

National Committee for a Human Life Amendment

The Second Session of the 111th Congress was convened on January 5, 2010. Bills are carried over from 2009. Information related to federal legislation—text of bills, testimony from hearings, committee reports, floor debates in the *Congressional Record*, roll call of floor votes, and the like—is available on the Library of Congress website: thomas.loc.gov.

Congress is now in recess. The Senate will return September 13, the House September 14.

I. Highlights**A. Authorizations Bills****1. Health Care Reform**

Background: For over 30 years, through the Hyde Amendment and similar laws, the federal government has maintained the policy that federal funds not be used for elective abortions. With the initiation of the debate on health care reform, it became necessary to apply this general policy to a new program context. The Hyde Amendment provides that federal funds may not be used for elective abortions or be used to pay for health insurance coverage that includes such abortions. These funding restrictions apply only to funds appropriated each year in the Labor/Health and Human Services appropriations bill. Federal funds to be authorized and appropriated through any health care reform bill also needed to be covered by their own abortion funding restrictions. Otherwise, the federal government would become involved in funding abortions in new and far reaching ways.

Federal law also provides certain conscience protections that cover both abortion and other morally controversial medical actions. New mandates in health care reform would require new protections against those threats.

Passage of Bills in 2009 and 2010: In 2009, both the U.S. House of Representatives and the U.S. Senate passed health care reform bills. On the question of preventing abortion funding, the language in the House bill was good, the language in the Senate bill was unacceptable. Outside the abortion context, neither bill had adequate conscience protection for health care providers, plans or employers.

In 2010, the House, without change, passed the Senate health care bill, which was then signed into law on March 23. The House and Senate also passed a budget reconciliation bill that made changes to the Senate bill but did not correct the substantial problems with the abortion funding or conscience provisions. This measure was signed into law on March 30.

Following the signing of the main Senate bill, Cardinal Francis George, President of the U.S. Conference of Catholic Bishops, stated that the bishops oppose the statute “in its current form.”

Legislation to address the statute's deficiencies "will almost certainly be required." For the full statement, see: nchla.org/datasource/idocuments/HCRstatement032310.pdf.

On March 24, President Obama signed an Executive Order "Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act." Responding to this action, Cardinal George stated: "We do not understand how an Executive Order, no matter how well intentioned, can substitute for statutory provisions."

In a March 25 legal analysis of abortion funding and conscience protection in the health care reform bill and the executive order, the Office of General Counsel, U.S. Conference of Catholic Bishops, concluded that the bill "poses serious problems in these two areas" and the executive order "does not correct those problems." For the full memo, see: www.usccb.org/healthcare/03-25-10Memo-re-Executive-Order-Final.pdf.

Correcting Legislation: Efforts are now underway to correct the serious deficiencies in the health care reform law. On April 22, Rep. Joseph Pitts (R-PA) introduced legislation (H.R. 5111) to remedy PPACA's serious problems on abortion. The measure, commonly called the Protect Life Act, enjoys bipartisan support, with 122 cosponsors to date. For a list of current sponsors, see: thomas.loc.gov/cgi-bin/bdquery/z?d111:HR05111:@@@.

On August 5, Sen. Tom Coburn (R-OK) introduced the companion bill in the Senate, the Excluding Abortion Coverage from Health Reform Act (S. 3723). This measure has 25 cosponsors. For a list of current sponsors, see: thomas.loc.gov/cgi-bin/bdquery/z?d111:S03723:@@@.

In a May 20 letter, Cardinal Daniel DiNardo, Chairman of the bishops' Committee on Pro-Life Activities, urged Members of Congress to support and co-sponsor H.R. 5111. See: nchla.org/datasource/idocuments/HR5111_lettertoCongress.pdf. That exhortation also applies to the cosponsorship of S. 3723.

In building cosponsorship for the House and Senate bills, emphasis should be placed on those Members who voted for the Stupak-Pitts Amendment in the House or voted to uphold the Nelson/Hatch/Casey Amendment in the Senate. For a list of these Members, see: nchla.org/datasource/idocuments/HR3590HR3962b.pdf.

If your Representative or Senators are among these Members but have not yet signed on as cosponsors of either H.R. 5111 or S. 3723, please consider implementing the NCHLA Action Alert at: nchla.org/actiondisplay.asp?ID=282.

2. No Taxpayer Funding for Abortion Act

On July 29, Reps. Chris Smith (R-NJ) and Dan Lipinski (D-IL) introduced the No Taxpayer Funding for Abortion Act (H.R. 5939). Each year Congress must pass the Hyde Amendment and other federal abortion funding restrictions as part of the various annual appropriations bills.

H.R. 5939 makes these abortion funding restrictions a part of permanent law. Rep. Smith stated, “This legislation would establish a comprehensive policy prohibiting public funding for elective abortion in all federal programs.” The bill also codifies the Hyde-Weldon conscience clause that is part of the Hyde Amendment. H.R. 5939 has bipartisan support. To date, an additional 165 Representatives have signed as cosponsors.

In an August 18 letter to U.S. Representatives, Cardinal Daniel DiNardo, Chairman of the USCCB Committee on Pro-Life Activities, noted that H.R. 5939 would write into permanent law a policy that has had “strong popular and congressional support for over 35 years.” See: usccb.org/prolife/DiNardo-HR5939.pdf.

For a current list of cosponsors, see: thomas.loc.gov/cgi-bin/bdquery/z?d111:HR05939:@@@P . Representatives who have not yet done so should be urged to cosponsor H.R. 5939. See NCHLA Action Alert at: nchla.org/actiondisplay.asp?ID=284.

3. Military Abortion Policy

According to current law, Department of Defense funds may not be used to pay for abortions, except to save the mother’s life, and U.S. military facilities cannot be used to perform abortions, except to save the mother’s life or in cases of rape or incest (10 USC Sec. 1093).

On May 27, 2010, during the Senate Armed Services Committee markup of the National Defense Authorization Act for Fiscal Year 2011 (S. 3280), Sen. Roland Burris (D-IL) offered an amendment to strike from law the restriction on use of military health care facilities to perform elective abortions, with the amendment passing, 15-yes, 12-no.

