RESOURCE ROUNDUP

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The Hippocratic Resource

(A Statewide Organization of Louisiana Physicians, Dentists, Nurses, Therapists, Scientists and Other Health Professionals)

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"I will give no deadly medicine to anyone if asked ... I will not give to a woman an instrument to produce an abortion"

Dear Colleague:

Without a doubt, the major issue of the day, currently, is health care reform. From the perspective of the tenets of Hippocratic medicine, concerns centering on the cardinal issue of the sanctity of life – source of the "first, do no harm" principle commonly recognized by our patients as being at the core of good medical practice – are being raised around the country. Specifically worrisome is the potential impact of prospective reforms on the "life" issues that, unfortunately, are no longer *universally* recognized in our society as core ethical principles. Abortion, embryonic stem cell research (ESCR) & human cloning, assisted suicide & euthanasia, and the freedom of health professionals to practice according to their informed consciences for the good of their patients – as well as whether or not taxpayers will be forced to pay for unethical procedures – are major concerns. Unfortunately, although no one truly knows what, exactly, is going to be in a final bill (H.R. 3200 is currently >1,000 pages), action trends suggest the strong possibility of federal invalidation of many of our successes in the Louisiana Legislature, including Acts 372 [*p.2.*] and 108 of the 2009 session [www.legis.state.la.us], as well as in earlier years. Certainly, recent actions of the Obama administration and Congress to liberalize ESCR, to promote abortions overseas through the U.N., and to reduce health professionals' conscience protections (despite several attempted but failed amendments to protect conscience), as well as the avowed intent of major administration officials to liberalize abortion and abortion funding, are causes for serious concern. As reported by www.Fastcheck.org on August 21, 2009, "Despite what [President] Obama said, the House bill would allow abortions to be performed by a federal plan and by federally-subsidized private plans." At the same time, although representing extra-congressional actions, forcing a Mt. Sinai hospital (NY) nurse to participate in the abortion of a 22-week old baby because of inadequate conscience protections, or the State of Montana allowing assisted suicide, are equally non-Hippocratic, and/or reprehensible! Dr. Rob Chasuk provides details on pp. 3, ff.

In a letter to the U.S. Congress, Bishop William Murphy, Chairman of the (Catholic) U.S. Bishops' Committee for Domestic Justice and Human Development, set forth the following major reform requirements:

> "Health care reform needs to reflect basic ethical principles … [including] … a truly universal health policy, with respect for human life and dignity; access for all, with a special concern for the poor and inclusion of legal immigrants; pursuing the common good and preserving pluralism, including freedom of conscience and variety of options; and restraining costs and applying them equitably across the spectrum of payers." [www.usccb.org/healthcare]

The big problem will come both with the language of the final bill and with regulations that devolve from it – as well as the machinations of those responsible for getting the final version through. Currently, **"all versions of the health care legislation introduced so far create government funding of abortion by allowing proposed federally subsidized health care vouchers to be used for public or private health insurance plans that include abortion. Health reform legislation being proposed would break with the decades-old federal policy of barring federal funds to pay for** [any and all] **abortions"** [*Our Sunday Visitor,* Sep 6, 2009]. According to Douglas Johnson, legislative director of the National Right to Life Committee (NRLC), "Under court decisions, *any general federal health program will cover all abortions unless Congress explicitly says otherwise*" [*Ibid*].

With all of the above in mind, we recently proposed the following language to be added to all health care reform plan bills:

> **"Notwithstanding any other considerations of this bill** [whatever comes out of deliberations]**, and recognizing that abortion, embryonic stem cell research, human cloning, and assisted suicide are not health care, taxpayer funds will not be expended on any facilitation, promotion, provision or payment for such actions, whether by health professionals, hospitals or other facilities. Furthermore, a health provider's conscience, particularly when based upon the Hippocratic Oath, will be considered a valid basis for not acquiescing to any mandate for any so-called 'reproductive health' service."**

Our federal legislators need to be encouraged to employ such – or other similarly functionally effective – language!

W. A. Krotoski, M.D., Ph.D., M.P.H. and Francis Rinaudo, Jr., D.D.S.

Roster Change

[Information deleted per privacy policy]

Upcoming Meeting

78th Annual. Educational Conference, Catholic Medical Association, "The Theology of Suffering,":
Springfield, IL, October 22-24. Please visit www.cathmed.org for details.

