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To the Honorable Members of the U.S. House of Representatives:

A final version of health care legislation, containing components of the differing bills passed by the House of Representatives and the Senate, is currently being assembled through a process largely hidden from public view. We are writing to share the perspective of the National Right to Life Committee (NRLC), the federation of right-to-life organizations in the 50 states, regarding the minimal criteria that we believe should apply to the provisions that implicate abortion.

We believe that the House-passed bill (H.R. 3962), as revised by the Stupak-Pitts Amendment that was adopted by the House on November 7, 2009, by a vote of 240-194, meets the minimal requirements explained below, with respect to abortion policy. Regrettably, the House-passed bill and the Senate-passed bill (H.R. 3590) are far more divergent on abortion policy matters than one would understand on the basis of accounts in the news media. **In reality, the Senate-passed bill contains provisions that would ultimately result in substantial expansions of abortion, driven by federal administrative decrees and federal subsidies. Any member of the House who does not wish to support legislation that will produce such sweeping pro-abortion results must make their support for a final bill, on both procedural and direct votes, contingent on inclusion of the elements described below.**

We believe the list below embodies long-established federal policies on abortion (including the “Hyde Amendment” principles), as applied to the new programs created by the health care legislation. Every item below is also consistent with public opinion as expressed in poll after poll showing strong opposition to inclusion of abortion in health plans subsidized or run by the government. And, again, every item on the list is also consistent with the substance of the Stupak-Pitts Amendment that was included in the House-passed H.R. 3962.

(1) **The federal government must not operate a program that funds elective abortions.** The House-passed bill would create an insurance plan (the “public option”) operated by the federal government, but the Stupak-Pitts Amendment, adopted on November 7, would prevent that government program from paying for abortions. The Senate-passed bill does not contain a “public option,” and it seems doubtful that a full-blown public option will be included in the final bill. But the Senate-passed bill would create a new program under which the federal Office of Personnel Management (OPM) would administer two or more multi-state insurance plans. The bill provides that “at least one” such plan would be subject to limitations on abortion coverage, implying that other federally administered plans could cover elective abortions, or perhaps even be required to do so by the federal administrator. NRLC believes that any OPM-operated plans should be prohibited from covering elective abortions, the same prohibition that Congress has long adopted with respect to the Federal Employees Health Benefits Program (FEHBP), which is also administered by OPM.

(2) **Federal funds must not pay the premiums of private health plans that cover elective abortion.** Both the House and Senate bills would establish new programs that would provide

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federal subsidies to help tens of millions of Americans purchase health insurance. Under the House-passed Stupak-Pitts Amendment, a citizen who takes advantage of this new benefit would not be required to help pay for anyone else's abortions; if a subsidized person wished to purchase abortion coverage, the coverage would have to be purchased separately and with non-federal funds, which could be done through the Exchange. In contrast, the Senate bill would result in a situation in which private plans that cover elective abortion would qualify for the federal subsidy, but every enrollee in such a plan would find himself or herself subject to a requirement that he or she make a separate monthly payment into a fund used exclusively for elective abortions – an “abortion surcharge,” if you will. Secretary of Health and Human Services Kathleen Sebelius recently insisted that this separate-payment requirement would apply to *every* person who participates in the exchange. As we read the language, the requirement would apply to anyone who enrolls in a subsidized plan that covers elective abortions, which would surely include many people who would learn of the “abortion surcharge” only after enrolling, but who would have no choice other than to pay the abortion surcharge or see their entire health coverage lapse.

