

Off Base: The U.S. Military's Ban on Privately Funded Abortions

By Heather D. Boonstra

Earlier this year, the Senate Armed Services Committee moved toward restoring abortion rights to some 200,000 active duty women in the U.S. military, by voting to reverse current policy prohibiting the performance of abortions in military facilities, even in cases when U.S. servicewomen pay out-of-pocket for the procedure. The amendment to change the policy was sponsored by Sen. Roland Burris (D-IL) and is now attached to the pending Department of Defense (DOD) authorization bill.

The policy's impact is particularly devastating for service members, as well as military spouses and dependents, who are living overseas and depend on their base hospitals for medical care. If she is living in a country where safe abortion services are unavailable, the only safe option for such a woman when confronting an unintended pregnancy is to travel back to the United States or find a provider in another country where abortion is legal. Supporters of the current policy who contend that abortion is immoral and should be illegal argue that allowing women to obtain an abortion at military facilities, even if they pay for it themselves, is tantamount to government sanctioning of the procedure, and that it would effectively turn military hospitals into abortion clinics. But proponents of the Burris amendment argue that the debate is not about whether or under what circumstances abortion should be legal, but about restoring equal access and rights to U.S. military personnel—especially those serving overseas. They argue that the current ban on privately funded abortions is cruel and unfair, and that it compromises the health and safety of U.S. servicewomen.

Abortion Policy in the Military

The political debate over the availability of abortion services at U.S. military medical facilities has been waged with varying intensity over the last four decades and has largely overshadowed the fact that many servicewomen will face an unintended pregnancy during their military career (see box, page 4). To understand the current ban on privately funded abortions, it is necessary to take a step back and consider the ban on public funds to perform abortions in military facilities.

Public Funding Ban

It may be hard to believe today, but public funding of abortion at military facilities was available, albeit with some limitations, for military personnel and their dependents during much of the 1970s. Memoranda to the surgeons general of the military departments issued in 1970—three years before the U.S. Supreme Court legalized abortion nationwide in *Roe v. Wade*—stated that, although no physician was required to perform an abortion if doing so would be against his or her religious, moral or ethical beliefs, abortions could be provided in military facilities “when medically indicated or for reasons involving mental health and subject to the availability of space and facilities and the capabilities of the medical staff.” Moreover, these memoranda stated unequivocally that abortions could be provided without regard to state laws—significant because, at the time, 30 states and the District of Columbia prohibited abortion except in cases of life endangerment, and three states (Louisiana, New Hampshire and Pennsylvania) prohibited all abortions without exception.

Although it received little publicity, DOD's policy prompted considerable opposition from antiabortion activists, and in 1971, then-President Nixon issued a statement overruling the DOD. Citing his own personal and religious beliefs on abortion, the president directed that the policy on abortions at military bases "be made to correspond with the laws of the states where those bases are located." That policy remained in effect until 1975, when the DOD directed medical facilities to provide abortions in accordance with the principles of the *Roe v. Wade* decision. Between August 31, 1976 and August 31, 1977, approximately 26,000 U.S. servicewomen and military dependents obtained an abortion in military hospitals or under the military's health care system.

In 1978, however, antiabortion members of Congress reopened the abortion funding debate and successfully amended the FY 1979 DOD appropriations bill to prohibit the use of federal funds to provide abortion services. Congress renewed these restrictions every year until 1984 (albeit with some modifications), when the ban was made permanent in the FY 1985 DOD authorization bill. The law prohibits the use of DOD funds to perform abortions, except in cases of life endangerment.

Private Funding Ban

Meanwhile, as the battle over the use of public funds for abortion intensified, military facilities in several countries around the world where safe abortion services are not locally available established a system by which U.S. servicewomen and military dependents could "pre-pay" for an abortion in military facilities using their own funds. Under this system, military hospitals overseas performed approximately 1,300 privately funded abortions in FY 1979, according to a 2002 Congressional Research Service report on abortion services at military facilities. During the 1980s, however, the number of abortions performed in military hospitals dropped dramatically: By the mid-1980s, military hospitals overseas performed roughly 30 abortions annually.

The Reagan administration put a stop to this practice entirely in 1988. Without consulting Congress, DOD established a policy that

extended the ban on DOD funds to prohibit women from using their own funds to obtain an abortion at military facilities overseas. In a memorandum dated June 21, 1988, DOD acknowledged that although "the informal practice of performing so called 'pre-paid' abortions in very limited circumstances outside the United States does not violate the legal prohibition...it might suggest insensitivity to the spirit of the Congressionally-enacted policy of withholding government involvement in the provision of abortions."