NCHLA has issued an Action Alert on this matter. See: nchla.org/actiondisplay.asp?ID=283. Constituents are urged to contact their two U.S. Senators in opposition to the Burris Amendment. It is anticipated that S. 3280 will be on the Senate floor in September and that an amendment to reverse the Burris Amendment will be offered at that time.

Both the Most Reverend Timothy Broglio, Archbishop for the Military Services, and Cardinal Daniel DiNardo, Chairman of the bishops’ Committee on Pro-Life Activities, have sent letters to the U.S. Senate, urging that the defense authorization bill not be approved until the Burris Amendment is reversed and the current law upheld.

On May 28, 2010, the House passed its version National Defense Authorization Act for Fiscal Year 2011 (H.R. 5136), without changing the longstanding military abortion policy.

B. Executive

1. Court Enjoins ESCR Guidelines

On August 23, 2010, Royce C. Lamberth, Chief Judge of the U.S. District Court for the District of Columbia, issued a preliminary injunction enjoining the federal government from implementing its embryonic stem cell research (ESCR) guidelines. *Sherley v. Sebelius* (Civ. No. 1:09-cv-1575 (RCL)).

On March 9, 2009, President Obama had issued an Executive Order overturning the limits President Bush had placed on government funding of destructive ESCR. On July 7, 2009, the National Institutes of Health (NIH) published final guidelines implementing the Obama directive.

Judge Lamberth argued that the NIH guidelines violate the Dickey-Wicker Amendment, which was first passed by Congress in 1996. As the Judge noted, the amendment is meant “to prohibit the expenditure of federal funds on ‘research in which a human embryo or embryos are destroyed.’” The prohibition reaches to “*all* ‘research in which’ an embryo is destroyed,” not just, as the Administration claims, to “the ‘piece of research’ in which the embryo is destroyed.” ESCR is the kind of research in which an embryo is necessarily destroyed, and thus may not be supported with federal funds. See: nchla.org/datasource/idocuments/2009cv1575-44ESCR.pdf.

Cardinal Daniel DiNardo, chairman of the Committee on Pro-Life Activities of the U.S. bishops’ conference, called the injunction “a welcome victory for common sense and sound medical ethics.” He also noted that it vindicates a reading of the Dickey-Wicker Amendment that the USCCB “has defended for more than a decade.” The Cardinal expressed the hope that the court decision “will encourage our government to renew and expand its commitment to ethically sound avenues of stem cell research.” See: usccb.org/comm/archives/2010/10-152.shtml.

2. FDA Approves Ulipristal as “Emergency Contraception”

On August 13, the Food and Drug Administration (FDA) approved the use of the drug ulipristal acetate as “emergency contraception,” with the trade name ella. On June 17, the FDA Advisory Committee for Reproductive Health Drugs had voted unanimously to recommend approval. At issue is the use of a dose of 30 mg of ulipristal acetate as an “emergency contraceptive” up to 5 days after unprotected intercourse or contraceptive failure.

In a June 17 letter to the FDA, Cardinal Daniel DiNardo, chairman of the U.S. bishops’ Committee on Pro-Life Activities, expressed grave concern with the approval process. He noted that ulipristal “is a close analogue to the abortion drug RU-486, with the same biological effect— that is, it can disrupt an established pregnancy weeks after conception has taken place.” To call ulipristal simply “contraceptive” is misleading and opens the way to abuses. For full text of letter, see: www.usccb.org/comm/archives/2010/10-121.shtml.

3. Conscience Protection Regulation: Final Rule Pending

On March 6, 2009, the Obama Administration issued a proposed rule to rescind the December 19, 2008 Bush Administration conscience protection regulation. The proposed rule on rescission was formally published in the *Federal Register* on March 10, 2009. The 30 day comment period ended April 9, 2009. A final rule has not been issued.

II. REVIEW OF LEGISLATION

The Review of Legislation section contains detailed information on legislative action, along with reports on executive actions and court developments that have important implications for legislative policies. Bills are divided into two general kinds: appropriations and authorization. Please note that some issues relate to both kinds of bills.

Authorization bills provide the fundamental authority – the policies and procedures – by which various government agencies and programs operate. The authorization can be for an indefinite period, or for one or several years. Some authorization bills set a ceiling on the amount of money that can be spent, while others are open-ended.

However, authorization bills do not provide the money. That is the function of the annual appropriations bills, currently 12 in number. Within annual budget targets, these bills “appropriate” the actual amount of money to be spent on various authorized agencies and programs each fiscal year (October 1 to September 30). This amount may well be below the authorized ceiling. Congress also passes short-term and supplemental appropriations bills. Sometimes Congress appropriates funds for programs or agencies whose authorization has lapsed. And sometimes Congress attaches policy riders to the appropriations bills. A number of policies prohibiting government funding of abortion exist as riders or amendments that must be enacted into law each year as part of an appropriations bill.

Typically, appropriations bills are first passed by the House and then the Senate. Each bill is developed in its own subcommittee.

A. Appropriations Bills

On February 16, 2010, the Administration released its Fiscal Year 2011 Budget, marking the formal beginning of budget process.

The target date for Congress to pass a budget resolution is April 15. Even if there is no budget resolution, the House can consider appropriations bills on the floor beginning May 15. The House is supposed to finish passing all its appropriations bills by June 30. The bills should then be taken up by the Senate, with all bill signed into law by September 30.

Often the process is neither orderly nor timely. This year, Congress did not pass a budget resolution, but House and Senate have set their own spending caps. In 2009, the final appropriations bill was not signed into law until December 19.

1. Fiscal Year 2011 State/Foreign Operations Appropriations: Mexico City Policy

On July 29, 2010, the Senate Appropriations Committee reported out the Fiscal Year 2011 State/Foreign Operations Appropriations Bill (S. 3676).

As with the Committee's fiscal year 2010 bill, Sen. Frank Lautenberg (D-NJ) was instrumental in adding language that would permanently prohibit the Mexico City Policy. See: Assistance for Foreign Nongovernmental Organizations (Sec. 7088).

