United States is engaged in wars on two fronts, and servicewomen put their lives and limbs at risk to preserve our rights and freedom, we should not deny them access to the same care available to the civilians they protect.

The United States military provides health insurance for members of the Armed Forces and their families through the Department of Defense's Military Health System. By federal statute, the Department of Defense is barred from providing coverage for abortion care except where a pregnant woman's life is endangered.<sup>1</sup> Unlike the other federal bans on abortion coverage, the military ban provides no exception for cases of rape and incest. Restoring abortion coverage to our military women who are survivors of rape and incest would bring the Department of Defense in line with the policy that governs other federal programs, such as Medicaid.<sup>2</sup>

The current policy is unjust and unfair. In the face of the alarmingly high rates of sexual assault in the military, it is unconscionable. Congress should take immediate steps to repeal it.

- **The military has a history of providing coverage for abortion care for women who have been assaulted.**

In 1978, Congress enacted a restriction barring abortion coverage in the military health care system; prior to that, abortion care was available through much of the 1970s.<sup>3</sup> The restriction allowed coverage in instances of life endangerment, rape, incest, or severe and long-lasting physical health damage to the pregnant woman.<sup>4</sup> Congress enacted this restriction annually for the next several years on the Department of Defense Appropriations Act, with minor changes to the exception language.

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<sup>1</sup> 10 U.S.C. § 1093(a) ("Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.").

<sup>2</sup> Military women face another unique barrier to abortion access when serving overseas. In 1995, Congress passed a law banning military treatment facilities from providing abortion services even when patients pre-pay the entire cost with their own private funds. The facilities ban has exceptions for life endangerment, rape and incest. See 10 U.S.C. § 1093(b).

<sup>3</sup> Heather Boonstra, *Off Base: The Military's Ban on Privately Funded Abortions*, 13 GUTTMACHER POL'Y REV. 2 (2010).

<sup>4</sup> Pub. L. No. 95-457, § 863, 92 Stat. 1254 (1978).

In 1981, Congress revised the restriction to ban coverage for all abortions except “where the life of the mother would be endangered if the fetus were carried to term.”<sup>5</sup> Then, in 1984, Congress codified this language in permanent law, barring military women from using their health care coverage to access abortion services, even when their pregnancies are the result of rape or incest.

- **The ban on abortion coverage for servicewomen in cases of rape is at odds with the federal policy applying to other insurance programs.**

By contrast, the federal bans on abortion coverage for women enrolled in Medicaid, disabled women enrolled in Medicare, federal employees (other than members of the Armed Services), women who receive health care through the Indian Health Service, and women in federal prisons, all include exceptions for rape survivors.<sup>6</sup>

Similarly, the abortion restrictions in the recently enacted Affordable Care Act also provide exceptions for survivors of rape and incest. Although Congress hotly debated the contours of those restrictions, access to abortion care for sexual assault survivors was never even questioned.

Servicewomen and military families stand out as the one group that Congress has shown the least regard for.

- **Rape survivors are being denied coverage despite the fact that sexual assault in the U.S. military persists.**

The ban on abortion coverage falls against the backdrop of an Armed Forces where sexual assault is pervasive. According to the Department of defense, in fiscal year 2010, 3,158 military sexual assaults were reported, many of which were reports of rape.<sup>7</sup> That number alone is shocking; but it barely scratches the surface. Most servicewomen who experienced sexual violence do not report the incident;<sup>8</sup> one study estimated that 75% of servicewomen who have been raped do not report it to a ranking officer.<sup>9</sup> Researchers estimate that over time, up to one third of women experience an attempted or completed rape during their military service.ies are higher still.<sup>10</sup>

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<sup>5</sup> Pub. L. No. 97-114, § 757, 95 Stat. 1588 (1981).

<sup>6</sup> The only other coverage restriction that does not include a rape exception is the ban on abortion coverage for women serving in the Peace Corps. Pub. L. No. 111-117, 123 Stat. 333 (2009).

