# TESTIMONY

## COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS
***Oct. 15, 2009, 10:30 am, Room 430, Dirksen Senate Office Building***

## "What Women Want: Equal Benefits for Equal Premiums"

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It is a pleasure to address this distinguished committee and to be a part of this distinguished panel. We are part of one of the most important debates to face this nation — especially for women and children. Ironically, as this debate rages, my book, *Children at Risk*, is being printed by the publisher. That book details all the ways that we are failing our children — primarily because of fatherless families leaving both women and children to face the vicissitudes of life without the support, protection and comfort that they need to thrive. With the additional costs and the problems associated with the health care reform bills currently in Congress, the burdens on women and children will escalate.

There is ample evidence (including a just-released report from Price Waterhouse Coopers) that health care reform measures will be prohibitively expensive — more than twice the expected growth in the Consumer Price Index with the increased cost of health insurance premiums being borne by individuals and families.[1]

While the cost is a major concern, I would like to focus this morning on health care concerns at the beginning and end of life. Health care reform must respect all life, but human beings are especially vulnerable at the beginning and end of their lives. Provisions of a satisfactory plan must protect the baby in the womb and provide effective care for citizens at the end of life. At both these stages of life, females are more vulnerable than males.

**Issues Related to Abortion**

We have two primary concerns about health care reform relating to abortion — whether it funds and covers abortion and whether it allows health care workers freedom of conscience.

***Funding and Covering Abortion:*** In spite of all the rhetoric to the contrary, all the health care reform bills currently before Congress *mandate* abortion funding and coverage. As pointed out so effectively by Americans United for Life (AUL), all of the pro-life amendments that came before the various committees were rejected. It is very clear that any health care reform bill *must* contain express language prohibiting abortion funding and coverage. Otherwise, "courts and

administrative agencies will interpret health care reform to include it, based on prior interpretations of Medicaid's 'Mandatory Categories of Care.' In addition, the Hyde Amendment, as added yearly to HHS Appropriations, is insufficient to prevent abortion funding and coverage under the health care bills."[2] In short, without explicit wording prohibiting abortion funding and coverage, health care reform will involve all American taxpayers in explicit financial support for abortion-on-demand.

For instance, the Senate HELP bill provides for a "Medical Advisory Committee" (Sec. 3103) to determine the specific benefits that are offered by the private and public health care plans. The members of this committee (to be appointed by President Obama's Administration rather than be elected or result from a Senate-appointed bipartisan effort) will make decisions regarding whether abortion will be mandatory in the health care plans that are offered. President Obama has made it clear that he supports such coverage. Indeed, in July 2007 speech he promised Planned Parenthood that his administration would provide mandatory abortion coverage.

In addition, Planned Parenthood is a "community provider" that would be included in the health insurance networks under health care reform bills. Under Sen. Mikulski's (D-Md.) amendment, accepted by the Senate HELP committee, community providers "that serve predominantly low-income, medically under-served individuals" would be covered to provide "any service deemed medically necessary or medically appropriate." At the time that her amendment passed, Sen. Mikulski pointedly refused Sen. Hatch's request to specifically *exclude* "abortion services."

In the Senate HELP Committee, four separate pro-life amendments were defeated along party lines, with the notable exception of Sen. Bob Casey (D-PA) who consistently votes pro-life. The amendments would have prevented taxpayer funding for abortion, excluded abortion clinics from federal grants and would have kept health care plans from including provisions to invalidate state laws regulating abortion. Obviously, the defeat of these amendments indicates the intent to implement by stealth what cannot be openly passed by vote. Lest anyone think such statements are an exaggeration, the lawyers at Americans United for Life have itemized cases where the courts have interpreted "Mandatory Categories" of care to include abortion.[3] AUL notes that though abortion is not explicitly named as a service, the courts have concluded that abortion is included in "family planning," "outpatient services," "inpatient services" and "physician services."

In seeking to reassure pro-life citizens, supporters of health care reform measures always refer to the Hyde Amendment as protecting the pro-life cause. Sadly, the Hyde Amendment, which prohibits taxpayer money for abortion through the Medicaid program, is not permanent law, instead, it is a pro-life rider that *must be re-introduced and passed* annually. Further, the proposed health care reform measures include funding mechanisms that enable Congress to circumvent the Hyde Amendment. This "back door spending authority" completely bypasses the appropriations committee. In addition, the tax credit provisions of the Baucus bill are not dependent upon the annual Appropriations process so Hyde doesn't apply there, either.

