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HATCH CALLS ON ADMINISTRATION TO PRESERVE RIGHT TO LIFE, FREEDOM OF RELIGION

*In Letter, Urges HHS Secretary Sebelius to Consider Full Impact of IOM Recommended
Benefit Mandates to Women's Preventative Services*

WASHINGTON – Today, U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, called on Health and Human Services Secretary Kathleen Sebelius to fully consider the impact of the Institute of Medicine's (IOM) recommendation to make women's preventative services a federal mandate for all health insurance plans. In a letter, Hatch said the mandates were an "affront to the natural rights to life, religious liberty and personal conscience." The Department of Health and Human Services is expected to issue guidance by August 1st.

"I firmly believe, along with millions of other Americans, that the right to life comes from our Creator, that this right is the fundamental philosophical commitment of our nation's founding and that abortion violates this right," Hatch wrote. "Adoption of the IOM recommendations would not only further undermine the right to life, but would substantially erode the First Amendment's right to free exercise by compelling both religious and non-religious persons and institutions that oppose abortion to subsidize it. If adopted by you, the IOM recommended benefits would force individuals to bear costs associated with drugs that violate their religious and philosophical commitments."

The full text of the letter is below:

July 29, 2011

The Honorable Kathleen Sebelius
Secretary

U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

Last week the Institute of Medicine (“IOM”) issued a report entitled “Clinical Preventive Services for Women: Closing the Gaps,” which recommended preventive services that should be mandated for all health insurance plans. As the Ranking Member of the United States Senate Committee on Finance, I am writing to express my concerns about the economic and constitutional implications of your approving these recommendations. As you prepare to issue your final decision regarding coverage of preventive benefits for women, I strongly urge you to consider carefully the problematic effects of implementing a federally determined benefit mandate. Not only will such mandates drive up health care costs for American families, but the mandates recommended by IOM are an affront to the natural rights to life, religious liberty and personal conscience.

The IOM recommendations regarding preventive services for women have received much attention by the media and my constituents. Some reports have indicated that the Administration will endorse all benefit mandates recommended by the IOM, less than two weeks after their publication. I caution the Administration about moving forward without taking the time to fully consider the impact of these benefit mandates. As you know, standard rulemaking under federal law requires a transparent process of public notice and comment, and I hope you agree that these recommendations deserve the full attention of not only the Administration, but also of all citizens who would be affected by these federal mandates. In a democracy it is critical that citizens have an opportunity for full public comment before unelected administrators issue legally binding regulations. Moving forward with approval of all the IOM recommended benefits within weeks of their publication, and without due consideration and a public deliberative process, would be an abdication of your responsibilities to the American people. I concur with the dissenting statement in the IOM report, which concluded that “the long-run risks associated with making poorly informed decisions, and their likely irreversibility once codified, outweigh the Affordable Care Act mandated rapidity with which [IOM] was confronted.”^[1]

Aside from my procedural concerns with the approval of these recommendations, I have substantive concerns as well. First, it was disconcerting to learn that the Administration directed the IOM to disregard any consideration of how

^[1] Institute of Medicine, “Clinical Preventive Services for Women: Closing the Gaps,” July 20, 2011, p. 207.

these new federal mandates would drive up health care costs for American families. President Obama, you, the former Director of the Office of Management and Budget, and many other administration officials repeatedly told the American people that the President's health care law would bring down costs and make coverage more affordable. Health care economists understand, however, that as a general rule benefit mandates drive costs up. In fact, the Congressional Budget Office has stated that "[a]lthough different types of preventive care have different effects on spending, the evidence suggests that for most preventive services, expanded utilization leads to higher, not lower, medical spending overall." In addition to taking away the right of individuals to choose the health care plans that best fit their needs, approving these recommendations will bend the health care cost curve in the wrong direction through federal benefit mandates, added layers of regulation, and price controls that stifle innovation. Given that benefit mandates generally increase the cost of coverage and decrease affordability, your contention that such benefits are "free" would be misleading, and your failure to instruct IOM to consider mandate costs is troubling.

My second concern with these recommended mandates runs deeper, because they threaten the core principles of personal liberty and individual conscience on which this nation was founded and that you and I take an oath to support. If the IOM recommendations were implemented, every health insurance plan would be forced to cover all Food and Drug Administration (FDA) approved contraceptives, including abortion-inducing drugs such as Plan B and Ella. The implications of such a decision would be a deliberate violation of First Amendment principles. If you adopt these recommendations, the President's health care law would require institutions like Brigham Young University and the University of Notre Dame to subsidize abortion-inducing drugs for their employees. It would require the health plans of religious hospitals, and even churches themselves, to subsidize abortion-inducing drugs.

Mandating this coverage is problematic for a number of reasons. From an economic perspective, it may encourage these religious institutions to drop coverage, increasing costs for the federal government. As a scientific matter, it is important to recall that you are considering "preventive" services, and pregnancy is not a disease to be treated. Most importantly, these mandates are an affront to the constitutionally guaranteed rights to free exercise of religion and personal conscience. Failing to protect the conscience rights of Americans who object to facilitating abortions stands at odds with not only the ostensible spirit of President Obama's own Executive Order 13535, but also with Congressional intent reflected in decades of public law.

I firmly believe, along with millions of other Americans, that the right to life comes from our Creator, that this right is the fundamental philosophical commitment of our nation's founding, and that abortion violates this right. Adoption of the IOM recommendations would not only further undermine the right to life, but would substantially erode the First Amendment's right to free exercise by compelling both religious and non-religious persons and institutions that oppose abortion to subsidize it.

If adopted by you, the IOM recommended benefits would force individuals to bear costs associated with drugs that violate their religious and philosophical commitments.

For these reasons, I strongly suggest that you consider the full impact of the IOM's recommended benefit mandates related to women's preventive services. In addition to increasing costs, requiring plans to cover abortion-inducing drugs undermines our nation's constitutional commitment to the free exercise of religion. I expect that in making your decision you will consider these serious issues through a regular public comment period, and that you will provide guarantees that the constitutional rights of persons are not violated by your decision to impose benefit mandates on health plans.

Sincerely,

ORRIN G. HATCH

Cc: Administrator Donald Berwick, MD, Centers for Medicare & Medicaid Services

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