Louisiana Conscience Bill Language

The following is the conscience-pertinent text of Act 372 (HB 517), as signed by Governor Bobby Jindal 7-06-09:

ACT No. 372 (Effective date: August 15, 2009)

BY REPRESENTATIVES LEBAS, BURFORD, HENRY BURNS, TIM BURNS, GREENE, HAZEL, HOFFMANN, LABRUZZO, LIGI, LOPINTO, SCHRODER, SIMON, JANE SMITH, AND WHITE AND SENATOR THOMPSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

AN ACT

To enact R.S. 40:1299.35.9 and Part LXVI of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1300.291, relative to health care services; to protect persons who refuse to provide health care services from certain types of punitive measures; to provide for definitions; …

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1299.35.9 and Part LXVI of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.291, are hereby enacted to read as follows:

§1299.35.9. Conscience in health care protection; definitions

A. (1) Any person has the right not to participate in, and no person shall be required to participate in any health care service that violates his conscience to the extent that patient access to health care is not compromised. No person shall be held civilly or criminally liable, discriminated against, dismissed, demoted, or in any way prejudiced or damaged for declining to participate in any health care service that violates his conscience.

(2) This Section shall not prevent an inquiry by an employer or patient regarding whether a person declines to participate in any health care service that violates its conscience. When a patient requests health care services, a person shall identify, in writing, as soon as practicable, his declination to provide a service in accordance with the provisions of this Section. All persons who have a sincerely held religious belief or moral conviction and who seek employment at a health care facility shall notify the prospective employer of the existence of any sincerely held religious belief or moral conviction. Any health care facility that employs a person with a sincerely held religious belief or moral conviction shall ensure that the health care facility has sufficient staff to provide patient care in the event an employee declines to participate in any health care service that violates his conscience.

(3) The provisions of this Section shall not be construed to relieve any health care provider from providing emergency care as required by state or federal law.

(4) A person shall notify his employer in writing as soon as practicable of any health care service that violates his conscience. A person shall notify any patient before such person provides any consultation or service to the patient of the existence of a health care service that he will decline to provide because the health care service violates his conscience.

B. For purposes of this Section:

(1) "Conscience" means sincerely held religious belief or moral conviction.

(2) "Health care service" is limited to abortion, dispensation of abortifacient drugs, human embryonic stem cell research, human embryo cloning, euthanasia, or physician-assisted suicide.

C. A suit alleging a violation of this Section shall be brought in a district court in accordance with R.S. 23:303.

* *

Health Care Reform Actions in Detail (compiled by Rob Chasuk, M.D., Editor)

Health Care "Reform" is now at the top of President Barack Obama's agenda. His efforts to ramrod complex, thousand-page bills through Congress have clearly gained the attention of the nation. There are daily reports of impassioned citizens speaking up to their representatives at local town halls, and their passion derives not only from the "bad sausage" character of the bills, but also from the sense that their representatives are not reading the bills, are not listening to them, and, from the president on down, are demonstrating contempt for the people whom they were elected to serve. Pro-life advocates have good reason to be concerned about the various bills in Congress. The House passed HR 3200 at the end of July just before the summer recess. Despite reassurances that these bills would not be **Trojan Horses** for abortion and euthanasia, etc., the actions of pro-abortion representatives reveal that they have every intent of using health care reform efforts to promote the culture of death.

Unfortunately, it is hard to make specific recommendations regarding action on health care reform as it is a "moving target," and as there are no published bills from the Senate, while the House bill continued to be amended until the final moments (see below). Additionally, although attention is on the "health reform" bill, abortion language is being inserted into other bills not predominantly thought of as health care vehicles (see below). Both houses were in recess until Labor Day. I have included excerpts from various sources regarding updates on this issue and would encourage you to access the links for a fuller view of this evolving process. The "Thomas" website of the National Library of Congress contains the texts of bills in congress but may not contain the last-minute amendments that I have referred to: http://thomas.loc.gov/.

For excellent reviews of the present state of health care legislation go to the websites of the National Right to Life Committee (http://www.capwiz.com/nrlc/issues/alert/?alertid=13157881&type=CO) and of Americans United for Life (http://www.KeepAbortionOutOfHealthcare.com/?page_id=245).

Rob Chasuk, M.D.

So-Called Common Ground Abortion Bill Requires Tax-Funded Abortions Nationwide

Washington, DC (LifeNews.com) -- The new legislation in Congress whose pro-abortion sponsors insist is a common ground bill that deserves support from pro-life advocates has a little-noticed provision. New analysis from Americans United for Life discovers the bill requires all 50 states to spend taxpayer dollars funding abortions. The bill, that LifeNews.com has repeatedly profiled, is sponsored by pro-abortion Rep. Rosa DeLauro, a former executive director of the pro-abortion group NARAL. Her co-sponsor is Ohio Democratic Rep. Tim Ryan, who flip-flopped on abortion and hasn't cast a pro-life vote since 2006.

