

MEMORANDUM

**To: Members
COMMITTEE ON THE JUDICIARY**

**From: Lamar Smith
Chairman**

Date: February 28, 2011

**Subject: Full Committee Markup of:
H.R. 3, the “No Taxpayer Funding for Abortion Act”**

On Wednesday, March 2, 2011, at 10:15 am in Room 2141 of the Rayburn House Office Building, the Committee on the Judiciary will meet to mark up the following: H.R. 3, the “No Taxpayer Funding for Abortion Act”.

H.R. 3, THE “NO TAXPAYER FUNDING FOR ABORTION ACT”

H.R. 3 was introduced by Reps. Chris Smith (R-NJ) and Daniel Lipinski (D-IL) on January 20, 2011.

For over 30 years, a patchwork of policies has regulated federal funding for abortion. Amendments have been added to various appropriations bills that would prohibit the federal funding of abortions through the programs funded by those appropriations bills. H.R. 3 will allow Congress to pass one piece of legislation that prohibits any federal funding of abortion, no matter where in the federal system that funding might occur. H.R. 3, with the exception of a few narrow categories that have been accepted for decades, stands for the principle that the federal government and federal taxpayer should not pay for, subsidize, encourage, or facilitate abortions.

H.R. 3 will make permanent the policies that have previously been passed on a case-by-case basis, as individual spending bills have worked their way through currently rely on regular re-approval including:

- the Hyde amendment, which prohibits funding for elective abortion coverage through any program funded through the annual Labor, Health and Human Services Appropriations Act;
- the Helms amendment, which prohibits funding for abortion as a method of family planning overseas;

- the Smith FEHBP amendment, which prohibits funding for elective abortion coverage for federal employees;
- the Dornan amendment, which prohibits use of congressionally appropriated funds for abortion in the District of Columbia; and
- other policies such as the restrictions on elective abortion funding through Peace Corps and Federal prisons.

H.R. 3 also codifies the Hyde-Weldon conscience clause that is part of the Hyde amendment. The conscience clause ensures that recipients of federal funding do not discriminate against health care providers, including doctors, nurses and hospitals, because the providers do not provide, pay for, provide coverage of, or refer for abortions.

Section-by-Section

The following is a section-by-section description of the bill. Descriptions of changes made by the manager's amendment are indicated in underlined text within the sections of this memo that describe the sections of the bill the manager's amendment amends.

Section 1. Provides the short title of the bill.

Section 2. Contains the following provisions prohibiting taxpayer-funded abortions and providing conscience protections:

Section 301. Prohibits federal funding for abortion.

Section 302. Prohibits funding for health benefits coverage that includes coverage of abortion.

Section 303. Clarifies that the prohibition on abortion subsidies applies to tax credits (a sum deducted from the total amount a taxpayer owes) and ensures that abortion is not incentivized through tax breaks in the form of itemized deductions or pre-tax health accounts, such as health savings accounts (HSAs), medical savings accounts (MSAs) or cafeteria plans (company benefit programs that allow employees to use pretax dollars to pay certain out-of-pocket expenses).

Section 303(1) provides that “no credit shall be allowed under the internal revenue laws with respect to amounts paid or incurred for an abortion or with respect to amounts paid or incurred for a health benefits plan (including premium assistance) that includes coverage of abortion.”

Section 303(1) ensures that tax credits for small businesses made available under the Democrats' health care law shall only be made available for the cost of health care plans which do not cover abortion.

Section 303(1) prevents tax credits for both abortion and abortion coverage.

Section 303(2) provides that “for purposes of determining any deduction for expenses paid for medical care of the taxpayer or the taxpayer's spouse or dependents, amounts paid or incurred for an abortion or for a health benefits plan that includes coverage of abortion shall not be taken into account.” Rep. Trent Franks intends to offer a manager’s amendment that will strike the reference, in Section 303(2), to “or for a health benefits plan that includes coverage of abortion.”

Neither this section, nor any other section of H.R. 3, would change the tax treatment of employer-sponsored health insurance coverage as is permitted through the general employer deduction and the employer exclusion.

Section 303(3) provides that “in the case of any tax-preferred trust or account the purpose of which is to pay medical expenses of the account beneficiary, any amount paid or distributed from such an account for an abortion shall be included in the gross income of such beneficiary.” This section involves the various tax-preferred savings accounts for medical expenses.

Section 304. Prohibits abortion in federal health facilities (such as Department of Defense and Veterans Affairs hospitals) and ensures abortion is not included in the services provided by individuals as a part of their employment by the Federal government.

