



# ISSUE ANALYSIS

## Abortion Funding and Obamacare

2016 Edition

Arina O. Grossu, M.A.

### Executive Summary:

Obamacare uses taxpayer funds to subsidize abortion by various means:

- Obamacare bypasses the Hyde Amendment by directly appropriating taxpayer funds in the form of advanceable, refundable tax credits to help low- and moderate-income individuals purchase health care plans even if they include elective abortion coverage.
- Obamacare can directly fund elective abortion through a total of nearly \$24 billion in appropriations to non-profit health co-ops, Community Health Centers, and the now expired high-risk pool plans program that have no restrictions on elective abortion funding. These funds can be used directly to pay for elective abortion since the funds are not restricted by the Hyde Amendment.
- Obamacare also contains an abortion surcharge. Individuals who enroll in a federally subsidized health care plan that includes elective abortion coverage will be required to pay an abortion surcharge of no less than \$1 per month. These funds will be used to pay the cost of other people's abortions enrolled in that plan.
- Obamacare violates the principle of the Hyde Amendment by subsidizing government-run health plans, called Multi State Plans (MSPs), even if they include elective abortion coverage.
- The government's Office of Personnel Management (OPM) chose to allow members of Congress and their staff to obtain taxpayer-subsidized insurance coverage that could include elective abortion coverage in violation of the Smith Amendment which has up to now prevented government subsidies to federal employees for plans with elective abortion coverage.

Obamacare also uses taxpayer funds to subsidize abortion providers:

- Federal funds can flow directly to abortion providers like Planned Parenthood, to work as "navigators" and "assisters."
- Obamacare also requires insurance companies to contract with health care facilities marked as Essential Community Providers which includes at least 588 Planned Parenthood and other family planning facilities that may perform abortions.

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801 G STREET NW, WASHINGTON, D.C. 20001  
202-393-2100 • fax 202-393-2134 • (800) 225-4008 order line  
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## **Obamacare Insurance Coverage Requirements**

All individuals are required under Obamacare to purchase qualified health insurance as of January 1, 2014. These plans can be employer-based plans or sold in the individual market on their state health care exchange. This requirement exists whether the exchange is state-created or, if the state chose not to establish the exchange, federally-created. Individuals must purchase a qualified plan as determined by minimum federal benefit requirements or face a tax penalty. Individuals must prove on their federal income taxes that they were covered by insurance each month of the year. If individuals have gaps in health care coverage, or refuse to purchase health care for that year, they will be fined on their taxes. For 2014, the tax penalty was either \$95 per adult, or 1% of total income, whichever was greater. The tax penalty increased each year. In 2015 it was 2% of income or \$325 per person. In 2016 it is 2.5% of income or \$695 per person. In 2017 and beyond it will be 2.5% of income, but the flat fee will be adjusted for inflation.<sup>1</sup>

## **Obamacare Allows Direct Federal Funding of Abortion**

Since 1976, the Hyde Amendment, a provision contained in the annual Labor, Health and Human Services (LHHS) appropriations bill, has prevented the Department of Health and Human Services (HHS) from paying for elective abortions in its programs. The Hyde Amendment also was amended in the 1990's to prevent federal funds from being used to pay "for health benefits coverage that includes coverage of abortion."<sup>2</sup> It is important to note that the Hyde Amendment only applies to funding "under this Act" so that other appropriations not funded by the LHHS bill are not subject to the Hyde funding restriction. Other spending bills contain similar "pro-life" abortion funding restrictions. The Dornan Amendment on the Financial Services and General Government appropriations bill prevents funding for elective abortion in the District of Columbia. The Helms Amendment prevents funding under the State and Foreign Operations appropriations bill from paying for abortion overseas. These amendments govern funding under those bills. If funding is spent by some other law, the amendments do not apply. Obamacare directly appropriates money so its expenditures are not subject to these annual pro-life funding provisions.

Obamacare bypasses the Hyde Amendment since the law itself directly appropriates taxpayer funds for various health programs and for subsidies to purchase health plans. These funds are not contained in the LHHS spending bill nor are they subject to the other spending bills or other prolife provisions.

U.S. courts have ruled that government health care funding will include abortion unless Congress *explicitly excludes it as a fundable service*.<sup>3</sup> After *Roe v. Wade*, the government began funding abortion. Congress responded by passing the Hyde Amendment in the late 1970's to stop government funding of abortion. As explained above, the Hyde Amendment and other abortion funding restrictions are contained in various spending bills and govern funds under those annual laws. Unfortunately, Congress did *not* explicitly exclude funding for elective abortion under Obamacare because it directly spends money for health care plans. Since there is no "Hyde Amendment" controlling the use of those funds, the government may fund abortion directly under several Obamacare provisions.

