



Legislative Bulletin.....May 4, 2011

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H.R. 3 —No Taxpayer Funding for Abortion Act

**H.R. 3 – No Taxpayer Funding for Abortion Act
(Chris Smith, R-NJ)**

Order of Business: H.R. 3 is scheduled to be considered on Wednesday, May 4, 2011, under a closed rule and waives all points of order against consideration of the bill. The rule provides forty minutes of debate equally divided and controlled by the chair and ranking minority member of the Committee on Judiciary, ten minutes equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means, and ten minutes equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The rule also provides that in lieu of the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. Lastly, the rule waives all points of order against provisions in the bill, as amended, and provides one motion to recommit with or without instructions

Summary: H.R. 3 will establish a permanent government-wide prohibition on taxpayer subsidies for abortion and abortion coverage consistent with several annually renewed appropriations policies against funding for abortion. The legislation also prohibits subsidies in the form of refundable advanceable tax credits for abortion coverage through the Patient Protection and Affordable Care Act (PPACA) and codifies an annually renewed appropriations policy providing conscience protections.

H.R. 3 prohibits federal funding for abortion and provides conscience protections amending Chapter 4 of Title 1 of the U.S. Code by adding ten new subsections regarding abortion. First, the bill will also prohibit funding for abortion with funds authorized or appropriated by Federal law. This language reflects 507(a) of the Hyde amendment as well as a mix of policies governing other federal programs such as federal prisons and international aid. Secondly, the legislation prohibits funding for health benefits coverage that includes coverage of abortion with funds authorized or appropriated by Federal law. This language reflects 507(b) of the Hyde amendment as well as a patchwork of policies governing other federal programs such as the Federal Employee Health Benefits Program and the State Children’s Health Insurance Program. H.R. 3 prohibits abortion in federal health facilities (such as DOD and VA hospitals) and ensures

abortion is not included in the services provided by individuals as a part of their employment by the Federal government. This language reflects policies currently in place for DOD and VA medical facilities.

H.R. 3 will clarify that the bill does not prohibit individuals, entities, States or localities from purchasing separate coverage that includes abortion. However, such coverage must be purchased using non-federal funds and may not be purchased using matching funds required for a federally subsidized program. For example, states may provide abortion coverage to Medicaid participants, but may not do so using federal funds or state Medicaid matching funds. Also, individuals who receive a federal health insurance subsidy may purchase separate abortion coverage. This language reflects 508(b) of the Hyde amendment. Fifth, the bill will further clarify that non-federal health insurance providers may sell abortion coverage so long as the funds are not authorized or appropriated by Federal law, and abortion coverage cannot be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds. Then, the legislation clarifies that the bill does not change any stronger abortion funding restrictions in existing law. This language ensures that H.R. 3 is not construed to weaken any existing pro-life funding restriction. It also clarifies that the Chapter shall not be construed to apply to treatment for complications caused by an abortion. This language is consistent with the long-standing application of the Hyde amendment and simply provides further clarification to address concerns raised by opponents of the legislation.

H.R. 3 also establishes an exception for abortion funding for cases of rape and incest and when necessary to save the life of the mother. The bill clarifies that the term "funds appropriated by Federal law" includes funds appropriated by Congress for the District of Columbia and that standards set for the federal government includes the government of the District of Columbia. This language is consistent with the DC Hyde amendment known as the Dornan amendment. H.R. 3 ensures that no federal, State or local government that receives Federal funds may discriminate against any individual or institutional health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions. The bill allows health care entities to file a lawsuit against any agency, government or individual that violates this provision. The bill gives federal courts jurisdiction to prevent and redress actual or threatened violations of these provisions by issuing a legal or equitable relief, including injunctions, and orders preventing the disbursement of federal financial assistance until the prohibited conduct has ceased.

H.R. 3 designates the director of the office for civil rights of the Health and Human Services Department (HHS) as the entity charged with investigating complaints regarding violations of the non-discrimination provisions.

Individuals, who spend more than 7.5% of their income (soon to be 10% of income) on health costs, are permitted to deduct those costs on their individual tax return. H.R. 3 ensures that elective abortion is not deductible by amending section 213 of the Internal Revenue Code. Plans that cover abortion are still deductible under H.R. 3, but the bill specifies that abortions in cases of rape or incest, or abortions necessary to save the life of the mother are deductible. The bill also clarifies that treatment for complications caused by an abortion are deductible. H.R. 3

ensures that PPACA premium assistance subsidies provided in the form of refundable advanceable tax credits are not used to pay for health insurance plans that include abortion except in cases of rape, incest and life of the mother, as well as post-abortion treatments. The legislation specifies that individuals may purchase insurance coverage that includes abortion provided that the coverage is not paid for using a premium assistance subsidy. H.R. 3 further specifies that non-Federal health insurance issuers may continue to offer health insurance plans that cover abortion provided that premiums for such coverage are not paid for using a premium assistance subsidy.