Section 305. Clarifies that the bill does not prohibit individuals, entities, States or localities from purchasing separate privately funded coverage that includes abortion. However, such coverage must be purchased using non-federal funds and may not be purchased using matching funds required for a federally subsidized program. For example, States may provide abortion coverage to Medicaid participants, but may not do so using federal funds or State Medicaid matching funds. Also, individuals who receive a federal health insurance subsidy may purchase abortion coverage, but if the federal subsidy requires the individual to pay a portion of their premiums, they may not use the premium payment to purchase abortion coverage.

Section 306. Clarifies that non-federal health insurance providers may sell abortion coverage consistent with the policies described in Section 305. Section 306 provides that “Nothing in this chapter shall be construed as restricting the ability of any non-Federal health benefits coverage provider from offering abortion coverage, or the ability of a State or locality to contract separately with such a provider for such coverage, so long as only funds not authorized or appropriated by Federal law are used and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds.”

Section 307. Clarifies that the bill preserves any stronger abortion funding restrictions in existing law.

Section 308. Clarifies that neither the bill nor any other federal law shall be used as a basis to require any State or local government to provide or pay for abortion or abortion coverage. This provision only relates to the effect federal law has on state law, and it ensures that states can

make their own decisions regarding abortion coverage under their own laws and with state money, without mandates or influences from the federal government. Rep. Trent Franks plans to offer a manager’s amendment that strikes this section and replaces it with another (described below).

Rep. Trent Franks’ manager’s amendment replaces section 308 with a new section that states:
SEC.308. CONSTRUCTION RELATING TO COMPLICATIONS ARISING FROM ABORTION. Nothing in this chapter shall be construed to apply to the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of an abortion. This rule of construction shall be applicable without regard to whether the abortion was performed in accord with federal or state law, and without regard to whether funding for the abortion is permissible under section 309 of this Act.” This section is added because the Hyde Amendment and other federal laws regarding abortion funding have never prevented funding for complications from an abortion.

Section 309. Establishes an exception to the prohibitions on abortion funding for cases of rape and incest, and when necessary to save the life of the mother. Rep. Trent Franks’ manager’s amendment will revert this section to the language used in the Hyde Amendment, namely through references pregnancies that are “the result of an act of rape or incest.” The references to “pregnant female” in Section 309(2) are also changes to “woman,” consistent with the terminology used in the current Hyde Amendment.

Section 310. Clarifies that the term “funds appropriated by Federal law” includes funds appropriated by Congress for the District of Columbia, and that standards set for the federal government include the government of the District of Columbia.

Section 311. Ensures that no federal, State or local government that receives Federal funds may discriminate against any individual or institutional health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

Section 312. Defines the term health benefits coverage. Rep. Franks’ manager’s amendment strikes this definition from the bill, as it could prove overly restrictive and exclude from coverage other forms of health benefits coverage that may be created under the Democrats’ health care law, and other federal laws.

Text of H.R. 3 Showing Changes Made by Manager’s Amendment
(deletions indicated by ~~strikeouts~~, additions indicated in *italics*)

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘No Taxpayer Funding for Abortion Act’.

SEC. 2. PROHIBITING TAXPAYER FUNDED ABORTIONS AND PROVIDING FOR CONSCIENCE PROTECTIONS.

Title 1 of the United States Code is amended by adding at the end the following new chapter:

CHAPTER 4--PROHIBITING TAXPAYER FUNDED ABORTIONS AND PROVIDING FOR CONSCIENCE PROTECTIONS.

SEC. 301. PROHIBITION ON FUNDING FOR ABORTIONS.

No funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for any abortion.

SEC. 302. PROHIBITION ON FUNDING FOR HEALTH BENEFITS PLANS THAT COVER ABORTION.

None of the funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for health benefits coverage that includes coverage of abortion.

SEC. 303. PROHIBITION ON TAX BENEFITS RELATING TO ABORTION.

For taxable years beginning after the date of the enactment of this section--

(1) no credit shall be allowed under the internal revenue laws with respect to amounts paid or incurred for an abortion or with respect to amounts paid or incurred for a health benefits plan (including premium assistance) that includes coverage of abortion,

(2) for purposes of determining any deduction for expenses paid for medical care of the taxpayer or the taxpayer's spouse or dependents, amounts paid or incurred for an abortion ~~or for a health benefits plan that includes coverage of abortion~~ shall not be taken into account, and

(3) in the case of any tax-preferred trust or account the purpose of which is to pay medical expenses of the account beneficiary, any amount paid or distributed from such an account for an abortion shall be included in the gross income of such beneficiary.

SEC. 304. LIMITATION ON FEDERAL FACILITIES AND EMPLOYEES.

