



**Legislative Bulletin ..... October 13, 2011**

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**H.R. 358 – Protect Life Act**

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(Pitts, R-PA)**

**Order of Business:** The legislation is scheduled to be considered on Thursday, October 13, 2011, will be considered under a closed rule, and provides one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The rule provides for one motion to recommit with or without instructions.

**Summary:** H.R. 358 amends the Patient Protection and Affordable Care Act (PPACA) to prevent federal funding of abortion or abortion coverage. It also ensures that nothing in PPACA can be construed to require coverage of, or access to, abortion and to ensure that nothing in PPACA allows anyone implementing PPACA to require “coverage of, access to, or training in abortion services.” The following summarizes the Protect Life Act.

**Special Rules Relating to Training in and Coverage of Abortion Services**

H.R. 358 requires that nothing in PPACA will be construed to require any health plan to provide coverage of or access to abortion services or to allow the Secretary or any other federal or non-federal person or entity in implementing PPACA to require coverage of, access to, or training in abortion services.

**Limitation on Abortion Funding**

H.R. 358 prohibits funds authorized or appropriated by PPACA, including credits applied toward qualified health plans under section 36B of the Internal Revenue Code of 1986 or cost-sharing reductions under section 1402 of this Act, from being used to pay for any abortion or to cover any part of the costs of any health plan that includes coverage of abortion. The legislation implements an exception for abortions if:

- the pregnancy is the result of an act of rape;
- or incest or in the case where a pregnant female suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place

the female in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself.

H.R. 358 provides an option to purchase a separate coverage or plan. The bill states that nothing in this legislation can be construed as prohibiting any non-federal entity (including an individual or a state or local government) from purchasing separate coverage for abortions for which funding is prohibited under this bill, or a qualified health plan that includes abortions, so long as:

- the coverage or plan is paid for entirely using only funds not authorized or appropriated under PPACA;
- and such coverage or plan is not purchased using individual premium payments required for a qualified health plan offered through an Exchange towards which a credit is applied under section 36B of the Internal Revenue Code of 198;
- or other non-federal funds required to receive a federal payment, including a state's or locality's contribution of Medicaid matching funds.

H.R. 358 also establishes a clause that prohibits restrictions on non-federal health insurance issuer offering a qualified health plan from offering separate coverage for abortions or a qualified health plan that includes such abortions so long as:

- the premiums for such separate coverage or plan are paid for entirely with funds not authorized or appropriated by PPACA;
- administrative costs and all services offered through such coverage or plan are paid for using only premiums collected for such coverage or plan;
- and any such non-federal health insurance issuer that offers a qualified health plan through an Exchange that includes coverage for abortions for which funding is prohibited under this bill also offers a qualified health plan through the Exchange that is identical in every respect except that it does not cover abortions for which funding is prohibited under this bill.

### **Nondiscrimination on Abortion**

H.R. 358 establishes a nondiscrimination on abortion clause that prohibits a federal agency or program, and any state or local government that receives federal financial assistance under PPACA from discriminating against any institutional or individual health care entity, or requires any health plan created or regulated under PPACA to subject any institutional or individual health care entity to discrimination, on the basis that the health care entity refuses to:

- undergo training in the performance of induced abortions;
- require or provide such training;
- perform, participate in, provide coverage of, or pay for induced abortions;
- or provide referrals for such training or such abortions.

The legislation defines “health care entity” as individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

The legislation gives the courts of the United States jurisdiction to prevent and redress actual or threatened violations of the nondiscrimination on abortion clause by issuing any form of legal or equitable relief, including:

- injunctions prohibiting conduct that violates the nondiscrimination on abortion clause,
- and orders preventing the disbursement of all or a portion of federal financial assistance to a state or local government, or to a specific offending agency or program of a state or local government, until such time as the conduct prohibited by this nondiscrimination on abortion clause has ceased.

The legislation allows action to be instituted by any health care entity that has standing to complain of an actual or threatened violation of the nondiscrimination on abortion clause, or the Attorney General of the United States. H.R. 358 requires the Secretary of the Department of Health and Human Services (HHS) to designate a Director of the Office for Civil Rights of Department of HHS to:

- receive complaints alleging a violation of nondiscrimination on abortion clause;
- and to pursue investigation of such complaints in coordination with the Attorney General.

Lastly, H.R. 358 requires that the Director of the Office for Civil Rights of Department of HHS ensure that no multi-state qualified health plan offered in an Exchange provides coverage for abortions for which funding is prohibited under this bill.

**Background:** According to the [committee report](#), “PPACA does not contain comprehensive anti-mandate provisions with respect to abortion for qualified health benefits plans, nor does it clearly prohibit other methods of mandating abortion coverage—such as through preventive care requirements. PPACA establishes ‘allocation accounts’ to segregate federal funds from premium funds that can be used for abortion coverage. Under this system, the plan issuer is required to collect the enrollee’s portion of the premium in two payments. One payment goes into an account for abortion coverage and the other payment goes into an account for all other coverage. This has sometimes been referred to as the ‘abortion surcharge’. PPACA requires the Director of the Office of Personnel Management to ensure that one multi-state plan does not cover elective abortion, while allowing all others to offer plans that do cover abortion. Individuals who prefer the overall coverage in a plan that covers elective abortion must write a check to pay the abortion surcharge in order to take advantage of the coverage in that plan. A significant dilemma arises, however, when individuals who have a strong moral objection to abortion are forced to directly finance abortion coverage in order to purchase a health care plan they believe best provides for their needs and the needs of their family members.”

According to the [committee report](#), “Article 1, Section 8 of the United States Constitution provides to Congress the power to allocate federal funds, and by extension the power to limit federal funding for certain activities. PPACA contains a definition of services that hinges on the Hyde amendment being retained each year through the

appropriations process. This leaves the door open for the Hyde limitations to be dropped by a determined majority in one chamber of Congress or by a presidential veto. The Protect Life Act provides greater certainty that the Hyde limitations will continue to apply to PPACA.”

**Committee Action:** H.R. 358 was introduced by Rep. Joseph R. Pitts (R-PA) on 1/20/2011. On 3/17/ 2011 the legislation was referred and amended by the Committee on Energy and Commerce. On 9/12/2011 the Committee on Ways and Means discharged the bill and placed it n the Union Calendar.

**Administration Position:** According to the Statement of Administration Policy, “the Administration strongly opposes H.R. 358 because, as previously stated in the Statement of Administration Policy on H.R. 3, the legislation intrudes on women's reproductive freedom and access to health care and unnecessarily restricts the private insurance choices that women and their families have today.”

**Cost to Taxpayers:** No Congressional Budget Office cost estimate is available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** According to CBO, “enacting H.R. 358 could affect direct spending; therefore, pay-as-you-go procedures apply. However, because H.R. 358 overlaps current federal and state laws, CBO expects that enactment would have little effect on coverage offered by qualified health plans. Consequently, CBO estimates that the federal budgetary effects would be negligible for each year.”

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** According to CBO, “H.R. 358 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?:** According to the committee report, “in compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R 358, the Protect Life Act, contains no earmarks.”

**Constitutional Authority:** According Rep. Pitts’s statement of constitutional authority, “Congress has the power to enact this legislation pursuant to the following: The Protect Life Act would overturn an unconstitutional mandate regarding abortion in the Patient Protection and Affordable Care Act.”

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