



**SUPPORT THE SHAHEEN AMENDMENT**  
**To the Fiscal Year 2012 National Defense Authorization Act (NDAA)**

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

**November 2011**

More than 400,000 women currently serve in the United States Armed Forces. At a time when 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 our 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. 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

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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).

the next several years on the Department of Defense Appropriations Act, with minor changes to the exception language.

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.

Congress should not treat servicewomen and military families as second-class citizens in this way.

- **Sexual assault victims in the military deserve the same access to care as other victims of sexual assault.**

Military sexual assault continues to be a problem. In fiscal year 2010, 3,158 military sexual assaults were reported, many of which were reports of rape.<sup>7</sup> One study estimated that 75% of servicewomen who have been raped do not report it.<sup>8</sup>

Further troubling is that military sexual assault disproportionately affects the junior enlisted<sup>9</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>10</sup> A junior enlisted woman with three years’ experience

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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> 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>9</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>10</sup> 2011 HHS Poverty Guidelines, 76 Fed. Reg. 13, 3637-8 (Jan. 20, 2011).

makes around \$23,000.<sup>11</sup> The last thing a servicewoman should have to worry about when dealing with the trauma of an assault (rape, sexual assault, and sexual harassment are the primary causes of PTSD for women in the military)<sup>12</sup> is struggling to find the funds to end a resulting pregnancy.

- **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 servicewomen commit their lives to defending our freedoms; we owe it to them to treat them with compassion and fairness.

**The Senate should act now to end the ban on abortion care for servicewomen and military dependents in cases of rape and incest by voting for the Shaheen Amendment.**

Our women in uniform deserve nothing less from their country.

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<sup>11</sup> Boonstra, *supra* note 3.

<sup>12</sup> Brittany L. Stalsburg, *Rape, Sexual Assault and Sexual Harassment in the Military: The Quick Facts*, SERVICE WOMEN'S ACTION NETWORK (citing Street et al., Sexual harassment and assault experienced by reservists during military service: Prevalence and health correlates, 45 J. of Rehabilitation Res. & Dev. 409-20 (2008); Kang et. al., *The role of sexual assault on the risk of PTSD among Gulf War veterans*, 15 Annals of Epidemiology 191-5 (2005)).