According to the Mexico City Policy, federal family planning funds are available only to foreign nongovernmental organizations that agree not to perform or promote abortion as a method of family planning in other countries. This policy, first set forth at a population conference in Mexico City in 1984, was overturned by President Obama in 2009.

In fiscal year 2010, the Lautenberg Amendment did not survive to become law.

The Senate committee bill also recommends a total of \$700 million for all international family planning programs, including \$55 million for the United Nations Population Fund.

The House has not yet reported its Fiscal Year 2011 State/Foreign Operations Appropriations Bill.

B. Authorization Bills

Issues considered below include:

1. Conscience Protection Regulations
2. Foreign Relations Authorization Act: Office for Global Women's Issues
3. Health Care Reform
4. Military Abortion Policy
5. No Taxpayer Funding for Abortion Act
6. Pregnant Women Support Act
7. Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act
8. Right to Life Act and Life at Conception Act
9. Sanctity of Human Life Act
10. Stem Cell Research
11. Ulipristal Approval

1. Conscience Protection Regulations

Background: On December 18, 2008, the Department of Health and Human Services (HHS) issued a final regulation protecting conscience rights. The regulation did not expand conscience rights but faithfully implemented three existing federal conscience protection laws.

In September 2008 the USCCB Office of General Counsel had filed formal comments strongly supporting the regulation. See: www.usccb.org/ogc/pl-hhs-conscience2.pdf.

Congress: Some members of Congress announced plans to rescind the Bush Administration regulations by legislative action. On January 15, 2009, Rep. Diana DeGette (D-CO) introduced the Protecting Patients and Health Care Act (H.R. 570), a measure that declares the Bush Administration regulations “shall have no force or effect.” H.R. 570 has 25 cosponsors and was referred the Committee on Energy and Commerce.

Judicial: On January 15, 2009, three federal law suits were filed in the District of Connecticut against the Bush Administration regulation by pro-abortion organizations and the attorneys general of six states (CT, joined by IL, CA, NJ, MA, RI, and OR), with the help of the American Civil Liberties Union. With Department of Health and Human Services action pending on rescinding the conscience regulation, the federal government filed a motion to stay all proceedings, which the court granted on April 27, 2009. That stay has not been lifted. For background on these three cases, see: www.clsnet.org/center/litigation/connecticut-v-united-states.

Obama Administration: On March 6, 2009, the Obama Administration issued a proposed rule to rescind the December 19, 2008 Bush Administration conscience protection regulation. The proposed rule on the rescission was formally published in the *Federal Register*, Vol. 74, No. 45 (March 10, 2009), 10207-11. See: www.gpo.gov/fdsys/pkg/FR-2009-03-10/pdf/E9-5067.pdf . The Obama Administration has not yet issued a final rule.

On March 23, 2009, the U.S. Conference of Catholic Bishops’ Office of General Counsel submitted well-argued, incisive comments on the rescission proposal. See: www.usccb.org/conscienceprotection/hhs_comments_conscience_09final.pdf.

For resources and background information, see: www.usccb.org/conscienceprotection.

For more detail on this issue, see the Final Legislative Report for 2009.

2. Foreign Relations Authorization Act: Office for Global Women’s Issues

On May 20, 2009, the House Foreign Affairs Committee marked up the Foreign Relations Authorization Act, Fiscal Years 2010 and 2011 (H.R. 2410). The bill contained a provision in Section 334 to establish an Office for Global Women’s Issues. Rep. Chris Smith (R-NJ) offered

an amendment to this section so that the new Office would not be used to promote abortion throughout the world.

The Smith Amendment was defeated in committee. On June 9, 2009, the House Rules Committee rejected a motion to put the Smith Amendment in order during floor consideration of H.R. 2410. Among the amendments put in order was the Manager's Amendment that would add a new generic paragraph stating that nothing in Sec. 334 "shall be construed as affecting" existing laws against abortion or laws against the use of U.S. funds to change the abortion laws of other countries. On June 10, 2009, during floor debate, the House approved the Manager's Amendment and passed H.R. 2410.

On June 22, 2009, H.R. 2410 was referred to the Senate Committee on Foreign Relations. No further action has occurred.

For more detailed on this matter, see the Final Legislative Report for 2009.

3. Health Care Reform

Summary: For over 30 years, through the Hyde Amendment and similar laws, the federal government has maintained the policy that federal funds not be used for elective abortions. With the initiation of the debate on health care reform, it became necessary to apply this general policy to a new program context. The Hyde Amendment provides that federal funds may not be used for elective abortions or be used to pay for health insurance coverage that includes such abortions. These funding restrictions apply only to funds appropriated each year in the Labor/Health and Human Services appropriations bill. Federal funds to be authorized and appropriated through any health care reform bill also needed to be covered by their own abortion funding restrictions. Otherwise, the federal government would become involved in funding abortions in new and far reaching ways.

Federal law also provides certain conscience protections that cover both abortion and other morally controversial medical actions. New mandates in health care reform would require new protections against those threats.

In 2009, both the U.S. House of Representatives and the U.S. Senate passed health care reform bills. On the question of preventing abortion funding, the language in the House bill was good, the language in the Senate bill was unacceptable. Outside the abortion context, neither bill had adequate conscience protection for health care providers, plans or employers.

In 2010, the House, without change, passed the Senate health care bill, which was then signed into law on March 23. The House and Senate also passed a budget reconciliation bill that made changes to the Senate bill but did not correct the substantial problems with the abortion funding or conscience provisions. This measure was signed into law on March 30, 2010.

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On March 24, 2010, President Obama signed an Executive Order “Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act.” Responding to this action, Cardinal George stated: “We do not understand how an Executive Order, no matter how well intentioned, can substitute for statutory provisions.”

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Throughout the debate, the U.S. Catholic bishops made the moral case that genuine health care reform must maintain the longstanding policy against federal funding of abortion, include full conscience protection and assure that health care is accessible and affordable for all. Bills not meeting these criteria would be opposed. See January 26, 2010 USCCB letter to Congress at: usccb.org/healthcare/HC-Letter-to-Congress-012610.pdf.

Efforts are now underway to correct the serious deficiencies in the health care reform law.