***Freedom of Conscience for Health Care Workers:*** Any health care reform provisions must provide protection for the rights of conscience for health care workers and medical providers.

Those whose faith or conscience prevent them from performing abortions must have the ability to object and refrain from participating in actions that are contrary to their beliefs. The Kennedy amendment [the late Sen. Ted Kennedy (D-MA) – (amdt. 205) is often invoked to reassure pro-lifers that health care workers will continue to be free to object to participate in performing abortions. The Kennedy amendment, however, has limited scope: it does not cover those *who refuse to pay for or to refer* patients for abortion services. Further, the Kennedy amendment has a provision for an exception in "cases of emergency" — an undefined phrase allowing for broad interpretation.[4] Again, an amendment — (amdt. 246) to specifically allow health care providers to refuse to participate in an abortion or to be discriminated against when they do so — failed, clear evidence of the intent of those who are pushing for health care reform measures with vague references and back door mechanisms. The American people deserve — and demand — clarity on any measures that are brought to vote and passed into law.

**Issues Related to End-of-Life**

***Life Sustaining Treatment:*** Pro-lifers are, rightly, concerned about the possibility of limitations on life-sustaining treatment of the elderly, permanently disabled, terminally ill, or those with long-term chronic illnesses. All the health care reform measures currently under consideration utilize the CER, Comparative Effective Research, a technique that compares and measures the benefits and harms of treatments, including prevention, diagnosis, treatment, and monitoring of health care delivery services. There are legitimate concerns that the CER will be used to determine whether to come to the aid of those who are elderly, terminally or chronically ill or those who are permanently disabled. Certainly, high profile politicians have made comments that would indicate they believe the least expensive treatment or no treatment at all is appropriate for those who are at or near the end of life or those whose conditions are irreversible.

Currently, the Senate HELP bill contains a comparative effectiveness provision — the Center for Health Outcomes Research and Evaluation (CHORE) — but the CHORE is charged to "report and recommend" rather than to "mandate." Nothing in the bill, however, keeps it from being used to *deny* treatment. Further, the bill provides *incentives* for health care providers to use cost-effective measures. (See Sec. 2707 (1)(C)). Most troubling, the bill establishes a Medical Advisory Council, reporting to the Secretary of Health and Human Services, to establish a minimum set of *required* "health care benefits."

It must be noted that, as is true with the other pro-life amendments, all amendments (amdts. 278 and 280) to prohibit cost-driven "curtailment, withdrawal or denial" of care and those that would prevent rationing or forcing taxpayers to fund assisted suicide (amdts. 232, 233, 228) were rejected along party line votes. Amazingly, amendments ensuring that everyone have access to essential health benefits regardless of their age, expected length of life or disability (amdts. 209, 210, and 211) — even amendments preventing private health insurers from being prevented from covering treatments — were defeated along party lines.

***Care at the End-of-Life:*** One of the most troubling aspects of health care reform legislation concerns end-of-life issues. In the House bill (H.R. 3200, section 1233) it is unclear whether patients could choose physician-assisted suicide in cases of terminal illness. Amendments

prevent "promotion" of assisted suicide, but not the practice of it. And, there are potential conflicts in various sections of the bill which preclude advance directives with a suicide or assisted suicide option and those that have state exceptions (see Section 1233 and Section 138).The Senate Finance Committee added a modification prohibiting federal funding for assisted suicide and a conscience protection clause for those refusing to participate in assisted suicide. (#C12, Page 17).

It is no secret that senior citizens require far more health care than younger people. Any health care reform must provide effective treatment for the nation's older people — without curtailment, withdrawal or denial of life-sustaining care for the terminally ill, the chronically ill, or the permanently disabled. Further, those provisions that address end-of-life issues must clearly leave no room for an interpretation that would pressure healthcare providers to make decisions based on cost rather than the best medical care.

**Conclusion**

In conclusion, Concerned Women for America is concerned about some key issues regarding abortion in the health care reform provisions. The current bill contains required benefits that the courts can interpret as covering abortion. The current bill precludes the Hyde Amendment from applying to new funds. Current language requires health plans to contract with abortion providers, like Planned Parenthood, and allows abortion providers to receive identical non-discrimination protections. Further, the bill could pre-empt some state anti-abortion laws.

