



## Secretariat of Pro-Life Activities

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### *Abortion in the Affordable Care Act: Responses to Administration Claims*

On September 15 the Government Accountability Office (GAO), an independent, nonpartisan investigative agency of the federal government, issued a [report](#) on serious abortion-related problems in health plans under the Affordable Care Act (ACA). In response a spokesperson for the Department of Health and Human Services (HHS) sent a statement and “background” to journalists covering the GAO’s startling findings. Here are HHS’s claims with responses.

*STATEMENT from HHS:*

*“CMS will work with stakeholders, including states and issuers, so they fully understand and comply with the federal law prohibiting the use of federal funds for abortions.”*

**Response:** This federal law, the ACA, [authorizes](#) use of federal funds for health plans covering abortion on demand – the GAO identified over a thousand such plans. In some states, every plan on the exchange -- including federally subsidized plans -- covers such abortions, and everyone enrolled in those plans is required by the ACA to help fund those abortions. Some of the problems are created by that law; tighter compliance with the law won’t solve those problems.

*ON BACKGROUND, attributable to an HHS official*

*“Let’s be clear: No Federal funds, including administrative funds, are permitted to cover abortions or administer plans that cover abortions, except in the case of rape, incest, or when the life of the woman is endangered.”*

**Response:** This is misleading in two ways. First, once an insurer decides to cover elective abortions, it is required by the ACA to make every enrollee pay a surcharge to fund abortions. No opt-out is provided. ACA, Sec. 1303 (b)(2)(i). While this is not Federal tax funding, it is Federally mandated funding of abortion. Second, Federal tax funds subsidize health plans that cover abortion, and in many states are used to establish and administer the health exchanges offering these plans.

*“This has been Federal law since the 1980s and nothing has changed. It is the same for the Federal Employee Health Benefits Program and for anyone who gets health insurance through the Marketplaces, including Members of Congress and their staff.”*

**Response:** This is simply untrue. The policy of the Hyde amendment, FEHBP, and other longstanding laws [prohibits](#) Federal tax funding of a health plan that covers elective abortions. The ACA would have followed that policy if Congress had included the House’s Stupak amendment, or the Senate’s Nelson/Hatch/Casey amendment. Instead, ACA ended up providing Federal tax subsidies for plans covering elective abortions, authorizing exactly what these other laws forbid. Members of Congress and their staff now come under the ACA, so they are governed by an abortion policy opposite to that of FEHBP: All other Federal employees in Washington D.C. choose among a wide array of plans, none of

**which have elective abortions; Members of Congress must choose among the plans on the ACA's Washington DC exchange, 92% of which (103 out of 112) have been found to include elective abortion. In short, 92% is not the "same" as zero.**

*"The law requires issuers to collect separate payments from consumers with health insurance plans that cover abortion services for which the use of federal funds are prohibited. It does not specify a method that issuers must use to comply with the separate payment requirement."*

**Response: In fact the law forbids the "method" that would make the term "separate payment" meaningful to enrollees: Separate billing. The ACA says health plans and exchanges can provide information "only with respect to the total amount of the combined payments" for abortion coverage plus all other items. ACA, Sec. 1303 (b)(3)(B). So "separate" doesn't mean separate. This problem was widely misrepresented or ignored when the law was debated and passed. It is easy to see why insurers may think the ACA allows and even requires them to hide the abortion payment.**

*"To help ensure compliance with the policy, CMS will provide additional guidance in the coming days."*

**Response: If the guidance ensures "compliance" with the provisions cited above (which differ from misleading claims by supporters), little will be remedied.**

*"As is the case with many provisions in the Affordable Care Act, states and state insurance commissioners have an important role in enforcing the law."*

**Response: The GAO showed that many are unaware of this role, and for four years HHS seems to have done little to inform them of it. For example, a number of insurance commissioners and insurers seem unaware that they were supposed to enforce protocols for "segregated" accounts to keep abortion funds separate from Federal funds. Sec. 1303 (b)(2)(E). If that is true, even direct use of Federal funds for abortion procedures themselves is not being prevented.**

*"GAO has stated that this audit was NOT designed to assess CMS' oversight of compliance with federal requirements. This was beyond the scope of the engagement."*

**While that was not the purpose of the study, GAO could not help finding evidence that this oversight has been shoddy to nonexistent depending on the issue.**

*"From the GAO Report 'Because we selected these issuers as part of a nonprobability sample, the information we report regarding the scope of non-excepted abortion services and premium- and billing-related information is not generalizable to all QHPs offered under an exchange.' – GAO, pg 17."*

**This is hardly a defense. What was found was bad enough, even as a sample. Other plans might be worse.**