First, Section 1322<sup>4</sup> of Obamacare appropriated \$6 billion for loans and grants to assist the establishment of non-profit health co-ops to pay for health care plans. There is no restriction on the use of those funds for elective abortion. Second, Section 10503 of Obamacare appropriated

\$12.5 billion for Community Health Centers (CHCs) with no abortion-funding restrictions. These Obamacare funds are neither subject to the Hyde Amendment nor any other abortion funding restriction. Third, Section 1101 of Obamacare appropriated \$5 billion to create a temporary high risk health insurance program run by states. Examples include evidence from 2010 that Pennsylvania and New Mexico's high risk pool programs listed "abortion" among the covered benefits.<sup>5</sup> After public disclosure, HHS denied the listing of abortion, and the mention of abortion was taken off the state websites. Obamacare directly can fund elective abortion through a total of nearly \$24 billion in appropriations over a five-year period to non-profit health co-ops, Community Health Centers, and high-risk pool funds (which have expired), by having no restrictions on elective abortion funding.

### **Obamacare Bypasses Abortion Funding Restrictions through Tax Credits**

To garner the support needed to pass Obamacare, Sen. Ben Nelson (D-NE) and Sen. Harry Reid (D-NV) offered an amendment in December 2009, claiming that it prevented abortion funding. It added Section 1303 to Obamacare – which explicitly allows elective abortion coverage to be included in any federally subsidized plan. However, the amendment was a political tactic giving the appearance that abortion was not directly funded, while violating the principles of the second part of the Hyde Amendment (which prevents subsidies under the LHHS bill to be spent on plans with abortion coverage). The Reid/Nelson Amendment passed the U.S. Senate along with Obamacare.

Obamacare directly spends money in the form of advanceable refundable tax credits to assist low- and moderate-income individuals purchase health care plans on the state exchanges even if, according to Section 1303, the plans include elective abortion coverage. The government may either pay out this "premium tax credit" to a federally-approved insurance company to lower out-of-pocket monthly premiums for qualifying individuals or they could get the tax credit directly when filing taxes.<sup>6</sup>

According to the Congressional Budget Office (CBO), the cost of these advanceable, refundable tax credits will total \$899 billion in direct spending over the next 10 years.<sup>7</sup> These dollars are directly appropriated by Obamacare so they are not subject to the Hyde Amendment restriction on paying for the cost of insurance plans that include abortion. Section 1303 allows these federally subsidized plans to include elective abortion coverage.

### **Required Elective Abortion Surcharge in Obamacare Premiums**

For any health plan in the exchanges that includes elective abortion coverage, plan participants must pay a separate abortion surcharge. The abortion fee is to be kept "separate" from any federal subsidies and other premium payments. Pro-abortion advocates claim this amendment prevents federal funding for abortion.

However, according to Section 1303, individuals who enroll in a federally subsidized health care plan that includes elective abortion coverage will be *required* to pay an abortion surcharge of no less than \$1 per month.<sup>8</sup> These dollars are to be used to pay for abortions for anyone in that plan. In other words, along with tax subsidies for plans with abortion coverage, Obamacare forces everyone in a qualified health plan in a state exchange to pay a minimum of \$12 per year for elective abortion coverage. The abortion fee could be more, but it must not be less than \$12

per year. Even if an individual does not use the abortion coverage, this abortion surcharge is mandated to help pay the cost of other people's abortions.

### **Abortion Surcharge Not Kept Separate**

Obamacare Section 1303 describes the separate abortion fee as follows: "State health insurance commissioners shall ensure that health plans comply with the segregation requirements in this subsection through the segregation of plan funds in accordance with applicable provisions of generally accepted accounting requirements."<sup>9</sup>

On March 24, 2010 President Obama released an executive order for "ensuring enforcement and implementation of abortion restrictions" in Obamacare.<sup>10</sup> The executive order spurred the Department of Health and Human Services (HHS) and the Office of Management and Budget (OMB) on September 20, 2010 to detail an enforcement plan:

1. An annual assurance statement from the issuer of each qualified health plan participating in the Exchange stating that the plan has complied with Section 1303 of Obamacare.
2. Periodic financial audits of qualified health plans to ensure compliance with Section 1303 of Obamacare.<sup>11</sup>

The Obamacare accounting gimmick requires two "separate" payments: First it requires the premium payments be made, and second, it requires that the abortion surcharge be paid. In reality the abortion surcharge is often collected through a single transfer of funds. This is in direct violation to Obamacare's requirements that insurance companies "collect from each enrollee in the plan (without regard to the enrollee's age, sex, or family status) *a separate* payment."<sup>12</sup> For example Rep. Chris Smith (R-NJ) cited bulletins and guidance documents issued in Rhode Island, Maryland, New York, and Washington that allow the collection of both premiums through a single transfer of funds and do not bill the abortion surcharge as a separate fee.<sup>13</sup> The federal subsidies are allowed to be combined with the premium payments made by individuals. Since the abortion surcharge and the rest of the plan premiums are billed as one payment, it obliterates any pretense that federal tax credits are not being used to pay the cost of elective abortion coverage.

