

REASONS TO REPEAL THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010

James S. Cole, General Counsel
Missouri Right to Life
August 6, 2012

1. PPACA coerces individuals and Christian organizations to violate their consciences and religious tenets by compelling them to provide abortifacients and contraceptives as benefits of health care plans. PPACA § 1001, enacting new PHSA § 2713(a)(4) & (b).

2. PPACA substantially expands funding of abortions by federal tax dollars.

a. Unless a State opts out by forbidding abortion coverage, Qualified Health Plans plans that are sold through the new Exchanges may include abortion coverage. PPACA § 1303(a). (Missouri has exercised its opt-out right. See Rev. Stat. Mo. § 376.805.) Qualified Health Plans will be offered by private insurers, § 1301, "Consumer Operated and Oriented Programs," § 1322, and for multi-state plans, by the Federal Office of Personnel Management, § 1334. All of these will follow the rules described below. § 1301(a)(2), as added by § 10104(a).

b. In states that do not opt out, PPACA describes two different payment and accounting systems for abortion premiums, one for funding abortions of the types that the Department of Health & Human Services can pay for under the Hyde Amendment (hereinafter, "HHS abortions"); another for coverage of abortions that HHS cannot pay for under Hyde ("non-HHS abortions"). HHS abortions include those when the baby is conceived as a result of rape or incest, and those performed if a physical disorder, physical injury, or physical illness as certified by a physician would place a woman in danger of death. Consolidated Appropriations Act of 2012, Pub.L. 112-74, §§ 506-507, 125 Stat. 1111-12. They also include abortions caused by substances that sometimes operate to prevent implantation of early embryos (Preven, Plan B). These are not considered abortifacients under federal law. See 42 CFR § 441.207, notwithstanding that in scientific terms, prevention of implantation kills an already-conceived human being and is thus an abortion.

c. As an aside, some physicians will certify that any pregnancy puts a woman in danger of death. The author of the standard textbook on abortion procedures, Dr. Warren Hern of Colorado, said in connection with a proposed exception for partial birth abortions, "I will certify that any pregnancy is a threat to a woman's life . . ." (The Record, Bergen County, N.J., May 14, 1997) (emphasis supplied).

d. HHS abortions are not paid for out of segregated accounts that must be established for premiums that are charged for non-HHS abortions. Only non-HHS abortions are paid for from the segregated accounts. See § 1303(b)(2)(B). HHS abortions are paid from the regular bank accounts of insurers.

e. The federal tax dollars that fund (i) tax credits for premiums provided on behalf of individuals up to 400% of the poverty level (currently approx. \$92,000) and (ii) refunds of cost-sharing payments (e.g., co-payments and deductibles) must go into the insurers' regular accounts and cannot be deposited into the non-HHS-abortion segregated accounts. § 1303(b)(2)(A).

f. Therefore, these federal tax dollars will pay for HHS abortions covered under Qualified Health Plans. § 1303(b)(2)(A) & (C).

g. Substantial growth in abortions may be expected from the expanded availability of abortion coverage. The USCCB reports that the abortion rate for low-income women in states that provide their own funding for Medicaid abortions is more than double the abortion rate for low-income women in other states. USCCB Secretariat of Pro-Life Activities, "Issues of Life and Conscience in Health Care Reform: An Analysis of the 'Patient Protection and Affordable Care Act' of 2010," p. 11, n.16 (5/24/10). The same may be expected for individuals who now obtain coverage for abortions under PPACA.

h. In states that opt out of abortion coverage, their citizens' federal tax dollars are still going to pay for HHS abortions in all the states that do not opt out. Missouri taxpayers are going to pay for HHS abortions in Illinois, California, New York, and other states.

i. In plans that offer non-HHS abortion coverage, the amount of a person's health insurance premium that goes toward paying for abortions must, by law, be kept secret from customers and the public. § 1303(b)(3), as amended by § 10104(c). Although separate amounts for this coverage will be collected and placed in segregated accounts under § 1303(b)(2), customers cannot be told how much it is, only that their plans cover abortions and the total amount of the premium. *Id.*

3. The National Right to Life Committee ("NRLC") has pointed out that PPACA appropriates \$7 billion for a new Community Health Center Fund that will subsidize community health centers without any restrictions against abortion or other anti-life "treatment." § 10503. NRLC, Memorandum to "Interested Parties," March 18, 2010, available on NRLC web site at <http://www.nrlc.org/AHC/NRLC MemoCommHealth.html>. Professor Robert A. Destro of the Catholic University School of Law has written that without doubt, the money will be used for abortions as well as other items. Letter to Representative Bart Stupak from Robert A. Destro, March 20, 2010, available at <http://www.nrlc.org/AHC/DestroLetterToStupak OnCommHealthCenters.pdf>

