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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To ensure affordable abortion coverage and care for every person, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. LEE of California introduced the following bill; which was referred to the Committee on _____

A BILL

To ensure affordable abortion coverage and care for every person, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Equal Access to Abortion Coverage in Health Insurance Act of 2021'' or the ''EACH Act of 2021''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) All people should have access to abortion services regardless of actual or perceived race, color, ethnicity, language, ancestry, citizenship, immigration status, sex (including a sex stereotype; pregnancy, childbirth, or a related medical condition; sexual orientation or gender identity; and sex characteristics), age, disability, or sex work status or behavior.

(2) A person's income level, wealth, or type of insurance should not prevent them from having access to a full range of pregnancy-related health care, including abortion services.

(3) No person should have the decision to have, or not to have, an abortion made for them based on the ability or inability to afford the health care service.

(4) Since 1976, the Federal Government has banned the use of Federal funds to pay for abortion services and allows for exceptions only in very narrow circumstances. This ban affects people of reproductive age in the United States who are insured through the Medicaid program, as well as individuals who receive insurance or care through other federally-funded health programs and plans.

(5) Women make up the majority of Medicaid enrollees (54 percent) and, in 2019, approximately 14 million women of reproductive age relied on the program for care. Due to systematic barriers and discrimination, a disproportionately higher number of women of color and Lesbian, Gay, Bisexual, Transgender, or Queer (LGBTQ) individuals are enrolled in the program.

(6) Women of color are more likely to be insured by the Medicaid program. Nationwide, 29 percent of Black women and 25 percent of Hispanic women aged 15–49 were enrolled in Medicaid in 2018 , compared with 15 percent of white women.

(7) In the aggregate, nearly one-fifth (19 percent) of Asian American and Pacific Islander women are enrolled in the Medicaid program, while enrollment rates for certain Asian ethnic subgroups are much higher (at 62 percent of Bhutanese women, 43 percent of Hmong women and 32 percent of Pakistani women).

(8) Medicaid also provides coverage to more than one in four (27 percent) nonelderly American Indian and Alaska Native (AIAN) adults and half of AIAN children.

(9) In a 2014 nationwide survey of LGBT people with incomes less than 400 percent Federal Poverty Level (FPL), 61 percent of all respondents had incomes in the Medicaid expansion range—up to 138 percent of the FPL—including 73 percent of African-American respondents, 67 percent of Latino respondents, and 53 percent of white respondents. Another survey found that 32 percent of Asian and Native Hawaiian/Pacific Islander transgender people were living in poverty.

(10) Of women aged 15–44 enrolled in Medicaid in 2018, 55 percent lived in the 34 States and the District of Columbia where Medicaid does not cover abortion services except in limited circumstances. This amounted to 7.2 million women of reproductive age, including 3 million women living below the FPL. Of this population, Black, Indigenous, and other People of Color (BIPOC) women accounted for 51 percent of those enrolled.

(11) The Indian Health Service (IHS) is the federally funded health program for American Indians and Alaska Natives. The IHS serves a population of approximately 2.56 million and as a federally funded system, since 1988, it has been barred from providing abortion services except for very lim-

ited cases. American Indians and Alaska Natives often face higher levels of poverty and limited access to health care for a number of intersecting oppressions thus leaving them without recourse for the federal ban on abortion services.

(12) Moreover, 26 States also prohibit coverage of abortion services in the marketplaces and 11 prohibit coverage in private health insurance plans under the Patient Protection and Affordable Care Act of 2010 (Public Law 111–148).

(13) A recent report details how restrictions on abortion services coverage interfere with a person's individual decision-making, with their health and well-being, with their economic security, with their vulnerability to intimate partner violence, and with their constitutionally protected right to a safe and normal health care service.

(14) About 25 percent of women covered by Medicaid seeking abortion services must carry their pregnancies to term because they are unable to obtain funds for their care. Government-imposed barriers to abortion services restrict people's decisions on if, when, and how to parent, and have long-lasting and life-altering harmful effects on the pregnant person, their families and their communities. Those

who seek and are denied abortion services are more likely to remain in or fall into poverty than those who access the care they need.