Section 1303 (b)(3)(B) on "Rules Relating to Notice" states that "any information provided by the Exchange, and any other information specified by the Secretary shall provide information *only with respect to the total amount of the combined payments* for [abortion services] and other services covered by the plan."<sup>14</sup> This means that Obamacare does not even require health care issuers to itemize the abortion surcharge on an enrollee's bill or invoice. This provision in effect makes the abortion surcharge a hidden fee. Most individuals will not even be aware that they are paying an abortion surcharge.

This provision containing both the abortion surcharge and accounting gimmick violates the principle of the Hyde Amendment by assisting individuals in purchasing health care plans with elective abortion coverage. It does not matter whether the funds are kept in separate accounts from the funds used to pay for abortion. Subsidizing plans with abortion coverage violates the Hyde standard. Of course, now that the states are allowing combined payments, it suggests that not even the "segregation of funds" requirement is being followed.

### **Obamacare Hides Abortion Funding through the “Secrecy Clause”**

Obamacare also makes it difficult for individuals to find out *prior* to enrolling in a plan whether or not that plan includes elective abortion coverage because of the “abortion secrecy clause.” Section 1303(b)(3)(A) of Obamacare contains an abortion secrecy clause which prohibits insurers from informing individuals before or after they enroll whether a specific plan covers abortion. It also requires that they be informed in the summary of benefits they are offered, not in any other format. The provision states: the insurer “shall provide a notice to enrollees, *only* as part of the summary of benefits and coverage explanation, *at the time of enrollment*, of such coverage.”<sup>15</sup> So before enrolling, individuals cannot find out if the plan they are considering purchasing does or does not have elective abortion coverage.

There is no transparency regarding which plans on the exchange do or do not cover elective abortion. Individuals have extreme difficulty comparing plans based on elective abortion coverage prior to enrollment and the Administration has not provided this information.

On October 30, 2013, Rep. John Shimkus (R-IL) asked then-HHS Secretary Kathleen Sebelius during a House Energy and Commerce Committee hearing if she could “provide for the committee the list of insurers in the exchanges which do not offer as part of their package abortion coverage.” Sebelius promised, “I will check and make sure that is clearly identifiable... I think we can do that, Sir... I will get that information to you.”<sup>16</sup>

Later, Rep. Shimkus pressed Sebelius in another hearing on December 11, 2013 reminding her that she had promised a list of plans and whether they included abortion. Secretary Sebelius insisted, “Every plan lists plan benefits and the one plan benefit that they must list by law is abortion services, so as a shopper goes on, I would highly recommend that they look in the plan benefits section...It is on the website...It is available.”<sup>17</sup> However, this is simply not true. On March 13, 2014, Rep. Andy Harris (R-MD) questioned Sebelius again at an LHHS Subcommittee Hearing, pointing out that he printed out summary of benefits of every exchange plan in Maryland for example and he said, “None of them have an indication of whether they cover abortion in the summary of benefits. It’s not transparent whatsoever.”<sup>18</sup>

To date, HHS has not provided a yearly list of insurers in the federal exchange who do not offer as part of their package elective abortion coverage. HHS Secretary, Sylvia Burwell, was asked by Senators Roberts, Lee and Cruz about abortion funding and like former Secretary Sebelius provided no response.

Individuals and families may not even know that they are paying for abortion coverage because the disclosure will likely be buried in fine print in an enormous document describing summaries of benefits and coverage. Moreover, they may not realize they are paying an abortion surcharge since that is not itemized on the enrollee’s bill.

Rep. Chris Smith (R-NJ) introduced the “No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act” (H.R. 7)<sup>19</sup> that would prohibit federal funds from being expended for abortion or health coverage that includes coverage of abortion, and it would require up-front information about abortion coverage in plans and a separate disclosure and identification of any abortion surcharge.

### **Multi-State Plans: Paths for Federal Subsidies of Elective Abortion**

Obamacare also violates the principle of the Hyde Amendment by subsidizing government-run health plans, called Multi-State Plans (MSPs), even if they include elective abortion coverage. This provision on MSPs in the Senate version was similar to the House version's "public option." Instead of one government-run plan, the Senate version created government-run "multi-state" plans to be run by the Office of Personnel Management (OPM), the same agency that runs the Federal Employee Health Benefits Plan (FEHB) for federal employees. The government runs the program while private insurers contract with OPM to offer various plans.

