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Abortion and Conscience Problems in the Senate Health Care Reform Bill

The “Patient Protection and Affordable Care Act” (Senate substitute for H.R. 3590), introduced by Senate Majority Leader Harry Reid (D-NV) on November 19, does not reflect current longstanding federal policies which reject abortion funding and mandates and support conscience protection in health care.

The bill includes language based on an amendment sponsored in the House by Rep. Lois Capps (D-CA). The Capps amendment, supported chiefly by members who strongly support abortion, was advertised as a “compromise” that reflects current laws such as the Hyde amendment.

The reality is just the opposite. The Hyde amendment, and parallel provisions in other federal laws, bar federal funding of (1) most abortion procedures, and (2) health benefits packages that include such abortions.¹ **The Senate bill violates the first policy in its government-run health plan, and violates the second in its subsidies for privately sponsored health plans.**

Community Health Insurance Option: The bill creates a government-run health plan (the “community health insurance option”), established and managed by the Secretary of Health and Human Services, to compete with private health plans in each statewide Exchange (sec. 1323). The Secretary may mandate that it cover unlimited abortions, in direct contradiction to all other federal programs; in addition, individual states may mandate elective abortion coverage for purchasers of this plan even if the Secretary does not (sec. 1303 (a)(1)(C)). While the bill tries to finesse the issue through an unprecedented bookkeeping exercise (discussed further below), elective abortion coverage mandated by the Secretary **will be paid for with federal funds.** Purchasers will pay their premiums to the federal government, in amounts determined by the government, and the government will use these funds to pay for abortions. Federal funds will also be disbursed directly from the Treasury for “start-up” and to provide initial reimbursement for medical procedures (sec. 1323 (c)). Some observe that the program may be run through contracts with non-profit entities; but these entities will be helping to administer a federal program, and the Secretary’s authority over them is the same as his or her authority over contractors in Medicare (sec. 1323 (e)). In short, the federal government will establish, and be responsible for, a federal program that provides elective abortions.

Subsidies for Private Plans: The bill allows each private insurer to decide whether its plan covers elective abortions (sec. 1303 (a)(1)(A)). Contrary to the Hyde amendment and similar laws, federal subsidies will help expand abortion coverage nationwide by supporting private health plans that cover unlimited abortions. Federal funds will help pay the administrative and other overall expenses of such plans.

The Abortion Surcharge: To create the illusion that federal funds will not be supporting abortion when they support pro-abortion plans, the amendment creates a distinct abortion surcharge, a fee of at least \$1 a month that each purchaser of such a plan *must* pay solely with his or her premium dollars to cover all abortion procedures that are ineligible for federal funding in a given year under the annual Hyde amendment. (Federal funding for many years has been only

for cases of rape, incest or danger to the mother’s life.) **Instead of forcing pro-life Americans to fund elective abortions with tax dollars, then, the federal government will create a system for making them pay for most abortions specifically and directly with their premium dollars.** Those who object to funding abortion will be told they could have chosen another plan – even if no plan without elective abortions meets their family’s budget and health needs. Oddly, families will be freed from having to pay the abortion surcharge only if Congress in a given year rescinds the annual Hyde amendment – because then elective abortions will be subsidized by everyone, through their taxes.

Government Abortion Mandate: The bill does state that each Exchange where health plans are sold must have at least one plan without elective abortions. However: (1) It also requires that each Exchange have at least one plan with such abortions. This is unprecedented, a federal mandate for private plans to cover abortions that every federal program for decades has excluded; the government would promote unlimited abortions by proxy. (2) The one plan excluding abortions may fail to meet families’ needs in other ways. (3) Like the funding policy above, this mandate will track the annual fate of the Hyde appropriations rider. If abortion supporters in Congress succeed in eliminating the Hyde amendment from a subsequent year’s appropriations bill, *every* private health plan sold to people needing federal subsidies could include unlimited abortions, which all purchasers (and all taxpayers) will be forced to subsidize.

Conscience Rights and Preemption of State Laws: On these issues the bill includes some helpful language, but also has serious flaws that depart from current law and need to be corrected: (1) The legislation will not preempt state laws regarding abortion coverage or procedural requirements for abortions; but it may still preempt state laws that protect conscience rights, or that actually restrict or prohibit abortion (e.g., laws against partial-birth abortion). (2) The legislation forbids health plans in the Exchange to discriminate against health facilities that do not provide abortions, if the facilities have a “moral or religious” objection. However, it also forbids them to “discriminate” against health facilities that perform abortions, regardless of their reason for doing so (e.g., profit motive). This “protection” could force pro-life health plans for the first time to include abortion facilities in their networks. (3) Beyond the context of abortion, the bill does nothing to reflect current federal laws on conscience rights (e.g., see the conscience exemption from the contraceptive mandate in the health program for federal employees).

Much-needed reform should not be a vehicle for abandoning or weakening federal policies on abortion and conscience. This bill must be amended to reflect longstanding current policies. On funding, for example, inserting the longstanding policy of the Hyde amendment into these bills (Hatch-Nelson amendment) would ensure that no one who opposes abortion is forced to pay for other people’s abortions in federally subsidized plans. This solution would not prevent insurers from covering abortion in their non-federally-funded plans, or from selling abortion coverage as a supplemental policy funded by the private dollars of those who choose it.

¹ See “Current Policy on Federal Abortion Funding: What is the Status Quo?”, www.usccb.org/prolife/issues/healthcare/abortion_funding_102309.pdf.