CWA believes that for any health care legislation to pass Congress it must protect life from conception to death. Therefore, we recommend:

1. First and foremost, abortion must be explicitly prohibited both in funding and coverage, with the Hyde Amendment permanently codified in law. The Enzi Amendment #276 ensures that taxpayer's dollars will not be used to fund procedures that are ethically and morally objectionable to a vast majority of Americans.
2. Second, the right to free exercise of their conscience must be granted to all health care workers without penalty or intimidation. We recommend the language of the Pitts/Stupak amendment to H.R. 3200 rather than the Kennedy Amendment to the Senate HELP bill.
3. Third, life-sustaining treatment must be available to all citizens, including the elderly, terminally or chronically ill or those who are permanently disabled.
4. Fourth, we categorically reject end-of-life counseling based on cost considerations and government formulas generated by Comparative Effectiveness Research. And, we reject all assisted suicide measures.

In the Old Testament, the very first commandment [the 5$^{th}$ commandment — Exodus 20:12] given with a promise [that those who follow the commandment will live long lives] is to honor your father and mother. No nation can hope to prosper if does not act in accordance with this mandate. To claim that cutting Medicare by half a trillion dollars will have no impact on senior citizen's benefits, mocks voters and insults our intelligence. No amount of smoke and mirrors will conceal the facts from the nation's senior citizens.

Most of our senior citizens are women — most of whom have been mothers. Those mothers are the backbone of the nation; there is in the very DNA of a mother the mandate to answer the call to sit in vigil when child or loved one is sick. Mothers generally do not begrudge that labor in service to those that they love. It is an outrage to hear politicians say to those mothers, in effect, that as old women whose years of service are ended, it is time for you to quit consuming resources . . . now roll over and die.

In a representative democracy, elected officials are honor bound to represent those whom they serve. A November 2008 Zogby poll revealed 71 percent of Americans oppose government-funded abortion. Those of us who come to give testimony and represent the public are free citizens, grateful for the opportunity to give feedback and opinion on the issues before this great body of legislators. We are not here summoned by masters. We are not here intimidated by power. Instead, we are here representing the views of thousands just like us who do not intend for our choices to be limited or for our hard-fought liberties to be taken away by those who would obfuscate, distort and hide the truth. No one here today should forget that the citizenry of this great nation has a history of overthrowing tyranny. And nothing is a clearer act of tyranny than for Congress to legislate change that abrogates our God-given right to choose life.

It is clear that the current health care reform legislation would classify abortion as an "essential benefit" and make it illegal for health care workers to deny abortion to anyone who seeks it (regardless of their personal convictions or beliefs). Further, it is clear that the legislation will overrule state laws that require limitations such as mandatory parental notification or waiting periods. It is also clear that the current bills would force American citizens, whether they want to or not, to subsidize abortion-on-demand with their tax dollars. Even those with incomes up to 400 percent of poverty would receive subsidies to pay for abortion.

Many things are negotiable and amenable to finding some middle ground. But human life is sacred; thus, its defense is not open to negotiation or compromise. Defending life is our sacred duty. It is also a privilege to stand for those who are too vulnerable to stand for themselves.

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[1] *"Potential Impact of Health Reform on the Cost of Private Health Insurance Coverage," Price Waterhouse Coopers, October, 2009.*

[2] *Mary Harned, "A Pro-Life Look at the Health Care Reform Bills Currently in Congress," Americans United for Life, October 12, 2009, p. 1. http://blog.aul.org/2009/10/10/a-pro-life-look-at-the-health-care-reform-bills-currently-in-congress/*

[3] *http://www.aul.org/*

[4] *The Congressional Budget Office sent a devastating analysis of the provisions to Senator Kennedy in a letter dated July 2, 2009 with two attachments. Their analysis indicated "a net increase in federal budget deficits of $597 billion over the 2010-2019 period – reflecting net costs of $645 billion for the coverage provisions which would be partially offset by net savings of $48 billion from other provisions in title I. (CBO has also estimated the budgetary impact of provisions in titles III and VI of an earlier draft of the legislation, which would add another $14 billion to the net cost of the proposal." They estimated very little change in the number of people covered by insurance.*