Similarly, starting on October 1, 2013, the OPM contracted with private health insurers in each state to establish MSPs. Obamacare required that by 2014, issuers must offer MSPs in at least 60% of the states. This percentage went up to 70% for 2015, 85% for 2016 and 100% for 2017 and each subsequent year.<sup>20</sup> As of September 2016, there are only 33 states, including the District of Columbia, that offer MSPs: AL, AK, AR, CA, CO, CT, DE, GA, IL, IN, KS, KY, LA, MD, ME, MI, MN, MO, MT, NC, NH, NV, NY, OK, PA, SC, TN, TX, VA, WA, WI, WV and the District of Columbia.<sup>21</sup>

Obamacare's provision on MSPs requires that at least one of these plans in each state exchange must exclude elective abortion coverage.<sup>22</sup> OPM is required to ensure there is at least one pro-life plan, implying that other MSPs can offer elective abortion coverage.<sup>23</sup> A portion of the MSP plans which *do* cover elective abortions can be funded by the government. *All MSPs are federally operated and funded even if they include coverage of elective abortion.* As more issuers and plans are added to the state lists, nothing prevents these future issuers from covering elective abortions, thus violating the Hyde Amendment.

### **Federal Funding of Abortion Providers**

While not explicit in Obamacare, the law has been used by this Administration to subsidize the abortion industry. In response to low enrollment turnout, HHS enlisted the help of various community organizations to be "navigators" and "assisters" to help consumers enroll in Obamacare. HHS has already funded Planned Parenthood, the nation's largest abortion provider in the country, performing over 300,000 abortions per year,<sup>24</sup> to help enroll Americans in exchange plans. HHS has funded Planned Parenthood affiliates in Iowa, Arkansas, Nebraska, Oklahoma, Montana and New Hampshire totaling \$655,192.<sup>25</sup> California, Minnesota and Vermont have awarded over \$700,000 to Planned Parenthood affiliates.<sup>26</sup> The District of Columbia health insurance Exchange awarded a \$375,000 grant to Planned Parenthood of Metropolitan Washington, D.C. to be an "In-Person Assister."<sup>27</sup> In February 2014 it was reported that about 400 Planned Parenthood canvassers were knocking on 15,000 doors a day in 18 cities.<sup>28</sup>

Obamacare also requires funding of Essential Community Providers (ECP), health care providers which serve low-income individuals. Obamacare requires insurance companies to contract with health care facilities marked as ECPs which can include Planned Parenthood and other family planning facilities that provide abortions. At least 588 Planned Parenthood facilities and other family planning facilities are listed among ECPs on a federal agency's website within HHS.<sup>29</sup> This is yet another example by which Obamacare and the Obama Administration have subsidized the abortion industry.

### **Abortion Coverage for Congress Violates the Smith Amendment**

The thirty-three-year-old Smith Amendment, contained in the Financial Services Appropriations bill, bans the OPM from using appropriated funds to pay for abortion or pay for the “administrative expenses in connection with any health plan” under the Federal Employees Health Benefits programs that includes coverage for abortion.<sup>30</sup> The FEHB program cannot pay for federal employees to purchase plans that cover elective abortion. Like the Hyde Amendment, the Smith Amendment prohibits federal subsidies for health care plans that include elective abortion coverage. This applies to members of Congress and their staff as well as other federal employees.

Sen. Charles Grassley (R-IA) introduced an amendment to Obamacare that required all lawmakers and their staff to enroll in health plans on the exchange. Congress and staff were to be treated like other Americans in having to sign up for Obamacare-compliant plans. The catch is that Congress members and their staff receive good health care from private companies through the FEHB program and their “employer” contribution often pays as much as 75% of the cost of their premiums. By forcing Congress and their staff to purchase private health plans under Obamacare’s exchanges, Congress and their staff could lose their federal employer contribution since the premium support (tax credits) for those plans only applies to those making between 100% and 400% of poverty level. This means Congress and their staff would not only change their health plans but lose significant subsidies. OPM issued a regulation allowing Congress and their staff to continue to receive their federal contributions while buying health plans on the District of Columbia Small Business Health Options Program (SHOP), a part of the D.C. exchange that offers plans for small businesses.<sup>31</sup>

This regulation had the effect of dumping Members and their staff into plans that, like other plans under Obamacare, can cover elective abortion *and* yet continue to receive federal premium support. In response, Rep. Chris Smith argued that this rule which allowed OPM to continue subsidizing Member and staff health care plans violated the Smith Amendment. Rep. Smith found that 103 of the 112 insurance plans that Members of Congress and congressional staff could choose from on the D.C. exchange *include* elective coverage of abortion.<sup>32</sup> OPM is violating the Smith Amendment by allowing Members of Congress and their staff to obtain taxpayer subsidies for their insurance plans which include elective abortion coverage. Since 92% of the insurance plans available to Members of Congress offer elective abortion coverage, it can be assumed that there are “administrative activities in connection with any plan that includes abortion,” activities which violate the long-standing Smith Amendment governing OPM’s practices. Here again the Administration has used Obamacare to subsidize abortion coverage.

### **Current State Laws and Opt-Outs**

Many states have taken matters into their own hands by using one part of Obamacare’s Section 1303 that was used by Senators Reid and Nelson to persuade Members that the bill does not subsidize abortion. This section does allow states to opt out of abortion coverage in state exchanges.

