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MEMORANDUM TO: Interested Parties

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SUBJECT: Senate-passed health bill (H.R. 3590) opens door to direct federal funding of abortion without restriction in 1,250 Community Health Centers

DATE: February 24, 2010 [update from version of January 11, 2010]

The health bill passed by the U.S. Senate on December 24, 2009 (H.R. 3590) contained multiple, far-reaching pro-abortion provisions. These have been described in a number of documents issued by the National Right to Life Committee (NRLC), including a letter sent to members of the U.S. House of Representatives on January 14, 2010, which is posted here: <http://www.nrlc.org/AHC/HouseLetteronAbortionProvisions.html>

**This memorandum provides more detailed information on just one of the pro-abortion provisions contained in H.R. 3590: The language that will allow direct federal funding of abortion, without restriction, in about 1,250 Community Health Centers.**

The provision in question was added to H.R. 3590 near the end of the Senate's amendment process, as part of a 383-page Manager's Amendment unveiled by Senator Reid on December 19. Senator Reid immediately filed a cloture petition on the Manager's Amendment, preventing consideration of any revisions to it, and severely limiting opportunities for analysis and debate. The Manager's Amendment was adopted on December 22, and H.R. 3590 passed the Senate on December 24.

Buried deep in the Manager's Amendment was new language making *a direct appropriation* of funds for Community Health Centers (CHCs) (which are also called Federally Qualified Health Centers, or FQHCs), totaling \$7 **billion** (\$7,000,000,000) over five years. (See Sec. 10503 on page 2355 of H.R. 3590.) **Because this is a direct appropriation in the health care bill itself, these funds will *not* flow through the annual appropriations bill for the Department of Health and Human Services. Therefore, these funds would not be covered by the Hyde Amendment.**

(The Hyde Amendment is a limitation provision that has been attached to the annual HHS

appropriations bill in past years; this provision, so long as it is renewed annually, prevents the use of funds appropriated through that bill to pay for abortion or for plans that cover abortion, except to save the life of the mother, or in cases of rape and incest.)

**There is no other language in H.R. 3590 that would prevent the use of the new funds to pay for abortions performed at Community Health Centers.** Section 1303 of H.R. 3590 contains certain abortion-related language that is associated with Senator Ben Nelson (D-Ne.), language that was also added by the Reid Manager's Amendment. This "Nelson language" applies only to a proposed program of tax credits and cost sharing for health insurance for low-income individuals. The Nelson language has no bearing at all on the Community Health Centers provision, Section 10503, which is the subject of this memorandum. (NRLC believes that the Nelson language would result in an unacceptable abortion policy with respect to the programs to which it pertains. This subject is outside the scope of this memorandum, but is explained in other NRLC documents, including the January 14, 2010 letter referenced above.)

There is no restriction in the current laws authorizing CHCs that prevents these centers from performing abortions. [See 42 U.S.C. 254b and Section 330 of the Public Health Services Act.] Under these laws, CHCs can only use these so-called "Section 330 funds" for purposes within the scope of their grants, but one can assume that grant applications that included (for example) "reproductive services" would not be deemed objectionable under the Obama Administration, and abortions could be subsumed under various other classifications as well. However, until now, these centers have been largely dependent on federal funds that flow through the annual HHS appropriations bill and that therefore have been governed by the Hyde Amendment. As noted above, the \$7 billion appropriated for CHCs by H.R. 3590 would not flow through that pipeline and therefore would not be restricted with respect to abortion.

This is not a merely hypothetical concern. There is already an organized effort underway by the Reproductive Health Access Project to encourage Community Health Centers to perform abortions, "as an integrated part of primary health care." For evidence, see "Frequently Asked Questions About Integrating Abortion into Community Health Centers, Potential Obstacles and Possible Solutions" at [http://www.reproductiveaccess.org/getting\\_started/faq.htm](http://www.reproductiveaccess.org/getting_started/faq.htm)

Indeed, the Reproductive Health Access Project and the Abortion Access Project have produced an "administrative billing guide" to help CHCs integrate abortion into their practices within the confines of existing federal and state restrictions. See "Administrative Billing Guide for Medical Abortion at Facilities that Receive Title X, Section 330, and other Federal Funding," at <http://www.nrlc.org/AHC/ReproductiveHealthAccessProjectAdminBillingGuide.pdf>

On February 22, 2010, President Obama released a list of changes that he recommends to H.R. 3590. Among these, he proposed to increase the direct funding for CHCs from the Senate-approved \$7 billion to *\$11 billion*. He did *not* propose adding any restriction on the use of the funds for abortion, even though the fact that H.R. 3590 would allow the use of the CHC funds to pay for abortion had been widely publicized by NRLC during January and February.

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The problem described in this memorandum does not exist with respect to the health bill passed by the House of Representatives on November 7, 2009 (H.R. 3962). The House-passed bill authorizes (but does not appropriate) \$12 billion for CHCs (see Section 2101), but this provision – like the rest of H.R. 3962 – would be governed by the Stupak-Pitts Amendment (Section 265), which prevents any funds authorized or appropriated in the bill from being used for abortion (except to save the life of the mother, or in cases of rape or incest).