(15) Restrictions on abortion service coverage have a disproportionately harmful impact on women with low incomes, women of color, immigrant women, LGBTQ people, and young women. Additionally, numerous state-imposed barriers make it disparately difficult for low-income people, people of color, immigrants, LGBTQ people, and young people to access the health care and resources necessary to prevent unintended pregnancy or to assure that they are able to carry healthy pregnancies to term. Furthermore, young people of reproductive age (15–24) are more likely to have a lower income than those older than that, and this income gap is greater for young BIPOC. More than 40 percent of youth and children under age 19 and almost a quarter of young people age 19 to 25 have health insurance through government programs. Without insurance coverage for abortion services, young people are at greater risk of not having the economic means to afford care outside of insurance. Young people face disproportionate access barriers to abortion including parental involvement requirement (notification

and consent) and cost, in addition to barriers to contraception and inadequate and incomplete sexual(ity) education. These challenges, which are magnified for BIPOC and queer, trans, and nonbinary youth, can cause significant delays in access to needed care, and could ultimately harm the life of the young person seeking abortion services. These institutionalized barriers deny young people's right to bodily autonomy and can force young people to encounter an abusive parent or guardian, ignores trusted relationships young people may have with adults other than a parent or legal guardian, and in the case of the judicial bypass process, may force young BIPOC to interact with a legal system that has historically targeted and caused harm to communities of color.

(16) These and other government-created and government-institutionalized barriers—including the restriction on funding for abortion services in Federal programs—exacerbate and create poverty and racial inequality in income, wealth-generation, and access to services.

(17) Access to health care, including abortion services, promotes the general welfare of people living in the United States. Singling out abortion services for funding restrictions in health care programs

otherwise designed to promote the health and wellbeing of people in the United States has cost pregnant people their lives, their livelihoods, their ability to obtain or maintain economic security for themselves and their families, their ability to meet their family's basic needs, their ability to continue their education without disruption, and their ability to break free of abusive relationships.

(18) Like other health care and health insurance markets in the United States, abortion services and public insurance programs are commercial activities that affect interstate commerce. Providers and patients travel across state lines, and otherwise engage in interstate commerce, to provide and access abortion services. Material goods, services, and federally-regulated medications used in abortion services circulate in interstate commerce.

(19) Congress has the authority to enact this Act to ensure affordable coverage of abortion and other services pursuant to—

(A) its powers under the necessary and proper clause of Section 8, Article I of the Constitution of the United States;

(B) its powers under the commerce clause of Section 8, Article 1 of the Constitution of the United States;

(C) its powers to tax and spend for the general welfare under Section 8, Article 1 of the Constitution of the United States; and

(D) its powers to enforce section 1 of the Fourteenth Amendment under Section 5 of the Fourteenth Amendment to the Constitution of the United States.

(20) Congress has exercised these constitutional powers to create, expand, and insure health care access for people in the United States for decades. Pursuant to this constitutional authority, Congress has enacted, and subsequently reauthorized, numerous health care programs including but not limited to title XVIII of the Social Security Act of 1965 (Medicare); title XIX of the Social Security Act of 1965 (Medicaid); and title XXI of the Social Security Act (Children's Health Insurance Program, enacted in 1997).

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ABORTION SERVICES.—The term ''abortion services'' means an abortion and any services related

to and provided in conjunction with an abortion, whether or not provided at the same time or on the same day as the abortion.

(2) HEALTH PROGRAM OR PLAN.—The term ''health program or plan'' means the following health programs or plans that pay the cost of, or provide, health care:

(A) The Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(B) The Children's Health Insurance Program under title XXI of the Social Security Act (42 U.S.C. 1397 et seq.).

(C) The Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(D) A Medicare supplemental policy as defined in section 1882(g)(1) of the Social Security Act (42 U.S.C. 1395ss(g)(1)).