As of September 2016, the following states passed laws to prohibit elective abortion coverage for plans in the exchange. Some also barred abortion coverage for health plans outside of the exchange. Others also passed legislation to bar abortion coverage in insurance policies for their public employees:<sup>33</sup>

- **25 states** have opted out of elective abortion coverage in the state-based insurance exchanges: AL, AZ, AR, FL, GA, ID, IN, KS, KY, LA, MI, MS, MO, NE, NC, ND, OH, OK, PA, SC, SD, TN, UT, VA, and WI. Individuals living in these states can purchase any plan on the exchange knowing that none will cover elective abortions.
- **11 states** prohibit elective abortion coverage in plans outside of the exchange: ID, IN, KS, KY, MI, MO, NE, ND, OK, RI<sup>34</sup>, and UT.
- **22 states** prohibit elective abortion coverage in insurance policies for public employees: AZ, CO, GA, ID, IL, IN, KS, KY, MA<sup>35</sup>, MI, MS, MO, NE, NC, ND, OH, OK, PA, RI, SC, UT, and VA.

It is crucial to note that while efforts to bar elective abortion coverage in exchange plans as well as in plans that are off of the exchange must be supported, such a policy change will not completely fix the problem for Americans in those states. Americans in those 25 states still pay federal taxes and that revenue is used by the Administration to subsidize health plans with elective abortion coverage in the rest of the states that do offer elective abortion coverage.

### **Limited Consumer Options**

Individuals living in any of the 25 states (or the District of Columbia) that currently have no abortion coverage opt-out laws have severely limited options for purchasing health plans that do not include elective abortion coverage. They must attempt to find either a private plan on their exchange or an MSP that does not cover elective abortions.

MSP plans have until the year 2017 to be set up in states that have created their own health care exchange or the federal exchange. By law, there must be at least one MSP plan that does not include elective abortion coverage.

Having a single abortion-free exchange plan as an option does not constitute much of a “choice” (in purchasing pro-life plans) especially when state residents are reviewing health care coverage for a variety of other factors to fit their needs and the needs of their families. While Obamacare requires at least one MSP offered on an exchange to exclude elective abortion coverage, the law does not stipulate that all of the remaining MSPs must include abortion coverage, as several states have interpreted.

Because the Obama administration has failed to be transparent about abortion coverage, Family Research Council (FRC) and Charlotte Lozier Institute (CLI) have done extensive research since 2014 to piece together during each enrollment period as much information as they could for the consumer to make an informed choice about Obamacare insurance purchases. This information is available on [ObamacareAbortion.com](http://ObamacareAbortion.com). As of September 2016, [ObamacareAbortion.com](http://ObamacareAbortion.com) shows that of all plans being offered on the exchange, an estimated 59% (around 1,106 plans) cover abortion on demand. Two states have abortion-only plan options: HI and VT. In addition, six states including the District of Columbia have 85% or more of the exchange plans covering abortion on demand: CA, NH, MA, NY, WA, and the District of Columbia.<sup>36</sup>



Even if a single pro-life plan does exist, the individual, regardless of her insurance needs and those of her family, would be limited to only that individual plan if she does not want to violate her conscience. There is no opt-out choice for an individual who prefers a certain health plan for its benefits but also wishes to opt out of its abortion coverage. Americans are left with few or no options in choosing the health care coverage that is right for them, without violating their consciences by subsidizing elective abortions.

It is important to reiterate that even in a state that has opted out of abortion coverage, an individual is still subsidizing others' plans in states that *do* have elective abortion coverage. Americans under Obamacare are subsidizing abortion coverage and have virtually no choice in the matter.

### **Federal Funding of Abortion Will Increase the Number of Abortions**

Over one million Americans are alive today because the Hyde Amendment has prevented federal funding of abortion.<sup>37</sup> Obamacare bypasses the Hyde Amendment by making tax credits available to assist low- and moderate-income individuals in purchasing health care on the exchange. These federal tax credits can be applied to lower the cost of premiums for plans which include elective abortion coverage, making abortions more affordable.

The effect of federal funding of abortions is an increase in the number of abortions. Federal funding of abortion increases the number of abortions by roughly 25%. According to a 2007 Guttmacher Institute report, the Hyde Amendment ban on federal funding of abortion has prevented between 18 to 35% of women from having an abortion.<sup>38</sup> Subsidizing health plans under Obamacare that include elective abortion is likely to increase abortion, not make it "rare" as even President Bill Clinton and other abortion advocates once espoused.

