national
RIGHT TO LIFE
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RE: H.R. 3962, abortion, and the "public option"

Dear Member of Congress:

We are writing to follow up on our letter of October 21, in which we summarized the objections of the National Right to Life Committee (NRLC) to certain provisions of the committee-reported versions of the health care legislation, H.R. 3200.

We have now reviewed the revised and expanded health care bill, H.R. 3962, that was introduced on October 29. Regrettably, H.R. 3962 still contains all of the objectionable elements that we mentioned in our earlier letter, and more. In this letter, however, we will discuss only a single issue: The bill would create a national federal agency health program, the "public option," and would explicitly authorize that federal agency program to pay for elective abortions. This federal agency program will pay for abortions with federal funds (which are the only kind of funds that federal agencies can spend).

Mr. Stupak and Mr. Pitts have proposed an amendment that would apply the long-established principles of the "Hyde Amendment" to the federal "public option" program, but Democratic leaders have made it clear that their Rule will not allow a floor vote on the Stupak-Pitts Amendment. As long as language in H.R. 3962 authorizes the public option to pay for elective abortions, a vote in favor of a Rule that protects that language will be regarded by NRLC as the most important House roll call on direct government funding of abortion on demand since the House last voted directly on the Hyde Amendment in 1997.

In short, the record of each House member on whether a federal agency program should directly fund elective abortion (abortion on demand) will be defined by this roll call, possibly for many years to come.

Please take note: We anticipate that a "manager's amendment" will soon be unveiled that will make additional changes in the abortion language of the bill, but those changes will be cosmetic -- because Speaker Pelosi and Chairman Waxman, among others, clearly are committed to attempt to establish a federal "public option" that will fund elective abortions. Yet, as the Associated Press reported on October 23, Mr. Stupak's "stand-alone amendment during floor debate to include the Hyde amendment restrictions in the health overhaul bill . . . would be almost certain to prevail . . ." if a vote on the Stupak amendment were permitted. It is possible to prevent the new federal agency program from funding elective abortions -- but only if the Rule is first rejected.

To elaborate: Language on page 110 of H.R. 3962 (lines 1-7) explicitly says that "nothing in this Act shall be construed as preventing the public health insurance option from providing for . . .

coverage of services described in paragraph (4)(A)." The "services described in paragraph (4)(A)" are elective abortions (i.e., all abortions, abortions without any limitations whatever). The language makes it explicitly clear that this authority extends to the entire universe of elective abortions that would NOT be eligible for funding under the federal Medicaid program, because the Hyde Amendment currently strictly limits coverage of abortion under the Medicaid program. The Hyde Amendment will not apply to the "public option," as the nonpartisan Congressional Research Service has confirmed -- which is why the Stupak-Pitts Amendment is necessary.

You may have read in news stories or elsewhere that H.R. 3962 contains language that would "segregate" federal funds away from the payments for abortions. *Those references are inapplicable or nonsensical with respect to the "public option."* These news stories are talking about an entirely different program, the "affordability credits" program. In past communications, we have discussed our objections to the "affordability credits" language, which currently allows this federal subsidy to help purchase private health plans that cover elective abortion, and those objections remain. But the problem with the "public option," which is the subject of this letter, is separate and distinct, and it would be equally acute even if the "affordability credit" program was not part of the bill. *It is utterly impossible to "segregate" federal funds away from abortion within the "public option," because the "public option" will be a federal agency program that can spend only federal funds. Any claim that this federal program could expend "private" funds for abortions is absurd on its face -- a deception.*

As NRLC documented in a memorandum published September 7, all of the funds spent by the "public option" will be federal funds. An October 9 memorandum from the Congressional Research Service reaches parallel conclusions.

In particular, the so-called "premiums" that will be paid to the government by citizens who enroll in this government program become federal funds when the government assumes control of them. Under H.R. 3962, abortionists will perform abortions and will be paid with funds drawn on a U.S. Treasury account (created on page 215 of the bill). This will be direct federal government funding of abortion, a complete break from the policy that has long governed Medicaid and other federal government health programs.

(Of course it is entirely irrelevant whether the Department of Health and Human Services hires contractors to administer various aspects of the program. We mention this only because Congresswoman Capps suggested, in a recent "Dear Colleague" letter, that because the program may utilize contractors, the government would not really be paying for abortions. This makes about as much sense as arguing that the government will not be paying for abortions if the payments are transmitted across the Internet. Medicare also uses contractors -- but no one doubts that medical services are being paid for with federal funds.)

Others may have directed your attention to page 246 of H.R. 3962, which contains a paragraph caption that reads, "Prohibition of Use of Public Funds for Abortion Coverage." Do not be fooled. A paragraph caption has no legal effect whatever. The operative bill language that

immediately follows the paragraph caption states simply, "An affordability credit may not be used for payment for services described in section 222(d)(4)(A)" [i.e., elective abortions]. But an "affordability credit" is only one type of federal funding. The language on page 246 does not restrict the use of all other types of federal funds to pay directly for elective abortions -- and the use of other types of federal funds is explicitly authorized by the "nothing in this Act shall be construed" clause on page 110.

To summarize: H.R. 3962 contains explicit language saying that "Nothing in this Act shall be construed as preventing" the "public option" from paying for all elective abortions. The public option will be a federal agency program, and when it pays for abortions, it will use federal funds, which are the only kind of funds that a federal agency can spend. As NRLC's congressional scorecard will clearly explain, a vote for a Rule that protects abortion coverage in the public option will be a position-defining vote in favor of establishing a federal government program to directly fund abortion on demand, with federal funds.

If you do not wish to go on record supporting creation of a national federal agency program that pays for elective abortions with federal funds -- which public opinion strongly opposes -- please vote No on the Rule, and insist on inclusion of the Stupak-Pitts Amendment in the bill.

Thank you for your consideration of the position of National Right to Life on this critical matter, which we convey on behalf of our affiliates in all 50 states.

Sincerely,

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