Background 2009

House: In 2009 three committees produced different versions of the America’s Affordable Health Choices Act (H.R. 3200). On October 29, 2009, leadership introduced its bill, the Affordable Health Care for America Act (H.R. 3962). This bill retained the unacceptable features on abortion and conscience protection that were in the earlier committee bills.

On November 7, 2009, the House debated H.R. 3962. After much discussion, leadership agreed to a Rule allowing a vote on an amendment by Reps. Bart Stupak (D-MI) and Joseph Pitts (R-PA) that maintained the longstanding policy against federal funding of abortion. The Rule was approved. *After debate, the Stupak-Pitts Amendment was agreed to, 240-yes, 194-no, 1-present (Roll Call 884).* Sixty-four Democrats joined 176 Republicans in passing this amendment. Thereafter, H.R. 3962 passed by the narrow margin of 220-yes, 215-no.

The Stupak-Pitts Amendment would enact a permanent ban on federal funding of elective abortions or health plans that include such abortions. Outside the abortion context, the House bill did not have adequate conscience protection for health care providers, plans or employers.

Senate: In 2009, two committees produced two different bills. On November 18, 2009, Senate leadership unveiled its health care reform bill, the Patient Protection and Affordable Care

Act. Through substitution of text, this bill would assume the number of a House-passed tax bill, H.R. 3590. On November 21, 2009, the Senate voted 60-yes, 39-no, to invoke cloture on the motion to proceed.

Senators Ben Nelson (D-NE), Orrin Hatch (R-UT), and Robert Casey, Jr. (D-PA), along with seven other co-sponsors, submitted an amendment that, like the Stupak-Pitts Amendment, would prevent the legislation from mandating abortion coverage or providing federal funds for coverage of elective abortions. *On December 8, 2009, the Senate voted to table the Nelson-Hatch-Casey Amendment, 54-yes, 45-no (Roll Call 369).* In addition to Senators Nelson and Casey, five other Democrats joined in opposing the motion to table: Senators Mark Pryor (AR), Ted Kaufman (DE), Evan Bayh (IN), Kent Conrad (ND), and Byron Dorgan (ND).

Subsequently, Senate Majority Leader Harry Reid (D-NV) introduced his Manager's Amendment to H.R. 3590. The abortion and conscience provisions in this proposal were not acceptable. On December 24, 2009, after voting to shut down the process of debating and amending the bill, the Senate approved H.R. 3590, 60-yes, 39-no.

In the Senate bill, funds authorized and appropriated for Community Health Centers could be used to pay for elective abortions. Also, federal funds are used to subsidize health plans that cover abortions. In addition, all purchasers of such plans would be required to pay for other people's abortions through a separate payment solely to pay for abortion. Outside the abortion context, the bill does not have adequate conscience protection for health care providers, plans or employers.

Developments 2010

House: On March 17, 2010, the House Budget Committee reported out the Budget Reconciliation Act of 2010 (H.R. 4872). It contained two of the House-passed health care reform bills as well a section on student aid. During markup, Rep. Jim Jordan (R-OH) offered an amendment recommending that the rule for the reconciliation bill make in order the Stupak-Pitts Amendment "to prohibit federal funding of abortion." The Jordan Amendment was rejected, 17-yes, 19-no. All Republicans on the committee voted for the amendment, along with three Democrats, Reps. Marcy Kaptur (OH), Marion Berry (AR), and James Langevin (RI).

On March 18, 2010, the House Rules Committee approved the Health Care and Education Affordability Reconciliation Act of 2010 (H.R. 4872). The text of the Budget Committee's reconciliation bill was struck and replaced with a new text that reflects the changes leadership would make to the health care reform bill passed by the Senate on December 24, 2009. In the reconciliation bill, there was no provision to add the Stupak-Pitts Amendment to the Senate health care bill or to correct that bill's inadequate conscience protection.

On March 21, 2010, the House voted, 219-yes, 212-no, to pass the Senate's health care reform bill, the Patient Protection and Affordable Care Act (H.R. 3590) (Roll Call 165).

On the same day, the House also considered the reconciliation bill (H.R. 4872) as reported from the Rules Committee. Rep. Dave Camp (R-MI) offered the motion to recommit this bill to committee, with instructions to report the measure back with the Stupak-Pitts amendment that would maintain the longstanding policy against federal funding of abortion. The House rejected this motion, 199-yes, 232-no (Roll Call 166). The House then approved the reconciliation bill (H.R. 4872), 220-yes, 211-no (Roll Call 167).

In neither H.R. 3590 nor H.R. 4872 did the House correct the substantial abortion funding and conscience protection problems in the Senate bill.

Senate: On March 25, 2010, the Senate passed the House reconciliation bill (H.R. 4872), 56-yes, 43-no (Roll Call 105). The Senate made small changes in the bill.

House: Later on March 25, 2010, the House passed the Senate-modified version of H.R. 4872, 220-yes, 207-no (Roll Call 194).

Law: On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (H.R. 3590) into law (Public Law 111-148).

Following the signing, Cardinal Francis George, President of the U.S. Conference of Catholic Bishops, stated that the bishops oppose the statute “in its current form.” Among other deficiencies, the law “would expand the role of the federal government in funding and facilitating abortion and plans that cover abortion” and has failed to include “essential conscience protections (both within and beyond the abortion context).” Legislation to address the statute’s deficiencies “will almost certainly be required.” For the full statement, see: nchla.org/datasource/idocuments/HCRstatement032310.pdf.

On March 30, 2010, President Obama signed the Health Care and Education Affordability Reconciliation Act (H.R. 4872) into law (Public Law 111-152).

Executive: On March 24, 2010, President Obama signed an Executive Order “Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act.” See: www.whitehouse.gov/the-press-office/executive-order-patient-protection-and-affordable-care-acts-consistency-with-longst. The Executive Order was promised to House Democrats prior to the final vote on H.R. 3590. In his statement, Cardinal George expressed the view: “We do not understand how an Executive Order, no matter how well intentioned, can substitute for statutory provisions.”

