

202-378-8863

**RE: Opposition to Abortion Expanding  
Provisions of Build Back Better Reconciliation**

October 21, 2021

As Congress continues work on the massive so-called “Build Back Better” (BBB) reconciliation bill, numerous provisions related to healthcare remain under consideration. *National Right to Life urges you to oppose any legislation that funds elective abortion in violation of the longstanding principles of the Hyde Amendment.*

The Hyde Amendment is a limitation that is attached annually to the appropriations bill that includes funding for the Department of Health and Human Services (DHHS), and it applies only to the funds contained in that bill, including Medicaid. Like the annual appropriations bill itself, the Hyde Amendment expires every September 30th, the end of the federal fiscal year.

Funding bans, similar to Hyde, have been attached to programs funded through other funding streams [e.g., international aid (Helms Amendment), the federal employee health benefits program (Smith Amendment), the District of Columbia (Dornan Amendment), Federal prisons, Peace Corps, etc.]. Together, these various funding bans form a patchwork of policies that cover most federal programs and the District of Columbia.

The BBB utilizes massive federal subsidies for health programs that are “self-appropriated” — that is to say, they flow outside the regular funding pipeline of future DHHS appropriations bills and therefore would be entirely untouched by the Hyde Amendment.

This would mean a dramatic expansion of abortion, and a sharp departure from long-standing policy on abortion funding.

**Mandating of Abortion Coverage in Obamacare Plans in States that Did Not Expand Medicaid**

One of the more egregious provisions of the BBB reconciliation bill would override state law as it relates to bans on elective abortion coverage in certain state Obamacare exchanges.

The 2010 Affordable Care Act (Obamacare) authorized massive federal subsidies to assist many millions of Americans to purchase private health plans that cover abortion on demand – in a sharp departure from longstanding law. The Obama healthcare law allows premium assistance credits to be directed to health insurance coverage that includes abortion, where a state had not specifically banned it.<sup>1</sup>

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<sup>1</sup> The Affordable Care Act §1303(a)(1) 42 U.S.C. 18023 allows individual states to pass legislation to keep abortion out of the health plans that participate in the exchanges. But even where a state does this (as about half have done), it does not address the other fundamental problems with the Obamacare – and the taxpayers in such a state will still be

The 2010 Obamacare law (as would the BBB) created multiple new streams of federal funding that are “self-appropriated” flowing outside regular appropriations.

That said, the Obamacare law contains a provision that specifically permitted states to ban elective abortion coverage in their exchanges, and 25 states passed legislation doing so. The BBB, starting in 2024, would explicitly override the laws of 11 of these states – states that did not expand their Medicaid programs.<sup>2</sup> Further, the provisions mandate that Obamacare silver exchange plans cover *abortion and transportation for abortions* (without cost sharing) for the Medicaid coverage gap population. The BBB provides unlimited appropriations to finance this abortion expansion.

The BBB would mandate coverage in the abovementioned 11 states of “services described in subsection (a)(4)(C) of section 1905 of the Social Security Act [which are “family planning services”] ... which are not otherwise provided under such plan as part of the essential health benefits package described in section 1302(a).” Obamacare specifically excluded abortion as a required essential health benefit under section 1303, and this BBB provision would effectively override the 2010 law.

### **Permanent Expansion of Obamacare Subsidies**

The BBB would make the Obamacare expansions from the Covid-19 American Rescue Plan Act of 2021 permanent. This would further subsidize Obamacare exchange plans that cover abortion and subsidize millions of individuals taxpayer-funded plans that cover abortion on demand.

The Covid-19 American Rescue Plan Act of 2021 included the most significant step in the last 10 years toward expanding the Obamacare program. The legislation included a two-year expansion of the Obamacare premium subsidies. It not only increased the size of the subsidy for those already eligible for assistance (people making between 100 and 400 percent of the federal poverty level) but also extended subsidies to people earning more than 400 percent of the poverty level, capping payments at 8.5 percent of their income.

Making this expansion permanent, combined with the above-discussed BBB provisions, will have the effect of driving large numbers of people into plans that cover abortion.

### **Abortion Funding in a Medicaid Look-a-like Program**

The BBB includes a new “Medicaid-like” program which is administered entirely by the federal government. Twelve states did not expand Medicaid under Obamacare, and in these states, the newly created Medicaid-like program would not run through regular appropriations and would therefore not be subject to the Hyde Amendment.

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paying to subsidize abortion-covering insurance plans in other states, and the other abortion-expanding components of the law.

<sup>2</sup>([Energy & Commerce \(E&C\) § 30601\(c\)](#) (pg. 6-8) / [Ways & Means \(W&M\) § 137505\(c\)](#))

Funding for elective abortion would follow, under legal precedents, because the program would be self-financed by a permanent appropriation – circumventing the Hyde Amendment protections in regular appropriations.<sup>3</sup>

### **Abortion Funding in Reinsurance Payments and Cost-Sharing**

The BBB creates a permanent \$10 billion annual fund to states for reinsurance for individual market plans and cost sharing subsidies for Obamacare exchange plans.<sup>4</sup>

The BBB would appropriate billions in cost-sharing payments to be distributed to insurers, and these payments do not include Hyde-like restrictions. These massive payments would be expected to underwrite an estimated one thousand Obamacare plans that cover abortion on demand.

### **Billions in Funding to Public Health Grants Without Hyde Amendment Protections**

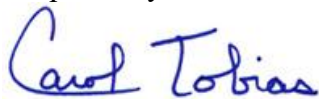
There are billions of dollars in the BBB allocated to a very long list of public health grants including but by no means limited to: \$75 billion to the CDC for “public health activities”, \$175 million for maternal health grants, \$3 billion for Advance Research Projects for Health Funding, \$85 million for education and training “addressing health risks associated with climate change for pregnant... individuals,” and \$30 million for maternal health digital tools, including telehealth services.

There is significant concern that these numerous programs, without Hyde or Dickey-Wicker protections, would be able to fund abortion training, research, and enable abortion-expansive policy.

**Due to the numerous provisions outlined above, we urge you to oppose any legislation that funds elective abortion in violation of the longstanding principles of the Hyde Amendment.**

Should you have any questions, please contact us via e-mail at [jpopik@nrlc.org](mailto:jpopik@nrlc.org). Thank you for your consideration of NRLC’s position on this important legislation.

Respectfully submitted,



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<sup>3</sup>[E&C § 30701 \(pg. 1-27\)](#)

<sup>4</sup>[E&C § 30603 \(pg. 16-28\) / W&M § 137506](#)