4. As the USCCB analysis of May 24, 2010 (cited above) and the Legislation Department of National Right to Life Committee have pointed out, there is ambiguous language in regard to several other programs that may allow either expanded federal funding for abortions, or in the alternative, for referrals for abortion, such as:

- a. School-based Health Centers (referrals) under § 4101(b)
- b. "Personal responsibility education" (sex ed) under Title V of Social Security, § 2953
- c. Expansion of family planning services under Medicaid under § 2303

4. PPACA compels health care rationing and will result in banning individuals from using their own private funds for elder care.

a. A new Independent Financial Advisory Board ("IFAB") is charged with recommending overall cuts in medical spending that include private health plans. The National Right to Life Committee summarizes the process as follows: "In turn, the Secretary of Health and Human Services is empowered to impose 'quality and efficiency' measures on hospitals, requiring them to report on their compliance with them. [42 U.S.C. § 1395l(t)(17)] Doctors will have to comply with quality measures in order to be able to contract with any qualified health insurance plans." Robert Powell Center for Medical Ethics, NRLC, "How the Obama Health Care Plan Will Ration Your Family's Medical Treatment - A Factsheet," pp. 3-4, n. 3 (revised June 27, 2012) (hereinafter, "NRLC Health Care Factsheet"). "Beginning on January 1, 2015, a qualified health plan may contract with...(B) a health care provider only if such provider implements such mechanisms to improve health care quality as the Secretary may by regulation require." 42 U.S.C. 18031(h)(1). *Id.*, n. 4.

b. Thus, to accept private money that puts the health care provider over the limit imposed by HHS means that it will face sanctions, and doctors may not contract to serve the provider.

c. The Congress that enacted PPACA had the temerity to attempt to lock in future Congresses by establishing an exclusive window during which the IFAB must be decommissioned (a 7-month period in 2017) or it cannot ever be terminated. § 3403(a)(1), creating new § 1899A(f) of the Social Security Act. Any vote to terminate must be by a super-majority. *Id.* It specifies minute procedures for Congressional review of the IFAB's proposals and also such things as committee assignments and the wording of a resolution to terminate IFAB, all wildly at odds with the freedom of each House to manage its own affairs within the broad rules of the Constitution. *Id.* In other words, the Congress of 2010 purported to dictate to the future Congresses when and how they could amend the PPACA. This is a flagrant violation of the Constitution and the structure of representative democracy.

d. Until the PPACA, individuals eligible for Medicare could buy their own insurance to supplement Medicare coverage ("Medicare Advantage"). The PPACA changed the law. § 3209. "CMS [Center for Medicare & Medicaid Services within HHS] may now refuse to allow senior citizens the choice of private-fee-for-service plans that charge what CMS, in its standardless discretion, regards as premiums that are too high. Indeed, the provision literally authorizes CMS, if it decides to do so, to refuse to allow private-fee-for-service plans altogether. Thus, this provision could eliminate the only avenue that senior citizen may use to escape rationing—using their own money to save their lives." NRLC Health Care Factsheet, p. 6.

e. Additionally, as NRLC points out, "Under [PPACA 1003 and 1311(e)(2)], state insurance commissioners are to recommend to their state exchanges the exclusion of 'particular health insurance issuers ... based on a pattern or practice of excessive or unjustified premium increases.' Not only will the exchanges exclude *policies* from competing in an exchange when government authorities do not agree with their premiums, but the exchanges will even exclude *insurers* whose plans **outside** the exchange offer consumers the ability to reduce the danger of treatment denial by paying what those government authorities consider an 'excessive or unjustified' amount. This will create a 'chilling effect,' deterring insurers who hope to be able to compete within the exchanges from offering adequately funded plans even outside of them, with the result that even outside the exchanges consumers will find it difficult to obtain health insurance that offers adequate and unrationed health care." NRLC Health Care Factsheet, p. 8.

CONCLUSION

The Patient Protection and Affordable Care Act has numerous provisions that result in (1) a substantial increase in the number of human deaths from abortion and euthanasia, (2) a substantial increase in the forced participation of the American people in paying for the killing and even sponsoring health care plans that provide for the killing, (3) a "gag rule" that hides from customers and the public how much of their premium money pays for non-HHS abortions in plans that provide such coverage, (4) a substantial reduction in the freedom of the people to pay for health care out of the money they themselves have earned, and (5) a flagrantly unconstitutional attempt to reduce the ability of the people's representatives in future sessions of Congress to change the law in regard to the IFAB. It is so permeated with anti-life provisions and dictatorial secrecy and imperatives that tinkering with it is inadequate to repair the damage that it is doing and will do to this country. It should be repealed.