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December 18, 2009

Senator Robert P. Casey, Jr.  
United States Senate  
Washington, D.C. 20510

Dear Senator Casey

We have reviewed certain legislative language that you have proposed to add to Senator Reid's pending health care bill, the "Patient Protection and Affordable Care Act," by having it incorporated into a "manager's amendment" that Senator Reid is now preparing.

We thank you for your willingness to afford us the opportunity to comment on elements of your proposal, since the manager's amendment is being crafted behind closed doors, and Senator Reid intends to demand that the Senate adopt the entire voluminous manager's amendment without any opportunity for further amendment, and little opportunity even for debate.

Regrettably, however, your proposal completely fails to correct any of the major pro-abortion provisions in the underlying Reid bill. The National Right to Life Committee (NRLC) and the Pennsylvania Pro-Life Federation strongly oppose the language you have proposed regarding federal subsidies for insurance plans that cover abortion on demand. We believe that your proposed language in no way improves the highly objectionable provisions of the Reid bill that authorize subsidies for health plans that cover elective abortion, and that authorize federal mandates for private health plans to cover elective abortion, as discussed below.

The original Reid bill, unveiled on November 18, contained abortion-related provisions modeled on the pro-abortion Capps-Waxman language that had been rejected by the House of Representatives on November 7. The Reid language, like the Capps-Waxman language, would explicitly authorize exactly the things that the Hyde Amendment and its progeny prohibit in Medicaid and in the other existing federal health programs: direct government funding of elective abortion, and government subsidies for plans that cover elective abortion.

Section 1303 of the Reid bill explicitly authorizes federal premium subsidies for private health plans that cover elective abortions. This would be a drastic break from the policy established under longstanding federal laws, under which federal funds do not flow to health plans that pay for elective abortions. For example, the 260 private plans that participate in the Federal Employees Health Benefits program are prohibited by law from including elective abortion coverage, because they are federally subsidized. Likewise, in Medicaid, current law prohibits direct federal funding of abortion, and also federal funding of any fund that pays for abortions – and this ban covers even state matching funds.

In addition, the Reid bill (Section 1303) explicitly authorizes the Secretary of Health and Human

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Services to order coverage of all abortions through the proposed new federal insurance program (the “public option”). The bill contains language concocted to create an illusion that “federal funds” cannot be used for this purpose, but this is nothing more than an exercise in deceptive labeling – a political hoax. When a federal agency program pays for abortion, that is federal government funding of abortion, no matter what contrived definitions are adopted to attempt to disguise it. Federal agencies do not expend “private” funds. If a federal government insurance program (“public option”) is created, the “premiums” collected by the program will become federal government funds as surely as premiums paid to Medicare or taxes paid through the IRS. While press reports suggest that the manager’s amendment may remove the “public option” provisions from the Reid bill, a public option is included in the House-passed health care bill (H.R. 3962), and a number of key lawmakers and organizations have indicated their intent to fight to retain some form of a federal insurance program in the final bill that emerges from a House-Senate conference committee.

As you know, on November 7 the House of Representatives adopted the Stupak-Pitts Amendment to H.R. 3962, which applied longstanding Hyde Amendment principles to both the “public option” program and the premium-subsidy program in the House bill. The Nelson-Hatch Amendment to the Reid bill was closely patterned on the Stupak-Pitts Amendment, and likewise would have applied the Hyde Amendment principles to both the public option and premium-subsidy programs. Regrettably, the Nelson-Hatch Amendment was tabled on December 8, although you voted in favor of it.

The language that you have now proposed, in contrast, in no way mitigates the fundamental problems. Under your language, federal funds would be used to pay the premiums of private health plans that pay for elective abortion on demand, for tens of millions of Americans. This is completely unacceptable.

