

American Center for Law and Justice

Concerns About the Baucus Health Care Bill

Today, Senator Max Baucus (D-MT) released his version of the national health care reform legislation. Initially, many in Washington anticipated that the bill would have bi-partisan support; however, to date no Republicans have signed on to the bill. Senators Grassley and Enzi, in fact, have expressed concerns about the abortion provisions.

Based on our initial reading, we too have concerns with the abortion provisions in this bill, which you can read [here](#).

First, with regards to a minimum benefits package, p. 25 of the bill states that abortion “cannot be a mandated benefit as part of a minimum benefits package except in those cases for which Federal funds appropriated for the Department of Health and Human Services are permitted.” We are concerned that, if the Hyde Amendment is scrapped by the pro-abortion Congress, then abortion on demand could be mandated as a minimum benefit. Since 1976, the Hyde Amendment has been added each year to the Department of Health and Human Services (HHS) appropriations bill. The amendment prevents federal funding of abortion, except in limited circumstances. However, Congress could, at some point, fail to add the Hyde Amendment to the HHS appropriations bill, thus eliminating its protections.

Second, the bill permits health care plans to cover abortions for which federal funds are prohibited, but tax credits and cost-sharing credits cannot be used “to pay for abortions beyond those permitted by the most recent appropriation for the Department of Health and Human Services.” Under the bill, “insurers participating in any state-based exchange that offer coverage for abortion beyond those permitted by the most recent appropriation for the Department of Health and Human Services must segregate from any premium and cost-sharing credits an amount of each enrollee’s private premium dollars that is determined to be sufficient to cover the provision of those services.” Furthermore, the “Secretary shall also establish a process using an estimated actuarial value by which insurers that provide coverage for abortions beyond those permitted by the most recent appropriation for the Department of Health and Human Services must demonstrate that no federal premium and cost-sharing credits are used for the purpose of paying for such abortions.”

We are concerned that what this means in practice is that if the Hyde Amendment is scrapped, then federal funds, tax credits, and cost-sharing credits could be used to pay for abortion on demand. Additionally, even while the Hyde Amendment is in place, federal funds, tax credits, and cost-sharing credits can subsidize plans that provide abortion coverage, even though an accounting mechanism attempts to segregate funds.

Third, under the bill, each state exchange would be required to include a plan that “provides coverage of abortions beyond those for which Federal funds appropriated for the Department of Health and Human Services are permitted. The Secretary would also ensure that in each state exchange, at least one plan does not provide coverage of abortions beyond those for which Federal funds appropriated for the Department of Health and Human Services are permitted.”

Therefore, at least one plan would be mandated to cover elective abortion. Furthermore, if the Hyde

Amendment is scrapped, there is not a requirement that each state exchange include a plan providing no abortion coverage.

Fourth, p. 25 of the bill contains a provision that “would ensure that state laws regarding the prohibition or requirement of coverage or funding for abortions, and state laws involving abortion-related procedural requirements are not preempted.” This provision would also ensure that “Federal conscience protections” are not preempted. It is unclear, however, how this provision would work in practice, particularly if the Hyde Amendment is deleted.

We will keep you posted on this bill and other measures now under consideration in Congress.