**(3) The final bill must contain restrictions on abortion funding that are bill-wide and that are permanent – not rigged to depend on annual reenactment of certain language on an appropriations bill.** The House-passed Stupak-Pitts Amendment applies longstanding principles (no federal funding of elective abortion and no federal subsidies to plans that cover elective abortion) to everything in the House bill. In contrast, many of the “restrictions” in the Senate bill, in addition to their other deficiencies, are narrow, and also temporary – they are tied to whatever abortion policy is enacted each year on the Health and Human Services appropriations bill, to cover Medicaid. Yet, the health bill itself makes long-term appropriations for authorized programs, and these funds will flow outside of the regular appropriations process. These new structures should be governed by permanent abortion policy language written into the law -- not language that will produce a pro-abortion policy unless the pro-life side prevails in every subsequent year on an essentially unrelated appropriations bill. Limitation amendments on appropriations bills are a disfavored form of legislation, which expire annually, and which are often subject to being blocked by obscure procedures. (Indeed, just last month legislation was enacted that lifted a longstanding ban on the use of congressionally appropriated funds for abortion on demand in the District of Columbia – without either the House or the Senate ever having an opportunity to vote directly on the abortion funding language.) Any final health bill must permanently bar federal funding of abortion and federal subsidies for plans that cover abortion, for all of the programs covered by the bill – including the Indian health provisions and the funds appropriated to Community Health Centers (CHCs), both of which were added late to the Senate bill, by the Reid Manager's Amendment. **We urge that you reject any proposal that would tie to the annual appropriations process the abortion policies that will govern the programs for which the health bill itself enacts authorizations or makes direct appropriations. (Please note: The \$7 billion added for CHCs are not covered by even a temporary restriction; these funds could be used to pay directly for abortions without restriction, as documented in an NRLC memorandum posted here: <http://www.nrlc.org/AHC/NRLCmemoCommHealth.pdf>)**

**(4) Since the legislation will permanently reauthorize Indian health programs, it should contain a permanent ban on Indian health programs providing elective abortions.** Here again, the House-passed bill is satisfactory, because the Stupak-Pitts Amendment applies to the entire House-passed bill, including the Indian health reauthorization section. A permanent ban on funding of abortions through federally subsidized Indian health programs was actually approved by the Senate the last time that the Indian health reauthorization was on the Senate floor in amendable form (the Vitter Amendment, adopted February 26, 2008), but that legislation was never enacted. A permanent reauthorization of Indian health programs was added to the Senate health bill by the Reid Manager's Amendment, but without the permanent ban on funding of elective abortions.

(5) **The final bill must contain airtight “anti-abortion mandate” language.** By this, we mean language to prevent any agency or official given authority under the bill from issuing administrative mandates that would require any private health plans to cover abortions. The Senate bill contains a bewildering array of provisions that grant authority to the Secretary of Health and Human Services and other federal entities to issue binding regulations on various matters. (One analyst recently wrote that the Senate bill “contains more than 2,500 references to powers and responsibilities of the secretary of health and human services,” to say nothing of other federal authorities.) Some of these provisions could be employed in the future as authority for pro-abortion mandates, requiring health plans to cover abortion and/or provide expanded access to abortion, unless there is clear language to prevent it. For example, under the Mikulski Amendment, adopted by the Senate on December 3, the Department of Health and Human Services could force every private health plan to cover elective abortions merely by placing abortion on a list of “preventive” services – as Senator Ben Nelson pointed out in a statement in the December 3 *Congressional Record*, explaining his vote against the Mikulski Amendment, in which he also noted that Senator Mikulski had declined to accept a suggested revision to exclude abortion from the scope of this authority. While the Senate bill does contain some anti-mandate provisions, our analysis finds that these clauses are worded in such a way that they control only specific provisions of the bill, or are ambiguous in their scope. What is needed is the language that was contained in the amendment proposed by Senators Nelson and Hatch, which the Senate tabled on December 8, which said that “nothing in this Act (or any amendment made by this Act) shall be construed to require any health plan to provide coverage of abortion services or to allow the Secretary or any other person or entity implementing this Act (or amendment) to require coverage of such services.” The House bill already contains similar language, in Section 222 (e) (1).

(6) **The final bill must have strong pro-life “conscience” language.** At a minimum, the “conscience” protection provision for health care providers that was included in the House-passed health bill (H.R. 3962, Section 259, sometimes referred to as the “Weldon language”) should be included in the final bill.

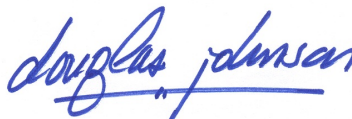
**In conclusion: NRLC believes that enactment of the abortion-related provisions of the Senate-passed health care bill would ultimately result in substantial expansions of abortion, driven by federal administrative decrees and federal subsidies, and a vote to advance such legislation would be described in those terms in the NRLC congressional scorecard for the 111<sup>th</sup> Congress. In contrast, inclusion of the substance of the House-passed abortion language, on the six points cited above, would preserve long-established federal policies on abortion, and would fully address our concerns regarding the abortion policy issues.**

We thank you for your consideration of our acute concerns on this critical issue.

Sincerely,



David N. O'Steen, Ph.D.  
Executive Director



Douglas Johnson  
Legislative Director