

March 18, 2010

Representative
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of FRCAction, the legislative action arm of Family Research Council, and the families we represent, I want to urge you to vote against the Rule governing debate on the House Reconciliation bill that would deem the Senate health care bill, the “Patient Protection and Affordable Care Act” (H.R. 3950), as passed. The Senate bill would both directly fund elective abortion and directly subsidize health plans that include elective abortion. Because the Senate bill directly appropriates funding for new health programs, it would bypass the annual Labor, Health and Human Services (LHHS) appropriations bill that has contained the Hyde amendment for over 30 years. The Hyde amendment has prevented LHHS appropriations funding for elective abortion or for plans that include coverage of elective abortion. With 240 votes, the House passed an amendment sponsored by Rep. Bart Stupak (D-MI) to the “America's Affordable Health Choices Act of 2009” (H.R. 3962) to keep abortion funding out of health care. However, the Senate bill does not contain the Stupak amendment to keep abortion funding out of health care.

The Stupak amendment, like the Hyde amendment, would prevent federal funding for elective abortion or subsidies for plans that cover abortion. It specifically would allow health plans on the government run Exchange to include abortion coverage and allow individuals to purchase such plans, or abortion riders, so long as government funds are not used. The Stupak amendment is consistent with the Hyde amendment and current government funding policy on abortion set forth by the Federal Employees Health Benefits Plan (FEHBP) and the State Children’s Health Insurance Plan. Like the Hyde amendment, laws governing both of these government programs prevent federal funding for abortion or funding for health plans that cover elective abortion. In direct contrast, the Senate bill would use government funds to pay for elective abortion and would subsidize health plans that include coverage for elective abortion in several ways.

Section 1303 (p. 2069) of the Senate bill would spend taxpayer money to purchase plans in the Exchange that cover elective abortion, a subsidy for abortion that directly conflicts with the principles of the Hyde amendment. The accounting gimmick established under this section allows issuers of plans that cover abortion to receive federal subsidies as long as these subsidies are kept in separate accounts from an abortion surcharge that everyone will be required to pay (pp. 2072-73). This scheme does not mitigate the fact that this section uses federal funds to pay for people to purchase health plans that include abortion coverage. In contrast, the Hyde amendment prohibits state Medicaid matching contributions from paying for abortion, but allows states to pay for abortion under a completely separate program. By analogy, if this Senate provision was applied to

Medicaid, it would have the effect of allowing states to use their Medicaid matching contribution to pay for abortion so long as the state kept the federal portion in a separate account. In contrast, the Hyde amendment prevents the federal and state portion of Medicaid from paying for abortion, leaving it up to the state to pay for abortion with non-Medicaid funds. The Stupak amendment follows current law, the Senate bill does not.

Worse, the Senate bill accounting gimmick requires individuals in plans that include abortion coverage to pay an abortion fee to be set by the Secretary of Health and Human Services (p. 2074). This provision also prevents health plans from informing participants about the abortion surcharge except in fine print (p. 2076). While this section allows states to opt out of abortion coverage in the Exchange, it does not allow states to choose to opt out of abortion coverage with specific exceptions. Instead, they must opt out of all abortion, including life, rape and incest, or cover all abortion (p. 2069). For those in states that do not opt out of such coverage, every person paying for those plans will be forced to pay for others' abortions because of the abortion fee. However, even those individuals in states that opt out of abortion coverage will still be required to pay for abortion coverage in other states that provide abortion coverage, because their federal taxes would be used to subsidize abortion in other states.

Despite the argument that the accounting gimmicks of Section 1303 somehow maintain the current Hyde restrictions, other sections of the bill would directly fund elective abortions in three new programs. Section 10503 of the Senate bill authorizes funds for community health centers and would appropriate \$7 billion for these community health centers (p. 2355-56). These appropriated funds would not be subject to the Hyde amendment in the annual LHHS appropriations bill, and therefore would directly pay for elective abortions. There are no restrictions or even accounting gimmicks for these funds. Second, Section 1322 of the Senate bill creates a non-profit co-op program that could be used for funding elective abortions (p. 180). The section appropriates \$6 billion for grants and loans to co-ops without any abortion funding restriction. Third, Section 1101 creates a temporary high risk health insurance pool program, and appropriates \$5 billion for this program, without any restriction on funding elective abortion (p. 45). Each of these Senate provisions would provide direct funding for elective abortion on a massive scale.

The Senate bill under Section 1334 replaced the public option with a multi-state plan to be managed by the Office of Personnel Management (p. 2086). However, unlike the FEHBP program on which it is modeled, the Senate bill allows the Director of OPM to contract and subsidize health plans that include elective abortion. This section would completely deviate from current law governing the FEHBP program which does not allow subsidies for plans that include abortion. This section of the Senate bill would violate long-standing practice by subsidizing abortion plans that span multiple states.

The Senate bill also contains an abortion coverage mandate. Section 1001 of the Senate passed bill would amend the Public Health Services Act and mandate that all individual and group health plans provide coverage for preventive care in accordance with guidelines offered by the United States Preventive Services Task Force (USPST). This Senate provision contains an amendment by Senator Barbara Mikulski (D-MD) that

would extend the mandate to include preventive services for women under guidelines written by the Health Resources and Services Administration (HRSA) (p. 21). If HRSA included elective abortion as one of the preventative services for women, then all group and individual health plans would be required by law to cover abortion. This scenario is very likely. Court rulings such as that which upheld the Hyde amendment in *Planned Parenthood Affiliates v. Engler* on January 16, 1996, made clear that abortion would be considered a covered medical service unless Congress excludes it. Since the Senate bill, and this section on preventative health benefits services for women, does not contain any abortion exclusion, this provision will guarantee that every health plan in the Exchange includes abortion coverage for women.

The Senate bill also reauthorizes the Indian Health Service Act without a permanent Hyde amendment. Section 10221 of the Senate bill provides for restrictions with a cross reference to the annual LHHS bill (p. 2175). However, if the Hyde amendment were not renewed on the LHHS bill in a given year, abortion on demand would be funded under this Act in Indian health services.

Last, the Senate passed bill does not contain the conscience protection provision sponsored by Rep. Bart Stupak and contained in the House health care bill (Sec. 259, p. 153). This provision incorporates the principles of the Weldon conscience language renewed each year in the LHHS appropriations bill to protect the conscience rights of health care workers who refuse to participate in abortion. Instead, the Senate rejected the Stupak provision in favor of a weaker nondiscrimination provision in Section 1303 (p. 2076). This section says only that health “plans” in the Exchange cannot discriminate against “providers” or “facilities” that are unwilling to participate in abortion. It does not prevent the Federal government from such discrimination, nor does it prevent providers and facilities from discriminating against individual health care workers who refuse to participate in abortion.

FRCAction opposes the Rule governing both the Reconciliation bill and the Senate bill because they will bypass current law on federal funding for abortion and will lead to the largest expansion of abortion since Roe v. Wade. FRCAction will also score negatively any missed votes or “present” votes on the Rule.

Sincerely,



Thomas McClusky
Senior Vice President