On March 25, 2010, the Office of General Counsel, U.S. Conference of Catholic Bishops, issued a detailed legal analysis of abortion funding and conscience protection in the health care reform bill and the executive order. The memo concludes that the bill “poses serious problems in these two areas” and the executive order “does not correct those problems.” The “need for fixes remains.” For the full memo, see: www.usccb.org/healthcare/03-25-10Memo-re-Executive-Order-Final.pdf.

New Correcting Legislation: Efforts are now underway to correct the serious deficiencies in the health care reform law.

On April 22, 2010, Rep. Joseph Pitts (R-PA) introduced a bill (H.R. 5111) to amend the Patient Protection and Affordable Care Act (PPACA), the purpose of the bill being to prevent the act from requiring abortion coverage or paying for abortion and to prevent the government from acting under the law to discriminate against health care entities that do not provide, pay for, provide coverage of, or refer for abortion. The bill, commonly called Protect Life Act, takes special care to modify PPACA's "Special Rules" section related to abortion coverage, so that the "Special Rules" section conforms "to long-standing federal policy."

To date, H.R. 5111 has 122 cosponsors and was referred to the Committee on Energy and Commerce. For a list of current sponsors, see: thomas.loc.gov/cgi-bin/bdquery/z?d111:HR05111:@@P.

On August 5, 2010, Sen. Tom Coburn (R-OK) introduced the companion bill in the Senate, the Excluding Abortion Coverage from Health Reform Act (S. 3723). This measure has 25 cosponsors and has been referred to the Committee on Health, Education, Labor, and Pensions. For a list of current sponsors, see: thomas.loc.gov/cgi-bin/bdquery/z?d111:S3723:@@P.

H.R. 5111/S. 3723 will do the following:

1. Ensure that all PPACA funds are covered by the policy of the Hyde Amendment (no funds for abortion except in cases of life endangerment or rape/incest).
2. Prevent federal funds from subsidizing health plans that cover abortions beyond the Hyde exceptions, so that PPACA will follow the policy of other federal health insurance programs.
3. Restore the conscience provision on abortion approved by the House last November (sec. 259 of H.R. 3962), ensuring that governmental entities receiving federal funds under PPACA may not discriminate against health care providers who decline involvement in abortion.
4. Close a loophole in PPACA's non-preemption clause, so that state laws restricting abortion or protecting conscience rights also will not be preempted.
5. Clarify a PPACA clause on the preservation of federal laws, so that laws restricting abortion or abortion coverage are preserved.

In a May 20, 2010 letter to Congress, Cardinal Daniel DiNardo, Chairman of the bishops' Committee on Pro-Life Activities, urged Members to support and co-sponsor H.R. 5111. After reviewing the goals of H.R. 5111, the Cardinal discusses the president's March 21 executive order on abortion funding in PPACA, and maintains that H.R. 5111 is still needed. See: nchla.org/datasource/ideuments/HR5111_lettertoCongress.pdf. This exhortation to cosponsor also applies to S. 3723.

In building cosponsorship for the House and Senate bills, emphasis should be placed on

those Members who voted for the Stupak-Pitts Amendment in the House or voted to uphold the Nelson/Hatch/Casey Amendment in the Senate. For a list of these Members, see: nchla.org/datasource/idocuments/HR3590HR3962b.pdf. If your Representative or Senators are among these Members but have not yet signed on as cosponsors of either H.R. 5111 or S. 3723, please consider implementing the NCHLA Action Alert at: nchla.org/actiondisplay.asp?ID=282.

It was learned that a new high-risk insurance programs for various states approved by the U.S. Department of Health and Human Services under the PPACA would include coverage of elective abortion. On July 14, reacting to public criticism, HHS announced that it would act to exclude the abortion coverage. Cardinal Daniel DiNardo, Chairman of the bishops' Committee on Pro-Life Activities, stated that the HHS action was welcome but expressed grave concern "that it was not issued until after some states had announced that pro-abortion health plan were approved and had begun to enroll patients." The Cardinal again called on Congress to pass legislation "clearly stating once and for all" that the PPACA will not pay for abortions or for insurance coverage that includes abortion. See: usccb.org/comm/archives/2010/10-142.shtml.

More Information: For documents helpful in critiquing the health care reform bills, see:

1. "Legal Analysis of the Provisions of the Patient Protection and Affordable Care Act and Corresponding Executive Order regarding Abortion Funding and Conscience Protection," March 25, 2010 at: usccb.org/healthcare/03-25-10Memo-re-Executive-Order-Final.pdf.
2. "The Senate Health Care Reform Bill: Funding Abortions at Community Health Centers," March 16, 2010 at: nchla.org/datasource/idocuments/Community%20Health%20Centers.pdf.
3. "What's Wrong with the Senate Health Care Bill on Abortion? A response to Professor Jost," March 12, 2010 at: nchla.org/datasource/idocuments/Jost%20Response.pdf.
4. "Abortion Funding in the Senate Health Care Reform Bill" March 4, 2010 at: nchla.org/datasource/idocuments/onepageAbortionFundingfinal.pdf.
5. "Issues of Life and Conscience in Health Care Reform: A Comparison of the House and Senate Bills" [extended analysis] January 20, 2010 at: www.usccb.org/healthcare/life_conscience.pdf.
6. "Life and Conscience Issues in the Health Care Reform Bill: A Comparison" [Chart] January 12, 2010 at: www.usccb.org/healthcare/Life_Issuechart.pdf.
7. "What Does the Nelson/Hatch/Casey Amendment Really Do?" December 7, 2009 at: nchla.org/datasource/idocuments/NelsonDo.pdf.
8. "Abortion and Conscience Problems in the Senate Health Care Reform Bill," December 4, 2009 at: nchla.org/datasource/idocuments/12USCCB.FactSheet.HCR.4.09.pdf.
9. "What Does the Stupak Amendment Really Do?" November 12, 2009 at: nchla.org/datasource/idocuments/WhatDoesTheStupakAmendmentDov2.pdf.
10. "Myths and Facts: The Capps Amendment to H.R. 3962," November 2, 2009 at: www.usccb.org/prolife/issues/healthcare/capps_3962.pdf.
11. "Abortion and Conscience Problems in Health Care Reform Bills," October 23, 2009 at: www.usccb.org/prolife/issues/healthcare/capps_102309.pdf.

