



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

(202) 626-8820

November 7, 2009

RE: NRLC scorecard advisory:
H.R. 3962, the Stupak-Pitts Amendment, abortion, and the “public option”

Dear Member of Congress:

On behalf of the National Right to Life Committee (NRLC), we are writing to urge you to support the Stupak-Pitts Amendment to the “Affordable Health Care for America Act,” H.R. 3962, that was introduced on October 29.

H.R. 3962 would create (1) a nationwide insurance program run directly by the federal government, “the public plan,” and (2) an “affordability credit” program that would subsidize health insurance for tens of millions of Americans. These two new government programs will subsidize elective abortion – a drastic break from decades of federal policy -- unless the Stupak-Pitts Amendment is added to the bill to prevent this outcome.

As NRLC’s congressional scorecard for the 111th Congress will clearly explain, a vote against the Stupak-Pitts Amendment can only be construed as a position-defining vote in favor of establishing a federal government program that will directly fund abortion on demand, with federal funds, and a second federal program that will provide government subsidies to private insurance plans that cover abortion on demand. NRLC regards this as the most important House roll call on federal funding of abortion since the House last voted directly on the Hyde Amendment in 1997. If you do not wish to go on record in support of creating major new federal programs that will both fund abortions directly and subsidize private abortion coverage, please vote for the Stupak-Pitts Amendment. NRLC will regard a “present” vote as equivalent to a negative vote on the Stupak-Pitts Amendment.

The Capps-Waxman language, which was added to H.R. 3962 in the House Energy and Commerce Committee despite the objections of pro-life members of both parties, has been falsely “marketed” as consistent with the principles of the Hyde Amendment. In reality, the Capps-Waxman language would explicitly authorize exactly the things that the Hyde Amendment prohibits in the existing Medicaid program: direct government funding of elective abortion, and government subsidies for plans that cover elective abortion.

Allow us to address first the “public option”: 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).

You may have been told that language has been included in H.R. 3962 that would “segregate” federal funds away from the payments for abortions. Those references are completely inapplicable or nonsensical with respect to the “public option.” 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 (like Medicare).

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.

In particular, the so-called “premiums” that will be collected by the government from citizens who enroll in the “public option” will become federal funds when the government assumes control of them (as the Congressional Research Service has confirmed in a memorandum dated October 9, 2009).

Thus, under H.R. 3962, the public plan would be engaged in direct funding of elective abortion, using federal funds. The federal program would pay abortionists for performing elective abortions. (It is, of course, entirely irrelevant whether or not the federal agency hires contractors to help process the paperwork, as also occurs under Medicare.) It is untenable to claim, as some have, that this federal program would pay for abortions with “private” funds. The public plan is the federal government, and if it pays for abortions, it is federal funding of abortion.

We turn now to the second abortion-related problem in the bill: the new premium-subsidy program (“affordability credits”). The Capps-Waxman language in the bill explicitly authorizes federal subsidies to pay the premiums of private health plans that cover elective abortions. This, too, would be a break with the policy established under longstanding federal laws, under which federal funds do not flow to health plans that pay for elective abortions. For example, the 260 private plans that participate in the Federal Employees’ Health Benefits program are prohibited by law from including elective abortion coverage, because they are federally subsidized. Likewise, in Medicaid, current law prohibits direct federal funding of abortion, and also federal funding of any fund that pays for abortions – and this ban covers even state matching funds.

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,



Douglas Johnson
Legislative Director



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