



THE PRESIDENT'S PROPOSAL
Abortion Still Included

February 23, 2010

The President's proposal, according to the summary issued by the White House, "includes a targeted set of changes to the Patient Protection and Affordable Care Act, the Senate-passed health insurance reform bill." Because the President's proposal does not provide changes to the Senate abortion language, all of the troubling pro-abortion language in the Senate bill remains valid under the President's proposal. Unfortunately, the Senate bill, unlike the House bill, does not contain strong, clear language prohibiting the funding of abortion and health plans that cover abortion. The abortion provisions in the final Patient Protection and Affordable Care Act can be largely found in section 1303 of the bill, starting on page 118. These provisions, however, are amended later in the bill, in section 10104(c), starting on page 2069. The amended provisions are as follows:

State opt-out: Under the amended section 1303(a)(1), starting on page 2069, States "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."

Required coverage: Under the amended section 1303(b), starting on page 2070, nothing in the applicable title of the bill "shall be construed to require a qualified health plan to provide coverage" of abortion, and the "issuer of a qualified health plan shall determine whether or not the plan provides" coverage for abortion.

Hyde Amendment: Many of the abortion provisions in this bill rely on Congress's continued passage of the Hyde Amendment, which restricts the use of federal funding for abortions. Amended section 1303(b)(1)(B), starting on page 2070, distinguishes between "Abortions for which public funding is prohibited" under the Hyde Amendment, often called elective abortions, and "Abortions for which public funding is allowed" under the Hyde Amendment, which, generally, are abortions in case of rape or incest or when the mother's life is at risk. Therefore, should Congress fail to add the Hyde Amendment to future Department of Health and Human Services appropriation bills, the so-called abortion funding restrictions in the health care bill would be largely meaningless, since the bill determines the public funding question by looking at "the law as in effect as of the date that is 6 months before the beginning of the plan year involved."

Federal Funding: Amended section 1303(b)(2), starting on page 2071, concerns the issue of federal funding. If a qualified health plan covers “abortions for which public funding is prohibited,” the “issuer of the plan shall not use any amount attributable to any of the following” for paying for the services: (1) tax credits for health care coverage established under the bill or (2) “[a]ny cost-sharing reduction under section 1402” of the bill. The amended section sets up accounting gimmicks to, supposedly, segregate federal funds from funds being used to pay for abortion services. These include allocation accounts to segregate funds. For plans that cover abortion services, under the amended section 1303(b)(2)(B), starting on page 2072:

the issuer of the plan shall—

(i) collect from each enrollee in the plan (without regard to the enrollee’s age, sex, or family status) a separate payment for each of the following:

(I) an amount equal to the portion of the premium to be paid directly by the enrollee for coverage under the plan of services other than services described in paragraph (1)(B)(i) [abortions for which public funding is prohibited] (after reduction for credits and cost-sharing reductions described in subparagraph (A)); and

(II) an amount equal to the actuarial value of the coverage of services described in paragraph (1)(B)(i), and

(ii) shall deposit all such separate payments into separate allocation accounts as provided in subparagraph (C).

Basically, under this provision, persons enrolled in qualified health plans that provide coverage for elective abortions will pay their premium cost minus the coverage for elective abortion, and what could be called an “abortion premium,” which will be held in a separate account. Amended section 1303(b)(2)(D) provides guidance for determining the actuarial value of the elective abortion services and amended section 1303(b)(2)(E) sets forth provisions for “ensuring compliance with segregation requirements.”

Discrimination: Amended section 1303(b)(4), on page 2076, sets forth that “No qualified health plan offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions.”

State & Federal laws: Amended section 1303(c)(1), on page 2077, contains language stating that “[n]othing in this Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.” Amended section 1303(c)(2) states that “[n]othing in this Act shall be construed to have any effect on Federal laws regarding—(i) conscience protection; (ii) willingness or refusal to provide abortion; and (iii) discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.”

Community Health Centers: Section 10503, starting on page 2355, establishes a “Community Centers Health Care Fund...to provide for expanded and sustained investment in community health centers under section 330 of the Public Health Service Act.” In addition, the section provides \$7 billion in funding over the fiscal years 2011-2015. Because money appropriated in the Senate bill is not subject to the Hyde Amendment, the use of this funding for abortion would be permitted. On page three of the President’s proposal, the funding for community health centers is changed to \$11 billion, an increase of \$4 billion over the Senate bill.

School Based Health Centers: Section 4101, starting on page 1135, sets up a grant program for school-based health centers, and defines such centers as those that do “not perform abortion services.” However, this does not restrict centers from being operated by an entity engaged in abortions, or from referring students for abortions.