Your proposed provision to allow an individual enrollee to decline the coverage of abortion at best misses the point, and might even be considered to add insult to injury. Numerous public opinion polls demonstrate that sizable majorities of Americans believe that government programs should not pay for abortions or for insurance plans that cover abortion. In contrast, the Reid bill, as modified by your proposal, would effectively enshrine in federal law the doctrine that elective abortion is routine health care, and then deign to allow individual citizens to declare themselves to be conscientious objectors. This is a political fig leaf for a pro-abortion policy – and a cellophane fig leaf, at that.

The abortion provisions in the original Reid bill were very bad, but on December 3 the Senate actually made the bill worse on abortion, by adopting the Mikulski Amendment. The Mikulski Amendment empowers the Department of Health and Human Services to compel every private health plan in the country to include coverage of all abortions, merely by listing abortion as a “preventive” service. As NRLC explained in our November 30 letter to the Senate opposing the Mikulski Amendment, some pro-abortion authorities have already started describing abortion as a “preventive” health service. We regret that you disregarded our concern on this matter and voted for the Mikulski Amendment, which was narrowly adopted. We concur with the remarks made by Senator Ben Nelson, who voted against the Mikulski Amendment and who entered the following explanation in the *Congressional Record* of December 3 (pages S12277-78):

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**Mr. NELSON of Nebraska.** Madam President, this afternoon I voted against the amendment offered by my colleague, the senior Senator of Maryland, Ms. Mikulski. I voted against this amendment with regret because I strongly support the underlying goal of furthering preventive care for women, including mammograms, screenings, and family planning. **Unfortunately, the amendment did not incorporate language I suggested to specifically clarify that abortion would not be covered as a future preventive care service.** I appreciate the assurances from Senator Mikulski in a colloquy on the floor that abortion would not be covered as a preventive service, **but words do not supersede the language in the legislative text.** I do look forward to ways in which Congress can further preventive care services for women. [boldface added for emphasis]

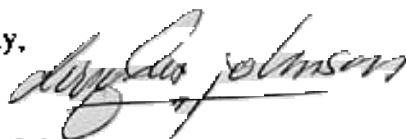
The Nelson-Hatch Amendment, tabled on December 8, would have prevented any political appointee from issuing a pro-abortion mandate that would govern every private health plan in the United States, whether based on the Mikulski Amendment or on any other provision in the massive Reid bill. Your proposal, however, does not incorporate any such anti-mandate language.

For all of these reasons, the Nelson-Hatch (Stupak-Pitts) language is the only acceptable solution to the far-reaching pro-abortion problems in the Reid bill. It is the solution that has already been embraced by the House of Representatives by a vote of 240 to 194, with the support of one-fourth of the Democrats in the House, including the majority of Democrats in the Pennsylvania House delegation. At this point in the process, however, the only way to get the Nelson-Hatch (Stupak-Pitts) language into the pending Senate bill is for Senator Reid himself to add it to the manager's amendment. **We respectfully urge that you discontinue your effort to paper over the sweeping pro-abortion provisions in the Reid bill, and instead join your colleague, Senator Ben Nelson, in urging Senator Reid to add the full Nelson-Hatch Amendment to his manager's amendment.**

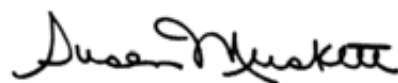
We understand that you have also proposed inclusion of a number of provisions related to the needs of certain pregnant women, adoption, and protection of health care providers who do not wish to participate in the provision of abortions (although not all of these provisions were included in the legislative language that we received from your staff). Some of these specific proposals have merit and have been endorsed by our organization in other contexts, but they would not in any way lessen the harm done by the provisions of the Reid bill that authorize federal subsidies for private insurance plans that cover abortion on demand and that authorize federal mandates that could force all private insurance plans to cover elective abortion. **We respectfully urge that you not employ, or allow others to employ, your essentially unrelated proposals as political camouflage for the pro-abortion provisions contained in the Reid bill.**

Thank you for your consideration of the position of National Right to Life and the Pennsylvania Pro-Life Federation on these critical matters.

Sincerely,



Douglas Johnson  
Legislative Director



Susan T. Muskett, J.D.  
Senior Legislative Counsel