Withstanding annual drives to overturn it legislatively, the 1988 directive remained in place until 1993, when then-President Clinton directed DOD to reverse its policy. The executive order lifted the ban on privately paid abortions in military hospitals, permitting U.S. servicewomen and military dependents stationed outside the United States, to the extent feasible and in accordance with host nation laws regarding abortion, to "have access to abortion services comparable to that of women in the United States." Moreover, the order made clear that health care providers who, as matter of conscience or moral principle, objected to performing abortions would not be required to do so.

Clinton's order settled the issue until 1995, when Congress—under the newly installed leadership of antiabortion Republicans—imposed a statutory ban on the performance of abortions in military hospitals, even when paid for with private funds. Under the ban, a woman could pay for an abortion at military facilities using her own funds only in cases of rape, incest or life endangerment. (In practice, abortions in the case of life endangerment should be funded by the DOD.)

Why Lift the Ban?

Defenders of the ban, led by Sen. Roger Wicker (R-MS) and Rep. Todd Akin (R-MO), along with the U.S. Conference of Catholic Bishops, have raised the specter that if the Burris amendment were passed, military hospitals worldwide would become "abortion mills." They contend that to allow abortions in military facilities is tantamount to direct government involvement in

abortion, and they insist that military doctors and nurses would be forced to perform abortions in violation of their moral or religious beliefs. Summing up their objection to the Burris amendment, antiabortion members of the House wrote in a June 2010 letter to the congressional leadership, “Expanding abortion in government owned and operated military medical facilities is simply unconscionable and morally unacceptable. Our military facilities should be a place of healing and life-saving. They should not be in the business of destroying the unborn.”

Proponents of the Burris amendment—ranging from abortion rights groups, such as NARAL

Prochoice America and the American Civil Liberties Union, to organizations that advocate for servicewomen, such as the Alliance for National Defense and the Women’s Research & Education Institute—say that this debate is not about the morality or legality of abortion, but whether women who enlist in the military and are serving their country overseas should be penalized as a result. To the contrary, U.S. military personnel deserve “the highest quality care,” Burris said in a statement released shortly after the committee vote, and “that includes allowing women and their families the right to choose at facilities operated under the Department of Defense.”

Women, Contraceptive Use and Unintended Pregnancy in the Military

Because the military must ensure that active duty personnel are healthy and fit for duty, it has a long history of providing sexual health education and medical services. Early efforts, initiated during World War II, focused on teaching soldiers and sailors—then almost exclusively male—about the consequences of so-called venereal disease and promoting condoms. Today, some 200,000 active duty military personnel—or 17% of the 1.4 million total—are women (see chart), and education and service provision efforts are now accordingly focused on unintended pregnancy prevention as well. In the Navy and Marine Corps, for instance, new female recruits receive a comprehensive medical examination upon arriving at boot camp, which includes contraceptive counseling and a pelvic exam. In addition, all Navy and Marine personnel receive information annually about prevention of pregnancy and sexually transmitted infections.

Women in the military have access to contraceptive methods and other reproductive health services free of

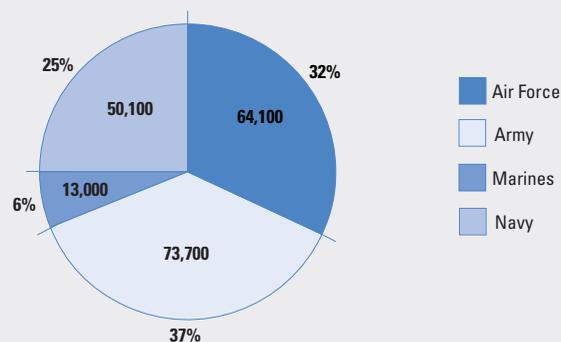
charge or at low cost through a network of health care providers under TRICARE, the DOD’s health care program. Condoms are accessible in numerous venues, and in February 2010, emergency contraception was added to the basic core formulary—a list of medications that are required to be stocked at all military health facilities.

The practical reality, however, is that U.S. servicewomen stationed in over-

seas or remote locations may have particular difficulty accessing the services they need and using contraceptives consistently. In the field or on a ship, active duty members may be limited in the choice of health care services and supplies available. Privacy is also a concern: Base camp clinics, for example, are very small and may lack interior walls and doors, and women may be concerned that their medical issues will not be kept confidential. Women also report chal-

WOMEN IN THE MILITARY

Some 200,000 women are on active duty in one of the four branches of the U.S. military under the Department of Defense.



Source: Department of Defense, 2009.

