national RIGHT TO LIFE committee, inc.

512 10th Street, NW Washington, DC 20004-1401
(202) 626-8800 FAX: (202) 737-9189 Website: www.nrlc.org

(202) 626-8820

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Statement by the National Right to Life Committee on the new Reid abortion language (Reid "manager's amendment" to H.R. 3590)

WASHINGTON (December 19, 2009) – The National Right to Life Committee (NRLC), the federation of right-to-life organizations in all 50 states, strongly opposes the abortion language contained in the "manager's amendment" (amendment no. 3276) that was filed today by U.S. Senate Democratic Leader Harry Reid (Nv.) to his pending health care bill (H.R. 3590). This statement may be attributed to NRLC Legislative Director Douglas Johnson.

The Reid manager's amendment is light years removed from the Stupak-Pitts Amendment that was approved by the House of Representatives on November 8 by a bipartisan vote of 240-194. The new abortion language solves none of the fundamental abortion-related problems with the Senate bill, and it actually creates some new abortion-related problems.

NRLC will score the upcoming roll call votes on cloture on the Reid manager's amendment, and on the underlying bill, as votes in favor of legislation to allow the federal government to subsidize private insurance plans that cover abortion on demand, to oversee multi-state plans that cover elective abortions, and to empower federal officials to mandate that private health plans cover abortions even if they do not accept subsidized enrollees, among other problems.

In addition, if the final bill produced by a House-Senate conference committee does not contain the Stupak-Pitts Amendment, NRLC will score the House and Senate roll calls on the conference report (final bill) as votes to allow federal mandates and subsidies for coverage of elective abortion.

This statement represents NRLC's initial assessment of changes made in the 2,074-page Reid bill by the 383-page manager's amendment. NRLC will issue more detailed analysis later that will speak to other objectionable elements of the revised Reid legislation, pertaining to other policy issues of concern to NRLC. Regarding the abortion language, however, we can already say that the Reid language is completely unacceptable for reasons that include the following:

– The language violates the principles of the Hyde Amendment by requiring the federal government to pay for premiums for private health plans that will cover any or all abortions. The federal subsidies would be subject to a convoluted bookkeeping requirement, different in detail but similar in kind to the Capps-Waxman accounting scheme that the House of Representatives rejected when it adopted the Stupak-Pitts Amendment on November 7. The Reid manager's

amendment requires that all enrollees in an abortion-covering plan make a separate payment into an account that will pay for abortions, but the amendment also contains language [Section 1303 (b)(3)(a) and (b)(3)(b)] that is apparently intended to prevent or discourage any insurer from explaining what this surcharge is to be used for. Moreover, there is nothing in the language to suggest that payment of the abortion charge is optional for any enrollee.

– The so-called "firewall" between federal funds and private funds is merely a bookkeeping gimmick, inconsistent with the long-established principles of that govern existing federal health programs, such as the Hyde Amendment. Moreover, the Reid "firewall" is made of rice paper – it exists only so long as the annual appropriations bill for the Department of Health and Human Services continues to contain the Hyde Amendment. At any future date when the congressional appropriators and/or the President decide to block renewal of the Hyde Amendment, the Reid bookkeeping requirements would automatically evaporate, and insurers could pay for elective abortions with the federal subsidies without even bookkeeping requirements. This is in stark contrast with the Stupak-Pitts Amendment, which would permanently prohibit the federal subsidies from paying any part of the premium of a plan that covers elective abortions (while explicitly affirming that insurers may sell, and persons may buy, through the Exchanges, plans that cover any or all abortions, as long as federal subsidies are not used to purchase such plans).

– In place of the original "public option" provisions in the Reid bill, the Reid manager's amendment establishes a new program under which the federal government (the Office of Personnel Management, OPM) would administer a program of "multi-state" health plans offered by private insurers. The amendment says (on page 56) that the OPM director "shall ensure that . . . there is at least one such plan that does not provide coverage of" abortions beyond the types of abortions that are funded under the federal Medicaid program in any given year, which is described as "assured availability of varied coverage." This seems to envision a system under which the OPM director would administer multi-state plans that cover elective abortions, and perhaps even possess authority to require such plans to cover elective abortions, as long as the diector also ensured that there was one plan that did not cover abortions (except types of abortions also funded by the federal Medicaid program). This would be a sharp break from the policy that has long governed the Federal Employees Health Benefits program, which is also a program administered by OPM, under which private plans are completely prohibited from covering elective abortions if they wish to participate in the program.

– The Reid manager's amendment contains a new section [Section 1303(a)(1)] providing that a state "may elect to prohibit abortion coverage in qualified health plans offered through an Exchange in such State if such State enacts a law to provide for such prohibition." The original Reid bill already contained a clause preventing pre-emption of state laws relating to insurance coverage of abortion [see Section 1303 (b)(1)]. The new opt-out clause [Section 1303 (a)], in contrast, is defective in several important respects. First, it apparently would apply only to new laws enacted in the future. Other new language in the manager's amendment [Section 1303 (b)(1)(A)(ii)] might be construed to conflict with some existing state laws. Moreover, it is unclear how the state opt-out clause would be interpreted in light of other provisions in the bill, including

the authority granted to the director of the Office of Personnel Management to set rules for the new federal program of multi-state plans.

– The House-passed health bill contains language to prevent any federal Executive Branch official from requiring private health plans to cover abortions. However, the Senate on December 3 adopted an amendment (the Mikulski Amendment) that could be employed by the HHS to require all private health plans to cover all abortions, simply by defining them as "preventive care," as Senator Ben Nelson pointed out in his December 3 floor statement explaining his vote against the Mikulski Amendment. The Reid manager's amendment prevents the Secretary of Health and Human Services from defining elective abortion as an "essential benefit," but it does not remove the entirely separate authority granted by the Mikulski Amendment to mandate that all plans cover abortion by defining abortion as a "preventive" service. As NRLC noted in our November 30 letter to the Senate opposing the Mikulski Amendment, a number of pro-abortion authorities have already begun to classify abortion as a "preventive" service.

– The manager's amendment inserts into the bill, by reference, the entire text of the Indian Health reauthorization bill (S. 1790). This language is objectionable because it does not contain an amendment (the Vitter Amendment) that was adopted by the Senate on February 26, 2008, by a vote of 52-42, during consideration of Indian health reauthorization legislation. The Vitter Amendment would permanently prohibit coverage of elective abortions in federally funded Indian health programs. That roll call was the last time that Indian health reauthorization legislation was on the Senate floor.

– The "conscience" protection for health care providers (sometimes referred to as "the Weldon language"), which was included in the House-passed health bill (H.R. 3962, Section 259), is not included in the Reid manager's amendment.

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