### **The Majority of Americans Object to Federal Funding of Abortion**

Obamacare's abortion funding is opposed by most Americans. In fact, the majority of Americans object to federal funding of abortion as shown in several recent polls. A July 2016 Marist poll found that 62% of Americans oppose taxpayer funding of abortion. This includes 65% African-Americans, 61% of Latinos, and 45% of those who say they are pro-choice, as well as 84% of Republicans, 61% of Independents and 44% of Democrats.<sup>39</sup> An April 2011 CNN poll revealed that 61% of Americans oppose using public funds for abortion.<sup>40</sup> Further, a January 2010 Quinnipiac University poll showed that 67% of Americans oppose federal funding of abortion.<sup>41</sup>

### **Congress and States Must Take Action**

Obamacare violates the principles of the Hyde Amendment by allowing direct payment for abortion and by subsidizing health care plans which include elective abortion coverage. Individuals should not have to choose between a health plan that is right for them and violating their beliefs by funding elective abortion.

The single most effective solution is for Congress to repeal Obamacare, which would stop taxpayer money from being used to directly fund abortions, subsidize abortion via tax credits, or require the payment of abortion surcharges if the individual is enrolled in an exchange plan that includes elective abortion coverage. Repealing this law will also stop the funneling of

money to abortion providers like Planned Parenthood and its affiliates that act as “navigators” and “Essential Community Providers”.

While Congress debates repealing this law, Congress can and should ban all federal funding of abortion and subsidies for abortion under Obamacare. It should make permanent the annual Hyde Amendment by passing the “No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act” (H.R. 7)<sup>42</sup> H.R. 7 would also require up-front information about abortion coverage in plans and a separate disclosure and identification of any abortion surcharge, make permanent the other annual restrictions on federal funding of abortion (or the funding of health plans that include abortion), and return the government to the status quo of neutrality when it comes to federal funding of abortion.

At the state level, for the 25 states and the District of Columbia with no opt-out laws, Family Research Council (FRC) recommends the adoption of such laws to prevent insurers from providing elective abortion coverage in the federally subsidized state insurance exchanges. Furthermore, an MSP would not be able to offer abortion coverage in any state where such coverage of abortion services is prohibited by state law.

Congress and each state must prohibit funding of elective abortions so that individuals can have a full range of choices for health care plans without violating their consciences. Respecting the freedom of conscience is a long-held American tradition and the government should not impose laws or mandates that force individuals to violate these beliefs in order to obtain health insurance. Congress should ensure that Americans are not forced to pay for and subsidize abortion. Such a policy of neutrality on the question of abortion funding could garner widespread support and save many lives.

*Arina O. Grossu, M.A. is the Director for the Center for Human Dignity at Family Research Council where she focuses on sanctity of human life issues, ranging from conception to end of life care.*

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<sup>1</sup> “What if someone doesn’t have health coverage in 2014?,” HealthCare.gov, accessed on March 5, 2014, <https://www.healthcare.gov/what-if-someone-doesnt-have-health-coverage-in-2014/>.

<sup>2</sup> On October 22, 1993, President Clinton signed into law the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1994.

<sup>3</sup> United States Court of Appeals, Sixth Circuit. *Planned Parenthood Affiliates v. Engler*. 73 F.3d 634. January 16, 1996. <http://openjurist.org/73/f3d/634/planned-parenthood-affiliates-of-michigan-v-engler-k-j>.

<sup>4</sup> PPACA can be accessed here for this and future references to it: <https://www.govtrack.us/congress/bills/111/hr3590/text>.

<sup>5</sup> Kathryn Jean Lopez, “Obamacare Covers Abortion in Pennsylvania – and in New Mexico, Too,” *National Review*, July 14, 2010, accessed May 8, 2014, <http://www.nationalreview.com/corner/233196/obamacare-covers-abortion-pennsylvania-and-new-mexico-too-kathryn-jean-lopez>.

<sup>6</sup> “The Premium Tax Credit,” IRS, accessed on February 25, 2014, <http://www.irs.gov/uac/The-Premium-Tax-Credit>.

<sup>7</sup> “Insurance Coverage Provisions of the Affordable Care Act – CBO’s February 2014 Baseline,” Congressional Budget Office, accessed on May 8, 2014, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43900-2014-02-ACAtables.pdf>.

<sup>8</sup> PPACA, Public Law 111-148, Section 1303 (a)(2)(C)).

<sup>9</sup> PPACA, Public Law 111-148, Section 1303(a)(2)).

<sup>10</sup> “Executive Order 13535-- Patient Protection and Affordable Care Act's Consistency with Longstanding Restrictions on the Use of Federal Funds for Abortion,” The White House, March 24, 2010, accessed February 26, 2014,

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<http://www.whitehouse.gov/the-press-office/executive-order-patient-protection-and-affordable-care-acts-consistency-with-longst>.

<sup>11</sup> “Pre-Regulatory Model Guidelines Under Section 1303 of the Affordable Care Act,” The White House, September 20, 2010, accessed February 26, 2014,

[http://www.whitehouse.gov/sites/default/files/omb/assets/financial\\_pdf/segregation\\_2010-09-20.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/financial_pdf/segregation_2010-09-20.pdf).

<sup>12</sup> PPACA, Public Law 111-148, 1303(a)(2)(B) and 45 C.F.R. § 156.280.