Burriss amendment proponents stress that the ban on privately funded abortions in military facilities is particularly onerous for women stationed overseas. Although abortions under current policy are not performed in military hospitals in the United States, a woman stationed here at least has the option to leave the base and seek services at a private clinic, provided she has transportation and can pay for the procedure. (In general, the closer a base is to a major metropolitan area, the more accessible abortion services will be.) Overseas, abortion laws vary widely, and many of the countries that host the largest contingents of U.S. service members are the most restrictive (see chart, page 6). And even in countries where

abortion is legally available, U.S. servicewomen may face language and cultural differences that make them reluctant to seek care locally.

Furthermore, supporters of the Burriss amendment argue the ban on privately funded abortions is costly—both to the military itself and to its servicewomen. The financial impact to the military can be considerable. Pregnancy accounts for a substantial proportion of attrition from the military, and attrition can be costly: Training alone is estimated to cost at least \$50,000 for each enlistee. Moreover, according to a June 2010 letter to congressional leadership from the Service Women’s Action Network

enges in the work environment (particularly during deployment, when working long hours across multiple time zones) that make it difficult for them to use contraceptives consistently. Add to this the facts that binge drinking in the military is common, and female recruits tend to be young, single, away from home for extended periods and building new relationships, and are outnumbered by men seven to one.

At the same time, sexual harassment and assault within the military is a pervasive problem. A review of the literature, published in the January 2010 issue of Aggression and Violent Behavior, concluded that, despite the variability of methodology across prevalence studies, rates of sexual assault in the military are very high: Between 9.5% and 33% of women report experiencing an attempted or completed rape while serving in the military. If sexual harassment and other forms of sexual assault are included, the rates reported during military service by women range from 22% to 84%. According to DOD, 2,670

cases of sexual assault (defined to include rape, nonconsensual sodomy and wrongful sexual contact) occurred in FY 2009—an 11% increase in reporting from FY 2008. Although the department attributes the rise largely to an upward trend in the reporting, not an increase in crime, the actual number is nonetheless likely much higher because most sexual assaults are still not reported. The department’s own statistics indicate that only 20% of unwanted sexual contacts are reported to a military authority.

For all these reasons, unplanned pregnancy is a major concern for the military. Although efforts to estimate unintended pregnancy rates in the military have been hampered by select samples and methodological limitations, research indicates that the proportion of pregnancies that are unintended is higher than the national percentage of 49%. Navy surveys consistently show that approximately two-thirds of pregnancies among enlisted women are unintended. A survey of active duty women in the

Air Force, published in the January 2005 issue of Military Medicine, found that 54% of pregnancies are unintended. And data from two surveys of active duty women in the U.S. Army, conducted in the late 1990s, suggests that 55–65% of pregnancies are unintended. Moreover, according to the 2005 Department of Defense Survey of Health Related Behaviors Among Active Duty Military Personnel, about 15% of servicewomen aged 18–25 had an unintended pregnancy in the last year. In contrast, about 10% of civilian women in this age-group become pregnant unintentionally each year.

TROOPS OVERSEAS

U.S. military personnel are stationed or deployed in more than 150 countries around the world—each with its own laws on abortion. The largest contingents of troops are in Iraq and Afghanistan, where abortion laws are highly restrictive.

	Number stationed or deployed	Abortion policy
Iraq	151,000	Banned in all cases
Afghanistan	71,000	Banned with exceptions (life)
Djibouti	1,055	Banned with exceptions (life, physical health)
Republic of Korea	24,655	Banned with exceptions (life, physical health, rape, incest, fetal anomaly); requires spousal consent
Japan	34,668	Permitted on socioeconomic grounds; requires spousal consent
United Kingdom	9,015	Permitted on socioeconomic grounds
Turkey	1,592	Permitted up to 10 weeks' gestation; requires spousal consent
Portugal	700	Permitted up to 10 weeks' gestation
Italy	9,660	Permitted up to 90 days' gestation
Belgium	1,253	Permitted up to 14 weeks' gestation
Germany	52,440	Permitted up to 14 weeks' gestation
Spain	1,262	Permitted up to 14 weeks' gestation
Bahrain	1,337	Permitted without restriction
Netherlands	505	Permitted without restriction

Note: Countries with greater than 500 personnel (men and women). Sources: Most recent available data from Department of Defense and the Center for Reproductive Rights.

(SWAN), an advocacy organization for service-women and women veterans, “losing personnel while operationally deployed has a direct impact on the ability of the unit to complete its mission and there is much research to show that replacing members of a military unit during wartime has a detrimental effect on unit cohesion. Both of these present a greater threat to mission accomplishment than removing the abortion ban.”