No health care service furnished--

(1) by or in a health care facility owned or operated by the Federal Government; or

(2) by any physician or other individual employed by the Federal Government to provide health care services within the scope of the physician's or individual's employment, may include abortion.

SEC. 305. CONSTRUCTION RELATING TO SEPARATE COVERAGE.

Nothing in this chapter shall be construed as prohibiting any individual, entity, or State or locality from purchasing separate abortion coverage or health benefits coverage that includes abortion so long as such coverage is paid for entirely using only funds not authorized or appropriated by Federal law and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds.

SEC. 306. CONSTRUCTION RELATING TO THE USE OF NON-FEDERAL FUNDS FOR HEALTH COVERAGE.

Nothing in this chapter shall be construed as restricting the ability of any non-Federal health benefits coverage provider from offering abortion coverage, or the ability of a State or locality to contract separately with such a provider for such coverage, so long as only funds not authorized or appropriated by Federal law are used and such coverage shall not be purchased using matching funds required for a federally subsidized program, including a State's or locality's contribution of Medicaid matching funds.

SEC. 307. NON-PREEMPTION OF OTHER FEDERAL LAWS.

Nothing in this chapter shall repeal, amend, or have any effect on any other Federal law to the extent such law imposes any limitation on the use of funds for abortion or for health benefits coverage that includes coverage of abortion, beyond the limitations set forth in this chapter.

~~**SEC. 308. CONSTRUCTION RELATED TO STATE OR LOCAL LAWS.**~~

~~Nothing in this chapter or any other Federal law shall be construed to require any State or local government to provide or pay for any abortion or any health benefits coverage that includes coverage of any abortion.~~

SEC.308. CONSTRUCTION RELATING TO COMPLICATIONS ARISING FROM ABORTION.

Nothing in this chapter shall be construed to apply to the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by the performance of an abortion. This rule of construction shall be applicable without regard to whether the abortion was performed in accord with federal or state law, and without regard to whether funding for the abortion is permissible under section 309 of this Act.

SEC. 309. TREATMENT OF ABORTIONS RELATED TO RAPE, INCEST, OR PRESERVING THE LIFE OF THE MOTHER.

The limitations established in sections 301, 302, 303, and 304 shall not apply to an abortion--

(1) if the pregnancy *is the result of an act of rape or incest* ~~occurred because the pregnant female was the subject of an act of forcible rape or, if a minor, an act of incest;~~ or

(2) in the case where ~~the a woman pregnant female~~ suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the *woman pregnant female* in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself.

SEC. 310. APPLICATION TO DISTRICT OF COLUMBIA.

In this chapter:

(1) Any reference to funds appropriated by Federal law shall be treated as including any amounts within the budget of the District of Columbia that have been approved by Act of Congress pursuant to section 446 of the District of Columbia Home Rule Act (or any applicable successor Federal law).

(2) The term `Federal Government' includes the government of the District of Columbia.

SEC. 311. NO GOVERNMENT DISCRIMINATION AGAINST CERTAIN HEALTH CARE ENTITIES.

(a) Nondiscrimination- A Federal agency or program, and any State or local government that receives Federal financial assistance (either directly or indirectly), may not subject any individual or institutional health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(b) Health Care Entity Defined- For purposes of this section, the term `health care entity' includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

(c) Remedies-

(1) IN GENERAL- The courts of the United States shall have jurisdiction to prevent and redress actual or threatened violations of this section by issuing any form of legal or equitable relief, including--

(A) injunctions prohibiting conduct that violates this section; and

(B) orders preventing the disbursement of all or a portion of Federal financial assistance to a State or local government, or to a specific offending agency or program of a State or local government, until such time as the conduct prohibited by this section has ceased.

(2) COMMENCEMENT OF ACTION- An action under this subsection may be instituted by--

(A) any health care entity that has standing to complain of an actual or threatened violation of this section; or

(B) the Attorney General of the United States.

(d) Administration- The Secretary of Health and Human Services shall designate the Director of the Office for Civil Rights of the Department of Health and Human Services--

(1) to receive complaints alleging a violation of this section;

(2) subject to paragraph (3), to pursue the investigation of such complaints in coordination with the Attorney General; and

(3) in the case of a complaint related to a Federal agency (other than with respect to the Department of Health and Human Services) or program administered through such other agency or any State or local government receiving Federal financial assistance through such other agency, to refer the complaint to the appropriate office of such other agency.

~~SEC. 312. HEALTH BENEFITS COVERAGE DEFINED.~~

~~In this chapter the term 'health benefits coverage' means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.~~