12. “Current Policy on Federal Abortion Funding,” October 23, 2009 at:
www.usccb.org/prolife/issues/healthcare/abortion_funding_102309.pdf.

For general information, see: www.usccb.org/healthcare. Additional documentation can found at:
usccb.org/prolife/issues/healthcare/index.shtml and nchla.org/issues.asp?ID=51.

For more detailed information on 2009 legislative action, see the NCHLA Final Legislative Report for 2009.

4. Military Abortion Policy

According to current law, Department of Defense funds may not be used to pay for abortions, except to save the mother’s life, and U.S. military facilities cannot be used to perform abortions, except to save the mother’s life or in cases of rape or incest (10 USC Sec. 1093(a)(b)). These restrictions on funding and use of facilities were placed in the U.S. Code in 1984 and 1996, respectively.

A ban on the use of facilities for elective abortions was first established as administration policy in 1988. President Clinton reversed the policy in 1993 but Congress restored it in 1995 in appropriation law, placing the policy in the U.S. Code in 1996. It has remained intact ever since. Efforts to overturn the restriction on use of facilities were made from 1996 to 2006, but all attempts failed. No efforts to remove the restriction were made in 2007, 2008, or 2009.

For NCHLA’s Fact Sheet on this issue, see: nchla.org/datasource/ifactsheets/MilAbtPol.PDF.

Senate: An effort is again underway to repeal that part of the military abortion policy banning the use of facilities.

Committee: On May 27, 2010, during the Senate Armed Services Committee markup of the National Defense Authorization Act for Fiscal Year 2011 (S. 3280), Sen. Roland Burris (D-IL) offered an amendment to strike from law the restriction on use of military health care facilities to perform elective abortions (10 USC Sec. 1093(b)). The Burris Amendment passed, 15-yes, 12-no. All Democrats voted “yes,” except Sen. Ben Nelson (D-NE), who joined with 11 Republicans in voting “no.” Sen. Susan Collins (R-ME) did not vote. See: nchla.org/datasource/Idocuments/6Burris8a.10.pdf.

Floor: S. 3280 is expected to be on the Senate floor in September and it is anticipated an amendment will be offered to reverse the Burris Amendment.

NCHLA has issued an Action Alert on this matter. See: nchla.org/actiondisplay.asp?ID=283. Constituents are urged to contact their two U.S. Senators in opposition to the Burris Amendment.

In a June 17, 2010 letter to the U.S. Senate, the Most Reverend Timothy Broglio, Archbishop for the Military Services, stated that the Burris Amendment “would contravene our military health care providers’ commitment to defending and protecting human life” and “would pressure military physicians, nurses and associated medical personnel to engage in an act of taking innocent human life.” Military medical personnel should be allowed to continue to abide by their commitment to save lives. For text of letter, see: nchla.org/docdisplay.asp?ID=339.

In a subsequent letter, Cardinal Daniel DiNardo, Chairman of the bishops’ Committee on Pro-Life Activities, urged that the authorization bill not be approved “until the original version of 10 U.S.C. §1093 is restored.” He said it is not the task of the federal government “to directly promote and facilitate elective abortions,” and the longstanding ban on use of these facilities for abortion should be maintained. For text of letter, see: nchla.org/datasource/idocuments/CardinalDiNardoMilitaryLetter.pdf.

House: On May 28, 2010, the House passed its National Defense Authorization Act for Fiscal Year 2011 (H.R. 5136). The existing law concerning military abortions was not changed.

On July 14, 2010, Reps. W. Todd Akin (R-MO) and Gene Taylor (D-MS), along with 178 other Representatives, sent a bipartisan letter to the leaders of House and Senate, urging them “to reject any language in the DOD Authorization bill for FY11 (or subsequent years) which would weaken or undermine current [abortion] policy.” See: nchla.org/docdisplay.asp?ID=343.

5. No Taxpayer Funding for Abortion Act

Background: Each year Congress must pass the Hyde Amendment and other federal abortion funding restrictions as part of the various annual appropriations bills. The No Taxpayer Funding for Abortion Act makes these abortion funding restrictions a part of permanent law. In addition to the Hyde Amendment that covers programs funded through the Labor/Health and Human Services appropriations bill, the Act also would make permanent such laws as the Helms Amendment (no funds for abortion as a method of family planning overseas), the Smith Amendment (no funds for elective abortion coverage for federal employees), the Dornan Amendment (no use of congressionally appropriated funds for elective abortions in the District of Columbia), and restrictions on funding elective abortions for the Peace Corps and federal prisons. The Act also codifies the Hyde-Weldon conscience clause that is part of the Hyde Amendment.

House: On July 29, 2010, Reps. Chris Smith (R-NJ) and Dan Lipinski (D-IL) introduced the No Taxpayer Funding for Abortion Act (H.R. 5939). H.R. 5939 has bipartisan support, with 165 additional cosponsors. The measure has been referred to three committees: Judiciary, Energy and Commerce, and Ways and Means.

At the end of Title I of the U.S. Code, H.R. 5939 would add a new chapter: “Chapter 4— Prohibiting Taxpayer Funded Abortions and Providing for Conscience Protection.” This new chapter would have 12 sections: Prohibitions on funding for abortion (Sec. 301), on funding for

health benefits plans that cover abortion (Sec. 302), and on tax benefits relating to abortion (Sec. 303); Limitations on federal facilities and employees (Sec. 304); Constructions relating to separate coverage (Sec. 305) and to the use of non-federal funds for health coverage (Sec. 306); Non-preemption of other federal laws (Sec. 307); Construction related to state or local laws (Sec. 308); Treatment of abortions related to rape, incest, or preserving the life of the mother (Sec. 309); Application to District of Columbia (Sec. 310); No government discrimination against certain health care entities (Sec. 311); Health benefits coverage defined (Sec. 312).

Rep. Smith stated, “This legislation would establish a comprehensive policy prohibiting public funding for elective abortion in all federal programs.” Rep. Lipinski noted that the recent health care legislation showed that existing laws to prevent taxpayer-funded abortions are too weak, adding, “Protecting the sanctity of life, and preserving the individual’s freedom not be complicit in any way in abortion, is a matter of principle for me and tens of millions of Americans.”