In addition, the ban clearly compromises women’s health and safety, as it necessarily delays women from having the procedure. Although abortion is a relatively safe procedure, the risk of death increases exponentially with increased gestational length, from a rate of 0.1 deaths per 100,000 legally induced abortions at or before eight weeks’ gestation to 8.9 deaths after 20 weeks. Servicewomen who make the decision to have an abortion must first seek approval from their commanding officer to take leave from their military duty and return to the United States or a country where abortion is legal. According to a 2002 Government Accountability Office (GAO) report on health care benefits for women in the military, “For active duty women, explaining their specific ailment to

their commanding officer (usually male) or appearing like they need special treatment may make them reluctant to seek the care they need.” The GAO goes on to say that, in some cases, commanders have not been adequately trained on the importance of women’s health care and may be reluctant to allow active duty members time away from duty. Indeed, commanders are not required to grant any particular leave request and, in war zones, leave may not be available.

Moreover, restrictions fall hardest on the most junior of enlisted ranks, who are also the most likely to have an unintended pregnancy. Assuming they are able to make it to the United States, the cost of an abortion can be substantial and only

increases with gestational age. Junior enlisted personnel with three years’ experience earn no more than \$23,000 per year. The average charge for an abortion in the United States is \$430 at 10 weeks’ gestation, but jumps to \$1,260 at 20 weeks. Thus, the longer it takes for women in the military to obtain an abortion, the harder it is for them to afford it.

Finally, supporters stress that the Burris amendment does not challenge the ban on federally funded abortions in the military and that it would not disturb the long-standing “conscience clauses” that each branch of the armed services has in place to accommodate individual medical personnel who object to abortion. If the ban were lifted, women in the military would be required to pre-pay for the cost of the procedure, including institutional overhead costs—as was required during the 1980s. No taxpayer dollars would be spent covering the costs of abortion care at military facilities overseas. Furthermore, each branch of the military has a standing policy that allows medical personnel and health care providers who object to abortion as a matter of moral or religious principle to opt-out of per-

forming or assisting in the procedure. If the ban on privately funded abortions were lifted, these policies would remain intact, said Senate Armed Services Committee Chair Carl Levin (D-MI). Abortion would be “only done on a voluntary basis by a doctor. There is no requirement, in other words, that doctors in military hospitals perform the abortions.” But, Levin added, lifting the ban would allow women to prepay for their abortion, at “no expense to the government.”

Only the First Step

Looking ahead, it would appear that prospects for lifting the ban this year are uncertain at best. Republican leaders have threatened to block Senate passage of the DOD bill over the Burris amendment, as well as the measure’s other hot-button issue—language also added by the Senate Armed Services Committee providing for repeal of the military’s “don’t ask, don’t tell” policy on homosexuality. Meanwhile, although the House voted to repeal the don’t ask, don’t tell policy, the House did not take any action with respect to abortion in passing its version of the bill, and House Armed Services Committee Chair Ike Skelton (D-MO) has already said he is opposed to lifting the ban. “Chairman Skelton is pro-life and has stood for years against repealing this abortion prohibition within the defense department,” said a spokeswoman for the congressman. “His stance on the issue has not changed.”

Nevertheless, the Burris amendment at a minimum has highlighted the challenges facing U.S. servicewomen needing safe and time-sensitive abortion services, and the campaign to repeal the private funding ban, if not successful this year, will no doubt continue. Moreover, although lifting that ban would go a long way toward

restoring the rights of women who serve overseas, Burris amendment supporters stress it is only a first step—and a limited one at that. “Even if the amendment were adopted, the long-standing ban on the use of federal funds for abortion at military facilities would remain,” says SWAN legal and policy adviser, Rachel Natelson, “And for military women stationed overseas who rely on the government for their health care, access to abortion services would remain significantly challenged.” This is particularly true because these women also rely on providers available on military bases, who may not be trained or willing to perform an abortion.

Despite these limitations, supporters of the Burris amendment contend that with the ongoing wars in Iraq and Afghanistan, it is time that the United States stop treating its women in uniform as second-class citizens. It is fundamentally unjust, they say, to deny women who have volunteered to serve their country from exercising their legally protected right simply because of where they are stationed. “Women in our armed services sacrifice each and every day to serve our country,” said Sen. Patty Murray (D-WA) during the 1996 debate on the ban on privately funded abortions. “They should receive our utmost respect, honor, and gratitude. They certainly do not deserve to be told they must check their constitutional rights at the door when they are stationed overseas.” www.gutmacher.org

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