AUL informed LifeNews.com today that, tucked into the Ryan-DeLauro bill (HR 3312) is a little-noticed provision that mandates that states provide abortion in state medical assistance programs. Language in Title VII, section 701 of the bill says that these state programs must cover "family planning" services. Since the 1970s, several federal appeals courts have read "family planning" in the Medicaid statute to include elective abortion, unless the bill contains an express exclusion of abortion, such as the Hyde Amendment. Because the Ryan-DeLauro bill contains no such exclusion, it mandates abortion coverage in state medical assistance programs, says Charmaine Yoest, the president of AUL. **Steven Ertfelt, LifeNews.com Editor, August 7, 2009,** www.lifenews.com/nat5335.html. **Related web sites: Americans United for Life** - http://www.aul.org; Text of HR 3312 http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3312:

House Panel OKs Fake Pro-Life Amendment That Funds Abortion in Health Care

Washington, DC (LifeNews.com) **--** A House of Representatives committee, late Thursday, approved a phony "compromise" amendment to the health care legislation it is considering. The amendment, sponsored by an abortion advocate, gave the impression that it would stop tax-funded abortions in the health care bill but in reality, would allow it.

The House Energy and Commerce Committee has been considering its version of the House government-run health care plan, **H.R. 3200. Rep. Lois Capps**, a California Democrat, proposed an amendment that she claimed was a "compromise" between pro-life advocates and abortion proponents. The amendment explicitly permits the Secretary of the Health and Human Services Department, pro-abortion advocate **Kathleen Sebelius**, to include abortion in the services offered by public option and requires abortion coverage in the government health plan if the **Hyde amendment** is ever reversed. HR 3200 authorizes taxpayer-funded affordability credits and the Capps amendment specifically requires taxpayer subsidies to flow to plans that include abortion, but creates an accounting scheme designed to give the impression that public funds will not subsidize abortion. The Capps amendment also requires that a plan that includes abortion be made available in every region of the country. Despite bipartisan opposition from Republicans and some pro-life Democrats on the committee, the panel approved the Capps amendment on a 30-28 vote. Pro-life advocates are very disappointed by the vote and worry that abortion advocates can use the Capps amendment to make a phony claim that this version of the House health care restructuring bill does not fund abortions.

Douglas Johnson, the legislative director of the National Right to Life Committee, told LifeNews.com that the health care bill continues to open the door for abortion funding and insurance mandates for abortions. "The Capps amendment -- the latest

refinement of the phony 'common ground' campaign -- would result in elective abortion being part of the 'public plan' created by the bill," he said. The Capps amendment "would ensure federal funding of private plans that include elective abortion (under a bookkeeping scheme), and contains other pro-abortion provisions." Johnson said no rational observer could conclude that Capps was trying to limit abortion funding given that National Right to Life has cataloged 74 votes Capps has cast during her career to promote abortion or stop attempts to limit abortions. She has never cast a pro-life vote, according to NRLC records. **Steven Ertfelt, Editor, July 31, 2009** http://www.lifenews.com/nat5306.html. Capps Amendment text: http://Republicans.EnergyCommerce.house.gov/Media/file/Markups/FullCmte/071709_Health_Reform/Capps.pdf

Status of Conscience Protection in the Pending Health Care Reform Bills—
Excerpted from Americans United for Life http://www.KeepAbortionOutOfHealthcare.com/?page_id=245
August 6, 2009

Current Health Care Bills Mandate Abortion Coverage

In addition to the explicit language in the House Bill (H.R. 3200 or Tri-Com Bill), the American Affordable Health Choices Act, which includes abortion as a mandatory minimum benefit in the newly-created public health care plan and requires taxpayer funding of abortion (see Capps amendment. to H.R. 3200), mandatory abortion coverage is confirmed by prior court interpretation and by the rejection of key amendments in congressional committees in recent days. Abortion mandates must therefore be explicitly excluded from health care proposals.

How Courts Will Read Abortion Into the Bills

In Planned Parenthood v. Engler, 73 F.3d 634 (6th Cir. 1996), a U.S. Court of Appeals held that abortion "fall[s] within several of Medicaid's mandatory categories of care" and that a state law that restricted funding for abortion to those necessary to save the mother's life conflicts with the "mandate" of Medicaid. Id. at 637. The court found that "under Medicaid, certain categories of medical care are mandatory and therefore must be provided by participating states when a physician certifies that the care is medically necessary to the patient . . . " The court concluded that "the mandatory categories of care" included "inpatient hospital services, outpatient hospital services, other laboratory and X-ray services, "nursing facility services" "early and periodic screening and diagnosis for individuals under the age of 21," "family planning services" and "physician services furnished by a physician." Though "abortion" is not explicitly named in any of those services, the court broadly concluded, "abortion fits within many of the mandatory care categories, including 'family planning,' 'outpatient services,' 'inpatient services,' and 'physician services."