Lastly, H.R. 3 ensures that PPACA health insurance expense credits for small businesses are not available for health insurance plans that cover abortion except in cases of rape, incest or to save the life of the mother, as well as post-abortion treatments. The bill also ensures that abortion expenses are not included in distributions from Health Savings Accounts, Medical Savings Accounts and Flexible Spending Arrangements except in cases of rape, incest or to save the life of the mother abortions and post-abortion treatments.

Background: According to the Committee report, in 1993 the Congressional Budget Office estimated that the Federal Government would pay for as many as 675,000 abortions each year without the Hyde Amendment and other measures in place at the time to prevent taxpayer funding of abortion in Federal programs. The provision commonly referred to as the "Hyde Amendment" was passed by the House as a rider to the Department of Labor and Health, Education, and Welfare Appropriation Act. The amendment was named after former Rep. Henry Hyde (R-IL), and the provision prohibits certain appropriated federal funds from being expended on abortion services except in cases of rape, incest, or when the mother's life is endangered by her pregnancy. Each year since it was enacted in 1976, the Hyde amendment has been attached to federal appropriations bills to continue to prevent federal funds from being used to directly provide abortion services and prevent abortions from being covered by federally sponsored health plans or programs, such as Medicaid.

During the debate last Congress on the Patient Protection and Affordable Care Act (PPACA), Rep. Joe Pitts (R-PA) and former Rep. Bart Stupak (D-MI) offered an amendment that would have prohibited government funding of abortion. The House-proposed health-care legislation, H.R. 3200, America's Affordable Health Choices Act, radically departed from the current Federal policy of not paying for elective abortion or subsidizing plans that cover abortion. However, at the last minute, the Democratic leadership permitted a vote on the Stupak/Pitts amendment, which passed by a vote of 240-194. The Senate then took up another bill (H.R. 3590) which did not include the Stupak/Pitts amendment. Instead it contained provisions designed to cloak the funding for abortion coverage. The Senate bill was signed into law as P.L. 111-148. The law is a drastic break from longstanding Federal policy. The Hyde Amendment has, for more than 30 years, prevented programs funded by the annual Health and Human Services Appropriations bill from financing abortion.

According to the committee report, the PPACA passed the House only after a handful of Democrats, led by former Rep. Stupak, who claimed to oppose the Senate bill's Federal funding of abortion, agreed to a deal in which the text of the Senate bill would not change, but the President would sign an executive order that would allegedly negate the text of the Senate bill.

The PPACA subsidizes abortion in private health plans and can pay directly for abortion in new health programs. The PPACA provides for actual “federal funding” of abortions. Under the PPACA, tens of millions of Americans will be eligible for Federal subsidies for private health plans, at a projected total cost of \$435 billion over 7 years (from 2014 through 2020).

Committee Action: H.R.3 was introduced by Rep. Chris Smith (R-NJ) on January 20, 2011, and referred to the Committee on Judiciary. The Committee of Judiciary voted and approved the bill on March 17, 2011, and it was then referred to the Committee on Energy and Commerce on April 7 2011. The legislation was discharged April 7, 2011, by the Committee on Energy and Commerce and referred to the Committee of Ways and Means. The Committee on Ways and Means discharged the bill on April 7, 2011

Administration Position: The SAP states: “The Administration strongly opposes H.R. 3 because it: intrudes on women's reproductive freedom and access to health care; increases the tax burden on many Americans; unnecessarily restricts the private insurance choices that consumers have today; and restricts the District of Columbia’s use of local funds, which undermines home rule. If the President is presented with H.R. 3, his senior advisors would recommend that he veto the bill.”

Cost to Taxpayers: According to the staff of the Joint Committee on Taxation, the bill would have negligible effects on tax revenues. Similarly, CBO estimates that any effects on direct spending would be negligible for each year and over the 2011-2021 periods.

Does the Bill Expand the Size and Scope of the Federal Government?: No, the legislation reduces the size of government.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, H.R. 3 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available.

Constitutional Authority: According the author, “Congress has the power to enact this legislation pursuant to the following: The constitutional authority on which this bill is based is Congress’s power under the Spending Clause in Article I, Section 8 of the Constitution.”

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