<sup>7</sup> DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2010 3(2011), [http://www.sapr.mil/media/pdf/reports/DoD\\_Fiscal\\_Year\\_2010\\_Annual\\_Report\\_on\\_Sexual\\_Assault\\_in\\_the\\_Military.pdf](http://www.sapr.mil/media/pdf/reports/DoD_Fiscal_Year_2010_Annual_Report_on_Sexual_Assault_in_the_Military.pdf).

<sup>8</sup> See, e.g., U.S. GOV'T. ACCOUNTABILITY OFFICE, DOD'S & THE COAST GUARD'S SEXUAL ASSAULT PREVENTION & RESPONSE PROGRAMS FACE IMPLEMENTATION & OVERSIGHT CHALLENGES 33, 35 (2008) available at <http://www.gao.gov/new.items/d08924.pdf>.

<sup>9</sup> Sadler et al., *Factors Associated with Women's Risk of Rape in the Military Environment*, 43 AM. J. OF INDUS. MED. 262, 266 (2003).

<sup>10</sup> Jessica A. Turchick & Susan M. Wilson, *Sexual Assault in the U.S. Military*, 15 AGGRESSION & VIOLENT BEHAV. 267, 268 (2010).

The comparison to civilian life is jarring. When a woman joins the military, her risk of being sexually assaulted doubles. And the likelihood that a woman will be assaulted more than once is particularly high: 37% of military rape victims experience multiple rapes.<sup>11</sup>

Further troubling, is that military sexual assault disproportionately affects the junior enlisted<sup>12</sup> – young women who have the fewest resources, the lowest salaries, and are least able to pay for medical procedures that their insurance is barred from providing. In 2011, the U.S. poverty line was set at \$22,350 for a family of four.<sup>13</sup> A junior enlisted woman with three years' experience makes at most \$23,000.<sup>14</sup> The last thing a servicewoman should have to worry about when dealing with the trauma of an assault is struggling to find the funds to end a resulting pregnancy.

As much as we know about the conditions U.S. servicewomen are subjected to, the full extent of the sexual assault epidemic has yet to be revealed. In fact, in December, 2010, the ACLU and the Service Women's Action Network sued the Department of Defense for its failure to respond to a Freedom of Information Act request seeking government records providing comprehensive and accurate information about rape, sexual assault, and sexual harassment in the Armed Services.<sup>15</sup>

- **All women deserve access to comprehensive reproductive health care.**

The ACLU believes that every woman should have the healthcare coverage she needs, and that all of the bans on insurance coverage for abortion should be repealed because they are discriminatory and harm women's health. But at the very least our military women deserve the same access to care as all of the other women who get their health insurance through the federal government. These soldiers commit their lives to defending our freedoms; we owe it to them – and to ourselves – to treat them with compassion and fight for their dignity. Restoring abortion coverage to rape and incest survivors is a first and crucial step toward ensuring that the health of U.S. servicewomen is protected.

**Congress should act now to end the ban on abortion coverage in cases of rape and incest.  
The women of our Armed Forces who serve and sacrifice deserve more from their country.**

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<sup>11</sup> Sadler et al., *supra* note 9 at 266.

<sup>12</sup> See *Use of Composite Risk Management (CRM) to Identify Risk Factors to Reduce or Eliminate the Risk of Sexual Assault*, U.S. ARMY SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM, [http://www.sexualassault.army.mil/ALARACT\\_crm.cfm](http://www.sexualassault.army.mil/ALARACT_crm.cfm) (last visited May 6, 2011).

<sup>13</sup> 2011 HHS Poverty Guidelines, 76 Fed. Reg. 13, 3637-8 (Jan. 20, 2011).

<sup>14</sup> Boonstra, *supra* note 3.

<sup>15</sup> Press Release, ACLU, SWAN and ACLU File Lawsuit Seeking Military Sexual Trauma Records Withheld By Federal Government (Dec. 13, 2010), <http://www.aclu.org/womens-rights/swan-and-aclu-file-lawsuit-seeking-military-sexual-trauma-records-withheld-federal-gov>.