In an August 18, 2010 letter to U.S. Representatives, Cardinal Daniel DiNardo, Chairman of the USCCB Committee on Pro-Life Activities, noted that H.R. 5939 would write into permanent law a policy that has had “strong popular and congressional support for over 35 years: The federal government should not use taxpayers’ money to support and promote elective abortion.” See: uscdb.org/prolife/DiNardo-HR5939.pdf.

For a current list of cosponsors, see H.R. 5939 at: thomas.loc.gov. Representatives who have not yet done so should be urged to cosponsor H.R. 5939. See NCHLA Action Alert at: nchla.org/actiondisplay.asp?ID=284.

6. Pregnant Women Support Act

Background: The Pregnant Women Support Act was first introduced in 2006. In its Findings, the bill is described as an initiative “to gather more complete information about abortion, to reduce the abortion rate by helping women carry their pregnancies to term and bear healthy children, and by affirming the right of women to be fully informed about their other options when they seek an abortion” and “to support women facing unplanned pregnancies, new parents and their children by providing for health care needs, supportive services and helpful prenatal information and postnatal services.” In pursuing its goals, the bill does not facilitate access to abortion or fund contraception programs.

House: On April 22, 2009, Rep. Lincoln Davis (D-TN) introduced the Pregnant Women Support Act (H.R. 2035). The bill has 44 cosponsors and was referred to four committees.

On April 24, 2009, Cardinal Justin Rigali, Chairman of the Bishops’ Committee on Pro-Life Activities, wrote to the U. S. House of Representatives, urging all Representatives to support and cosponsor H.R. 2035. The Cardinal cited two statements that most can endorse: That over a million abortions take place each year in this country is a tragedy, and steps should be taken to reduce abortions; and no woman should undergo an abortion because she feels she has no choice

or because alternatives were unavailable or unknown to her. For the Cardinal's full letter, see: www.usccb.org/prolife/issues/women/PWSAHouse09.pdf

Senate: On May 13, 2009, Sen. Robert Casey, Jr. (D-PA) introduced the identical measure in the Senate (S. 1032). The bill has one cosponsor and was referred to Committee on Health, Education, Labor, and Pensions.

On May 15, 2009, Cardinal Rigali wrote a letter to the U.S. Senate, urging all Senators to support and cosponsor S. 1032. For the Cardinal's full letter, see: www.usccb.org/prolife/issues/women/PWSASenate09.pdf.

For more detailed information on these bills, see the NCHLA Final Legislative Report for 2009.

7. Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act

This measure was first introduced in 2006. On July 23, 2009, Rep. Tim Ryan (D-OH) introduced the current version of this legislation, the Preventing Unintended Pregnancies, Reducing the Need for Abortion, and Supporting Parents Act (H.R. 3312). The bill has 44 cosponsors and was referred to five different committees.

In a June 24, 2009 *Life Issues Forum* news column, Susan Wills, Assistant Director for Education and Outreach at the Bishops' Secretariat of Pro-Life Activities, quoted Rep. Ryan saying that the bill is "about access to birth control." Ms. Wills correctly argues that contraception is already widely available in society—in 2006, public expenditures totaled \$1.85 billion. According to the Guttmacher Institute, virtually all teenagers who are sexually active and do not want to become pregnant are already using contraception. The reality is that contraceptives do not work well in real life. "Numerous studies in the United States and Europe have found that greater access to contraception fails to reduce unintended pregnancies and abortions." The real abortion-reduction bill, Ms. Wills concludes, is the Pregnant Women Support Act. See: www.usccb.org/prolife/publicat/lifeissues/072409.shtml.

For more detailed information on this bill, see the NCHLA Final Legislative Report for 2009.

8. Right to Life Act and Life at Conception Act

Background: The Right to Life Act and Life at Conception Act, commonly called Human Life Bills, represent one approach to address the tragedy the U.S. Supreme Court set in motion when in 1973 it created a constitutional right to abortion. For related information on Human Life Amendments, their history, texts, and votes, see: www.nchla.org/issues.asp?ID=46.

The measure introduced in the House is called the Right to Life Act and a similar measure introduced in the Senate is called the Life at Conception Act. According to their official titles,

the Acts' purposes are "To implement equal protection under the 14th article of amendment to the Constitution for the right to life of each born and preborn human person."

House: On February 4, 2009, Rep. Duncan Hunter (R-CA) introduced the Right to Life Act (H.R. 881). The measure has 94 cosponsors and was referred to the Judiciary Committee, Subcommittee on Constitution, Civil Rights, and Civil Liberties.

Senate: On January 29, 2009, Sen. Roger Wicker (R-MS) introduced the Life at Conception Act (S. 346). The measure has 10 cosponsors and was referred to the Judiciary Committee.

For more information on these bills, see the NCHLA Final Legislative Report 2009.

9. Sanctity of Human Life Act

Background: The Sanctity of Human Life Act is a form of human life bill. It has as its official title, "To provide that human life shall be deemed to begin with fertilization." The measure has two main sections, a Declaration on the right to life under the U.S. Constitution (Sec. 2) and Definitions (Sec. 3).

House: On January 7, 2009, Rep. Paul Broun (R-GA) introduced the Sanctity of Human Life Act (H.R. 227). The measure has 61 cosponsors. The bill was referred to the Judiciary Committee.

For more detailed information on this bill, see the NCHLA Final Legislative Report for 2009.

10. Stem Cell Research

Background: A stem cell is a basic body cell that can reproduce itself and has the ability to differentiate itself into one or more specialized cell types. Derivation of embryonic stem cells (ESCs) from the early embryo necessarily results in the death of the embryo, and thus is morally prohibited. The derivation of adult stem cells, however, presents no such moral issue and these stem cells can be used for research and treatment.

