

November 30, 2009

RE: Mikulski Amendment 2791 to Reid health care bill

To the Honorable Members of the U.S. Senate:

The National Right to Life Committee (NRLC), representing affiliated right-to-life organizations in all 50 states, is opposed to the pending Mikulski Amendment No. 2791, unless the amendment is modified in the manner discussed below.

Section 1001 of Senator Reid's pending substitute, the "Patient Protection and Affordable Care Act," would create a new Section 2713 of the Public Health Services Act, dealing with "Preventive Health Services." Under this provision, all private health plans would be mandated to cover, without cost-sharing, "(1) evidence-based items or services that have in effect a rating of 'A' or 'B' in the current recommendations of the United States Preventive Services Task Force."

The Mikulski Amendment No. 2791 retains that mandate, but further specifies that all health plans would also be mandated to cover "with respect to women, such additional preventive care and screenings not described in paragraph (1) as provided for in comprehensive guidelines supported by the Health Resources and Services Administration for purposes of this paragraph."

In short, the Reid language makes the "recommendations" of the United States Preventive Services Task Force, regarding "preventive services," into mandates that will bind all health plans. The Mikulski Amendment No. 2791 would further empower political appointees at the HRSA to issue mandates that all health plans cover any service "with respect to women" that is declared to constitute "preventive care."

If Congress were to grant any Executive Branch entity sweeping authority to define services that private health plans must cover, merely by declaring a given service to constitute "preventive care," then that authority could be employed in the future to require all health plans to cover abortions. Therefore, NRLC opposes both the Mikulski Amendment No. 2791, and the underlying language of Section 1001, unless additional language is added to explicitly exclude abortion from the universe of services that might be mandated as "preventive care."

Our concern on this point is not hypothetical – prominent pro-abortion advocates are already on record discussing abortion as a category of "preventive health care." For example, a 2009 publication cosponsored by the National Abortion Federation, *Providing Abortion Care*, explicitly stated that "APCs [Advanced Practice Clinicians] are especially well positioned within

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the health care system to address women's need for comprehensive primary *preventive* health care that includes abortion care." (emphasis added).

It is also noteworthy that when Senator Mikulski offered a similar amendment in the Senate Committee on Health, Education, Labor, and Pensions, it was backed by a long list of pro-abortion advocacy groups, including NARAL Pro-Choice America, Catholics for Choice, Physicians for Reproductive Choice and Health, Planned Parenthood Federation of America, and Medical Students for Choice. A July 8, 2009 letter from these groups asserted that by allowing the Health Resources and Services Administration to issue binding guidelines on preventive services, the "unique preventive health needs of women" would be addressed.

Moreover, when a constituent wrote to Sen. Dianne Feinstein (D-Ca.) earlier this year to urge that abortion be excluded from pending health care legislation, he received an e-mail response dated August 3, 2009, in which Sen. Feinstein wrote: "Thank you for writing to me to express your support for proposed restrictions on private coverage of preventative services for reproductive care in health reform legislation. . . . I understand your opinion that private coverage of abortion services should be restricted in health reform. However, I believe that reproductive health services should be treated no differently than any other health care service or benefit."

There will be some who endeavor to dismiss our concern that the term "preventive care" could be construed to encompass abortion. However, anyone who genuinely believes that abortion properly will remain outside the scope of future "preventive care" mandates should have no objection to explicitly writing such a rule of construction into the legislation.


In summary: The National Right to Life Committee opposes the Mikulski Amendment No. 2791, unless it is revised to explicitly remove abortion from the universe of services that could be defined as mandated "preventive care" by either the Health Resources and Services Administration or the United States Preventive Services Task Force.

Thank you for your consideration of the concerns of the National Right to Life Committee on this subject.

Sincerely,



Douglas Johnson
Legislative Director



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