(E) The Indian Health Service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(F) Medical care and health benefits under the TRICARE program (10 U.S.C. 1071 et seq.).

(G) Benefits for veterans under chapter 17 of title 38, United States Code, and medical care for survivors and dependents of veterans (38 U.S.C. 1781 et seq.).

(H) Benefits under the uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the Department established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note).

(I) Medical care for individuals in the care or custody of the Department of Homeland Security pursuant to any of sections 235, 236, or 241 of the Immigration and Nationality Act (8 U.S.C. 1225, 1226, 1231).

(J) Medical care for individuals in the care or custody of the Department of Health and Human Services, Office of Refugee Resettlement under section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

(K) Medical assistance to refugees under section 412 of the Immigration and Nationality Act (8 U.S.C. 1522).

(L) Other coverage, such as a State health benefits risk pool, as the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury, recognizes for purposes of section 5000A(f)(1)(E) of the Internal Revenue Code of 1986 (26 U.S.C. 5000A(f)(1)(E)).

(M) The Federal Employees Health Benefit Plan under chapter 89 of title 5, United States Code.

(N) Medical care for individuals under the care or custody of the Department of Justice pursuant to chapter 301 of title 18 (18 U.S.C. 4001 et seq.).

(O) Medical care for Peace Corps volunteers under section 5(e) of the Peace Corps Act (22 U.S.C. 2504(e)).

(P) Other government-sponsored programs established after the date of the enactment of this Act.

SEC. 4. ABORTION COVERAGE AND CARE REGARDLESS OF INCOME OR SOURCE OF INSURANCE.

(a) ENSURING ABORTION COVERAGE AND CARE THROUGH THE FEDERAL GOVERNMENT IN ITS ROLE AS AN INSURER AND EMPLOYER.—Each person insured by, enrolled in, or otherwise receiving medical care from health programs or plans described in section 3(2) shall receive coverage of abortion services. Health programs or plans described in section 3(2) shall provide coverage of abortion services.

(b) ENSURING ABORTION COVERAGE AND CARE THROUGH THE FEDERAL GOVERNMENT IN ITS ROLE AS A HEALTH CARE PROVIDER.—In its role as a provider of health services including in health programs and plans described in section 3(2), the Federal Government shall ensure access to abortion services for individuals who are eligible to receive medical care in its own facilities or in facilities with which it contracts to provide medical care.

(c) PROHIBITING RESTRICTIONS ON PRIVATE INSURANCE COVERAGE OF ABORTION SERVICES.—The Federal Government shall not prohibit, restrict, or otherwise inhibit insurance coverage of abortion services by State or local government or by private health plans.

SEC. 5. REPEAL OF SECTION 1303.

(a) IN GENERAL.—Section 1303 of the Patient Protection and Affordable Care Act (42 U.S.C. 18023) is repealed.

(b) CONFORMING AMENDMENTS.—

(1) BASIC HEALTH PLANS.—Section 1331(d) of the Patient Protection and Affordable Care Act (42 U.S.C. 18051(d)) is amended by striking paragraph (4).

(2) MULTI-STATE PLANS.—Section 1334(a) of the Patient Protection and Affordable Care Act (Public Law 111–148) is amended—

(A) by striking paragraph (6); and

(B) by redesignating paragraph (7) as paragraph (6).

SEC. 6. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the Federal Government, acting in its capacity as an insurer, employer, or health care provider, should serve as a model for the Nation to ensure coverage of abortion services; and

(2) restrictions on coverage of abortion services in the private insurance market must end.

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to have any effect on any Federal, State, or local law that includes

more protections for abortion coverage or services than those set forth in this Act.

SEC. 8. RELATIONSHIP TO FEDERAL LAW.

This Act supersedes and applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the date of enactment of this Act and is not subject to the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

SEC. 9. SEVERABILITY.

If any portion of this Act or the application thereof to any person, entity, government, or circumstances is held invalid, such invalidity shall not affect the portions or applications of this Act which can be given effect without the invalid portion or application.