In general, stem cells show promise in treating diseases by assisting in the regeneration of damaged tissue. The pluripotent ESCs have proven very difficult to use and have produced no therapeutic benefits in humans. Adult stem cells are much more manageable and to date have produced therapeutic benefits in treating humans for at least 73 different diseases. See: www.stemcellresearch.org. For additional valuable resources, see: www.usccb.org/prolife/issues/bioethic/stemcell/index.shtml.

The Bush Administration issued regulations that permitted federal funding for research on ESCs existing as of August 9, 2001.

Administration: On March 9, 2009, President Barack Obama issued an Executive Order overturning the Bush Administration ESCR guidelines. On July 7, 2009, NIH published final

guidelines implementing the Obama directive. See: nchla.org/datasource/idocuments/7NIHescGuidelns7.09.pdf. Federal taxpayer funds would now support research on human embryonic stem cells that are derived by killing human embryos acquired from fertility clinics. Parents can relinquish their embryonic children for such research when they no longer want them for reproduction.

House: On March 10, 2010, Rep. Diana DeGette (D-CO) introduced the Stem Cell Research Advancement Act (H.R. 4808). The bill has 51 cosponsors and was referred to the Energy and Commerce Committee. In addition to authorizing the funding of human embryonic stem cell research using “excess” embryos from fertility clinics, the bill prohibits the funding of human cloning only if the new cloned human life is implanted in a uterus. The bill directs that NIH guidelines should be updated “for consistency” with this provision, and, in general, the guidelines should be reviewed at least every three years and updated “as scientifically warranted.”

For an Action Alert opposing destructive ESCR, see: nchla.org/actiondisplay.asp?ID=272.

Judicial: On August 23, 2010, Royce C. Lamberth, Chief Judge of the U.S. District Court for the District of Columbia, issued a preliminary injunction enjoining the federal government from implementing its ESCR guidelines. *Sherley v. Sebelius* (Civ. No. 1:09-cv-1575 (RCL)).

Judge Lamberth argued that the NIH guidelines violate the Dickey-Wicker Amendment, which was first passed by Congress in 1996. As the Judge noted, the amendment is meant “to prohibit the expenditure of federal funds on ‘research in which a human embryo or embryos are destroyed.’” The prohibition reaches to “all ‘research in which’ an embryo is destroyed,” not just, as the Administration claims, to “the ‘piece of research’ in which the embryo is destroyed.” ESCR is the kind of research in which an embryo is necessarily destroyed, and thus may not be supported with federal funds. See: nchla.org/datasource/idocuments/2009cv1575-44ESCR.pdf.

Cardinal Daniel DiNardo, chairman of the Committee on Pro-Life Activities of the U.S. bishops’ conference, called the injunction “a welcome victory for common sense and sound medical ethics.” He also noted that it vindicates a reading of the Dickey-Wicker Amendment that the USCCB “has defended for more than a decade.” The Cardinal expressed the hope that the court decision “will encourage our government to renew and expand its commitment to ethically sound avenues of stem cell research.” See: usccb.org/comm/archives/2010/10-152.shtml.

For more detailed information on this issue, see the NCHLA Final Legislative Report for 2009.

11. Ulipristal Approved as “Emergency Contraception”

On August 13, 2010, the Food and Drug Administration (FDA) approved the use of the drug ulipristal acetate as “emergency contraception,” with the trade name ella. See FDA press release: www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm222428.htm. On June 17, 2010, the FDA Advisory Committee for Reproductive Health Drugs had voted unanimously to recommend approval. At issue is the use of a dose of 30 mg of ulipristal acetate as an “emergency contraceptive” up to 5 days after unprotected intercourse or contraceptive failure.

In a June 17, 2010 letter to Dr. Margaret Hamburg, Commissioner of the FDA, Cardinal Daniel DiNardo, chairman of the U.S. bishops' Committee on Pro-Life Activities, expressed grave concern that the process for approving ulipristal "does not demonstrate an understanding of the new medical and moral issues it presents." The Cardinal noted that ulipristal "is a close analogue to the abortion drug RU-486, with the same biological effect—that is, it can disrupt an established pregnancy weeks after conception has taken place." To call ulipristal simply "contraceptive" is misleading and opens the way to abuses. "Plans for approving a known abortion-causing drug as a 'contraceptive' for American women is not consistent with the stated policy of the Administration on these matters." For full text of letter, see: www.usccb.org/comm/archives/2010/10-121.shtml.

On June 2, 2010, Donna Harrison, M.D., President of the American Association of Pro-Life Obstetricians & Gynecologist (AAPLOG), submitted comments opposing the proposal to approve ulipristal as a post-coital contraceptive (FDA New Drug Approval 22-274) and expressed extreme disappointment "in the non-transparent manner" in which the FDA approval process was going forward. "Ulipristal's ability to destroy established pregnancies, as well as prevent implantation, makes it an embryocidal drug." Dr. Harrison carefully explained how ulipristal acts as an abortifacient by blocking progesterone receptors in three critical areas. "That mechanism is identical to the action of RU-486 in early pregnancy." As a "selective progesterone receptor modulator" (SPRM), ulipristal blocks progesterone receptors throughout the body. "This receptor blockage interferes with the hormone action of progesterone to prepare the endometrium for implantation and to support the early pregnancy." For the full and detailed comments of AAPLOG, see: www.aaplog.org/wp-content/uploads/2010/06/AAPLOG-Ulipristal-Comments_2010.pdf.

On August 2, 2010, 90 Members of Congress sent a letter to the FDA, raising serious concerns about ella that need to be addressed. If, as some evidence indicates, ulipristal acetate may also kill or injure an unborn child after implantation, classifying ella as an "emergency contraception" would be deceptive. Women deserve to know if ella can cause an abortion. Members were disappointed that the advisory committee did not insist on evidence demonstrating that ella's modes of action do not include abortion. Members also were concerned with off-label use and associated adverse effects, and about the safety of ella in other respects. See: nchla.org/docdisplay.asp?ID=352.

With ella labeled as a "contraceptive," questions have been raised whether the drug could be funded under federal family planning programs, even though the drug may be abortifacient.

Ella is manufactured by Laboratoire HRA Pharma (France) and will be distributed by Watson Pharma of Morristown, NJ. According to news stories, Watson intends to make ella available by the end of 2010.

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