<sup>13</sup> “The Big Three Obamacare Abortion Lies of the Year,” Congressman Chris Smith, December 30, 2013, accessed May 8, 2014, [http://chrissmith.house.gov/uploadedfiles/the\\_big\\_three\\_abortion\\_lies\\_of\\_2013.pdf](http://chrissmith.house.gov/uploadedfiles/the_big_three_abortion_lies_of_2013.pdf).

<sup>14</sup> PPACA, Public Law 111-148, Section 1303(b)(3)(B).

<sup>15</sup> PPACA, Public Law 111-148, Section 1303(b)(3)(A).

<sup>16</sup> “Rep. Shimkus hammers Sebelius on privacy, abortion,” *The Washington Post*, October 30, 2013, accessed February 19, 2014, [http://www.washingtonpost.com/posttv/politics/rep-shimkus-hammers-sebelius-on-privacy-abortion/2013/10/30/39ad77de-416f-11e3-8b74-d89d714ca4dd\\_video.html](http://www.washingtonpost.com/posttv/politics/rep-shimkus-hammers-sebelius-on-privacy-abortion/2013/10/30/39ad77de-416f-11e3-8b74-d89d714ca4dd_video.html).

<sup>17</sup> Jeremy Art, “Rep. Shimkus (R-IL): ‘It’s like talking to the Republic of Korea,’” C-SPAN, December 11, 2013, accessed February 26, 2014, <http://www.c-span.org/video/?c4477043/rep-shimkus-like-talking-republic-korea>.

<sup>18</sup> “2014 03 13 Rep. Andy Harris (R-MD) questions Secretary Sebelius on abortion in the exchanges,” YouTube.com, March 13, 2014, [https://www.youtube.com/watch?v=KWKa\\_fwYZSo](https://www.youtube.com/watch?v=KWKa_fwYZSo).

<sup>19</sup> U.S. Congress. House. *No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2015*. HR 7, 114th Cong., <https://www.congress.gov/bill/114th-congress/house-bill/7>.

<sup>20</sup> “Frequently Asked Questions: Multi State Plan Program,” Office of Personnel Management, accessed February 19, 2014, <https://www.opm.gov/faqs/topic/insure/index.aspx?cid=d45b11e4-e5a7-4012-a529-60a748e45502&page=1>.

<sup>21</sup> “Multi-State Plan Program and the Health Insurance Marketplace – Consumer,” OPM.gov, accessed September 8, 2016, <https://www.opm.gov/healthcare-insurance/multi-state-plan-program/consumer/>.

<sup>22</sup> PPACA, Public Law 111-148, Section 1334 (a)(6)).

<sup>23</sup> 45 C.F.R. § 800.602. The only exception is if a state opts out of abortion coverage: “An MSP may not offer abortion coverage in any State where such coverage of abortion services is prohibited by State law.”

<sup>24</sup> “Planned Parenthood: Annual Report, 2012-2013,” Planned Parenthood, accessed May 8, 2014, [https://www.plannedparenthood.org/files/AR-FY13\\_111213\\_vF\\_rev3\\_ISSUU.pdf](https://www.plannedparenthood.org/files/AR-FY13_111213_vF_rev3_ISSUU.pdf).

<sup>25</sup> Penny Starr, “Obamacare Gives Planned Parenthood Clinics \$655,192 to Serve as ‘Navigators,’” *CNS News*, August 16, 2013, accessed February 26, 2014, <http://www.cnsnews.com/news/article/obamacare-gives-planned-parenthood-clinics-655192-serve-navigators#sthash.ej879RA1.dpuf>.

<sup>26</sup> Sarah Torre, “Obamacare’s Many Loopholes: Forcing Individuals and Taxpayers to Fund Elective Abortion Coverage,” The Heritage Foundation, January 13, 2014, accessed May 8, 2014, <http://www.heritage.org/research/reports/2014/01/obamacares-many-loopholes-forcing-individuals-and-taxpayers-to-fund-elective-abortion-coverage>.

<sup>27</sup> Philip Klein, “DC Obamacare exchange awards \$375k grant to Planned Parenthood,” *Washington Examiner*, August 14, 2013, accessed February 26, 2014, <http://washingtonexaminer.com/dc-obamacare-exchange-awards-375k-grant-to-planned-parenthood/article/2534244>.

<sup>28</sup> Juliet Eilperin, “For White House staffer, the health-care law may be harder sell than Obama was,” *The Washington Post*, February 20, 2014, accessed February 26, 2014, [http://www.washingtonpost.com/politics/for-white-house-staffer-the-health-care-law-may-be-a-harder-sell-than-obama-was/2014/02/20/2207a24c-903b-11e3-b227-12a45d109e03\\_story.html](http://www.washingtonpost.com/politics/for-white-house-staffer-the-health-care-law-may-be-a-harder-sell-than-obama-was/2014/02/20/2207a24c-903b-11e3-b227-12a45d109e03_story.html).

