

# United States Senate

WASHINGTON, DC 20510-2101

July 28, 2010

Kathleen Sebelius  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Ave, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

We request your immediate assistance to ensure that federal dollars will not be used to pay for elective abortions. A new report prepared by the non-partisan Congressional Research Service (CRS) confirms our concern that the Patient Protection and Affordable Care Act (PPACA) lacks any restrictions prohibiting states from using federal funding to pay for abortions in the newly-created Pre-Existing Condition Insurance Plans. The report also highlights steps you should take to prevent this inappropriate use of federal dollars and uphold the President's promise that no federal taxpayer funds will be used to pay for elective abortions. We urge you to take these actions as soon as possible.

According to CRS, neither the restrictions in PPACA, Presidential Executive Order 13535 nor the recently released Department of Health and Human Services (HHS) contract materials actually prohibit a state high risk pool from covering elective abortions. The report notes abortion restrictions in section 1303 of PPACA, as well as the President's Executive Order from March 24<sup>th</sup> of this year, fail to address high risk pools and the \$5 billion in funding provided for their operation.

The report also notes that the solicitation for proposal and model contracts issued by your department "contain no specific language with respect to coverage of any particular health services or procedures, including elective abortions." The report further notes that current HHS regulations that restrict the availability of federal funds for elective abortion "would also not appear to apply to the funds appropriated under section 1101(g)(1)."

We were pleased to see recent press statements by HHS staff indicating that elective abortion services will not be covered in this federal program, which is 100 percent federally funded, in any state. However, the Department's press release and related comments on this matter do not have the force of law and will not prohibit the use of funds for these services. We are, therefore, especially troubled by recent press reports indicating that several states intended to cover elective abortions in this federal program within their respective states.

The CRS report suggests that the Secretary of Health and Human Services has the authority to issue regulations prohibiting federally-funded high risk pool plans from covering elective abortions. We urge you to act immediately to prohibit all states operating Pre-existing Condition Insurance Plans from covering elective abortions. Absent such contractual requirements, it will be necessary for Congress to modify the current law to include restrictions to prevent federal dollars from being used to provide such coverage. We request that you identify the specific actions and timeline you will take to address these concerns by July 30, 2010.

Sincerely,

Orin G. Hatch

Tim B. Egan

Tom Coburn

[Signature]

Lisa Mulcahy

John Barrasso

Lamar Alexander

Mike Johnson

Phil McClellan

John [Signature]

John Cornyn

Chuck Grassley

Jon Kyle