



## Secretariat of Pro-Life Activities

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194

202-541-3070 • FAX 202-541-3054 • EMAIL [PROLIFE@USCCB.ORG](mailto:PROLIFE@USCCB.ORG) • WEB [WWW.USCCB.ORG/PROLIFE](http://WWW.USCCB.ORG/PROLIFE)

### **Backgrounder: The New Federal Regulation on Coerced Abortion Payments**

On March 12, 2012 the Obama administration issued a final rule under the Patient Protection and Affordable Care Act (PPACA) that, among other things, requires many health insurers to charge all enrollees for elective abortions.<sup>1</sup> This requirement has surprised many people, who thought that they had been assured the new health care reform act would not make taxpayers fund abortions.

In fact, this final rule simply repeats the language of the Act itself (PPACA, §1303 (b)), adding some details already issued as part of guidelines or executive order shortly after the Act was signed into law in March 2010. While some have misunderstood or misrepresented the Act's role in funding abortions, the new rule confirms that analyses by the Catholic bishops' conference were accurate on this point.<sup>2</sup>

Under this Act, millions of American taxpayers will be forced to help support abortion coverage, in two ways:

(1) Through their tax dollars all taxpayers will be forced to subsidize overall health plans that cover elective abortions, contrary to the policy of the Hyde amendment and every other major federal program, and

(2) Many of these Americans will also be forced to pay directly for other people's abortions. Some will say this is technically not "tax funding of abortions," because the required surcharge will be a premium payment rather than a tax payment as such. But what the payment is *called* is less important than what it actually does. Details follow:

1. Under the Act, private health plans may be offered on the new health care exchanges whether they offer abortions or not. (Most secular plans do include abortion, partly because insurers think covering abortions saves them the cost of childbirth and addressing children's health needs; presumably they will continue to do so.) These plans, including those which cover abortions without any limits, will be eligible for federal tax credit subsidies when the enrollee earns less than four times the federal poverty level. In all previous federal health programs, including the Federal Employees Health Benefits Program, such tax subsidies for overall plans that include elective abortions were forbidden by law.

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<sup>1</sup> See the final rule, "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers," at 77 *Fed. Register* 18310-18475 (March 27, 2012), available at [www.gpo.gov/fdsys/pkg/FR-2012-03-27/pdf/2012-6125.pdf](http://www.gpo.gov/fdsys/pkg/FR-2012-03-27/pdf/2012-6125.pdf). A pre-publication copy of the rule was released on March 12. Payments for abortion are discussed at pages 18406, 18429-30, and 18472-3.

<sup>2</sup> For example, see this legal analysis of the Act and President Obama's executive order of March 2010, <http://old.usccb.org/healthcare/03-25-10Memo-re-Executive-Order-Final.pdf>, and this lengthy analysis of the final Act, pages 3-4, <http://old.usccb.org/healthcare/PPACA-Analysis-5-24-10.pdf>.

2. The plans that include elective abortions<sup>3</sup> must charge each enrollee an additional payment, to be used solely for elective abortions for anyone in the plan. The Act explicitly requires that the premiums paid on behalf of every man, woman and child in the plan must have this surcharge.

3. While some reports have said the surcharge will be \$1 a month, this is only a minimum figure. The real cost will be determined by predicting, and then determining, what the surcharge must be to cover the cost of all abortions performed on all women in the plan. Unlike the Administration's rule on mandated contraceptive coverage, this rule on abortion does not allow a health plan to include abortion for "free" by taking into account the costs allegedly saved on live births (see §1303 (b)(2)(D)).

4. The insurer who covers elective abortions may list abortion in its usual summary of covered benefits, but may not take any further step to warn enrollees that they are buying a plan with abortions. Moreover, even at the time of enrollment, they may not inform enrollees how much of their premium payment is to be separated out and used solely to pay for abortions (Id., §1303 (b)(3)). This seems designed to make it difficult or impossible for enrollees even to try to withhold that part of their premium – they will never know how much of the premium is involved, so cannot attempt to withhold that amount to protest against the legal requirement.

While many private health plans now cover abortions, then, what is new about the Affordable Care Act is this:

- These plans will receive federal tax subsidies;
- The federal government will explicitly *forbid* the insurer to:
  - (a) allow any enrollee to opt out of the abortion coverage on conscience grounds;
  - (b) give enrollees an explicit warning as to what they are buying;
  - (c) tell enrollees how much of their money will go toward other people's abortions.

This regulation left some questions unanswered regarding "multi-state plans." These are private health plans that the federal government will promote and make available across state lines, ultimately on every state exchange. The Act requires at least *one* such plan to exclude elective abortions (Id., §1334 (a)(6)). It seems that all other multi-state plans may include elective abortions – in which case, the federal government for the first time will sponsor and promote health plans that cover all abortions. However, a later regulation of March 2013 says that a multi-state plan "may not offer abortion coverage in any State where such coverage of abortion services is prohibited by State law."<sup>4</sup> This seems to indicate that multi-state plans must comply with any restrictions on abortion coverage a state law has established. 11/6/13

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<sup>3</sup> Here the phrase "elective abortions" refers to abortions beyond those for which direct federal subsidies are allowed under the Hyde amendment and similar longstanding provisions. For many years Hyde has allowed funding of abortions only in the rare cases of danger to the mother's life, or cases of rape or incest. The Hyde amendment also has long forbidden federal tax subsidies for overall health plans that include elective abortions; that part of the Hyde amendment is ignored in PPACA and violated by its policy.

<sup>4</sup> "Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges," at 78 *Fed. Register* 15560-96 (March 11, 2013) at 15596, available at [www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-04954.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-04954.pdf).