<sup>29</sup> “Non-Exhaustive List of Essential Community Providers – ECPs,” Centers for Medicare & Medicaid Services, accessed February 26, 2014, This list can be found here: <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/non-exhaustive-list-essential-community-providers-2015.xlsx>. The list was originally found at the below URL but access to the list has been restricted as of June 4, 2014: <https://data.cms.gov/dataset/Non-Exhaustive-List-of-Essential-Community-Providers/ibqv-mswq>.

It has been referenced by at least 4 government sites:

<http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/ecp-faq-20130513.pdf>.

<http://www.healthdata.gov/data/dataset/non-exhaustive-list-essential-community-providers-ecps>.

<http://hab.hrsa.gov/affordablecareact/ecp.html>.

[http://www.hivma.org/uploadedFiles/HIVMA/Policy\\_and\\_Advocacy/Policy\\_Priorities/Healthcare\\_Reform\\_Implementation/Resources/HCR\\_Essential\\_Community\\_updated\\_june\\_final.pdf](http://www.hivma.org/uploadedFiles/HIVMA/Policy_and_Advocacy/Policy_Priorities/Healthcare_Reform_Implementation/Resources/HCR_Essential_Community_updated_june_final.pdf).

<sup>30</sup> P.L. 113-76, the Consolidated Appropriations Act, 2014 (H.R. 3547), Division E, the Financial Services Appropriations Act, Section 613, accessed June 9, 2014, <http://beta.congress.gov/113/bills/hr3547/BILLS-113hr3547enr.pdf>. Section 613 reads as follow: “SEC. 613. No funds appropriated by this Act shall be available to pay

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for an abortion, or the administrative expenses in connection with any health plan under the Federal employees health benefits program which provides any benefits or coverage for abortions.”

<sup>31</sup> Michael A. Memoli, “For Congress, healthcare plans remain a notch above,” *Los Angeles Times*, December 1, 2013, accessed March 10, 2014, <http://articles.latimes.com/2013/dec/01/nation/la-na-lawmakers-health-plans-20131201>.

<sup>32</sup> “Of 112 Obamacare Plans for Congress and Staff, 103 are Pro-Abortion,” Congressman Chris Smith, December 3, 2013, accessed February 26, 2014, <http://chrissmith.house.gov/news/documentsingle.aspx?DocumentID=363344>.

<sup>33</sup> Numbers taken from Guttmacher Institute and National Right to Life.

“Restricting Insurance Coverage of Abortion,” Guttmacher Institute, accessed September 8, 2016, <https://www.guttmacher.org/state-policy/explore/restricting-insurance-coverage-abortion>.

“State Laws Concerning Abortion Coverage in Insurance Policies” National Right to Life, May 6, 2014 <http://www.nrlc.org/uploads/stateleg/InsuranceCoverageofAbortionStateStatus.pdf>.

<sup>34</sup> According to Guttmacher Institute, the Rhode Island law is permanently enjoined by court order and the policy is not in effect.

<sup>35</sup> According to Guttmacher Institute, Massachusetts specifically prohibits coverage of postviability “partial-birth” abortions except in cases of life endangerment and “substantial risk of grave impairment of her physical or mental health.”

<sup>36</sup> “Abortion In Obamacare – 2016 Fact Sheet,” Family Research Council, <http://downloads.frc.org/EF/EF15K50.pdf>.

<sup>37</sup> “NRLC letter to House of Representatives on H.R. 7, the No Taxpayer Funding for Abortion Act,” National Right to Life, January 24, 2014, accessed May 8, 2014, <http://www.nrlc.org/federal/ahc/nrlc-letter-to-house-of-representatives-on-h-r-7-the-no-taxpayer-funding-for-abortion-act/>.

<sup>38</sup> Heather D. Boonstra, “The Heart of the Matter: Public Funding Of Abortion for Poor Women in the United States,” *Guttmacher Policy Review*, Winter 2007, Vol. 10, No. 1, pp. 12-16.

<sup>39</sup> “Americans Support Abortion Restrictions,” Knights of Columbus, accessed September 8, 2016, <http://www.kofc.org/en/news/polls.html#/>.

<sup>40</sup> “CNN Opinion Research Corporation Poll,” April 11, 2011, accessed May 8, 2014, <http://i2.cdn.turner.com/cnn/2011/images/04/11/rel6a.pdf>.

<sup>41</sup> “U.S. Voters Say Sacrifice Modesty, Rights For Security, Quinnipiac University National Poll Finds; Support For Health Reform At 34 Percent,” Quinnipiac University Poll, January 14, 2010, accessed May 8, 2014, <http://www.quinnipiac.edu/institutes-and-centers/polling-institute/national/release-detail?ReleaseID=1413>.

<sup>42</sup> U.S. Congress. House. *No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2015*. HR 7, 114th Cong., <https://www.congress.gov/bill/114th-congress/house-bill/7>.