Other federal courts have reached the same conclusion. See Hope Medical Clinic v. Edwards, 63 F.3d 418 (5th Cir. 1995); Little Rock Family Planning Services v. Dalton, 60 F.3d 497 (8th Cir. 1995), cert. denied, 116 S.Ct. 777 (1996); Hern v. Beye, 57 F.3d 906, 910 (10th Cir. 1995), cert. denied, 116 S.Ct. 569 (1995).

The above referenced judicial interpretation of Medicaid—whereby abortion is included within broad categories of services and "medically necessary" services, which include elective abortion—will almost certainly be applied to any federal statute revising Medicaid and involving health care reform.

In addition, Sec. 122 of H.R.3200 and Sec. 3103 of the Senate HELP bill list several benefits, which would fall under the category of "essential benefits," which any public plan or private plan participating in the Health Care Exchange/Gateway must offer. These benefits include "hospitalization," "outpatient hospital and outpatient clinic services," "professional services of physicians and other health professionals" and "preventive services." As is clearly determined by the Engler case, each of these services will be interpreted by the federal courts to include abortion services.

In addition, H.R. 3200 allows states to cover "family planning services" under Medicaid. (See Sec. 1714). The definition of "family planning" in the bill comes from Sec. 1905(a)(4)(C) of the Social Security Act which defines "family planning" services as those "family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies." Given the Engler court's interpretation of family planning to include abortion, the use of the term "family planning services" is clearly another means by which courts will read abortion into HR 3200.

Mandatory Contracting with Planned Parenthood

Sec. 204 of H.R. 3200 also mandates that health insurers participating in the Health Care Exchange contract with "essential community providers" who will provide services for the insured. Planned Parenthood is covered under the bill's definition of "essential community provider" as an entity that performs outpatient services (See 1861(s)(2) of the Social Security Act) and as a family planning project receiving a grant or contract under Sec. 1001 PHSA (42 USCS§3001.)

Sen. Barbara Mikulski (D-MD) offered an amendment, which the Committee accepted by a vote of 12-11, to include the same language and mandate in the Senate HELP bill. Sen. Mikulski explained her amendment to require insurers to cover

"essential community providers…that serve predominantly low-income, medically under-served individuals." as providing for any service deemed medically necessary or medically appropriate."

In response to Mikulski's amendment, Sen. Hatch offered an amendment that would prevent tax-funded abortions unless the life of the mother is endangered or unless the pregnancy is the result of rape or incest. These amendments would have made the Hyde Amendment permanent, but the amendments failed 12-11. Pennsylvania Sen. Bob Casey was the only Democrat to vote in favor of the Hatch amendment.

During the debate over the Hatch amendments, Sen. Durbin made the claim that the Hyde Amendment was "settled law" (and thus already established, making the Hatch amendment unnecessary). This is incorrect. The Hyde amendment was a yearly "fix" to the Labor and Health and Human Services Appropriations bill rather than permanent law, and moreover, many parts of the health care reform bills before Congress would not be subject to the Hyde amendment "fix" either way.

Troubling Provisions on End-of-Life Care

In H.R. 3200, section 1233 addresses end-of-life care. The section leaves unclear whether the government or a health care provider could counsel or encourage a patient to choose physician-assisted suicide as a solution to terminal illness. While section 1233 remains in the bill, an amendment offered by the "Blue Dog Democrats" and accepted by the Energy and Commerce Committee clarifies end-of-life counseling and services by adding Sec. 138 to the bill. Section 138, though placed in an entirely different section of the bill, also addresses physician-assisted suicide and end-of-life planning. Section 138 prevents the promotion of assisted suicide (though not the practice of it), and makes it clear that material distributed by Qualifying Health Benefits Plans (QHBPs) "shall not include advanced directives or other planning tools that list or describe as an option suicide, assisted suicide or the intentional hastening of death regardless of legality." However, there is an exception to this for states that already require this information to be listed.

Also, section 138 clarifies that nothing in the text should be construed as requiring one to affirmatively ask for life-sustaining treatments or as requiring an individual to consent to restrictions on the amount duration, scope or medical benefits of treatment.

lllusory Provider Rights of Conscience

H.R. 3200 currently contains two conscience clauses. Reps. Pitts, Stupak, and Lee Terry (R-NB) drafted a conscience clause, which the Energy and Commerce Committee passed by voice vote, and Representative Capps also included a conscience clause in the amendment she successfully offered on July 30.

Both amendments prohibit discrimination against physicians, other health care professionals, hospitals, provider-sponsored organizations, health maintenance organization, and health insurance plans for refusing to provide, refer for, pay for or provide coverage for abortion.

On the Senate side, Sen. Kennedy offered an amendment on July 13 to the HELP bill (amendment 205) which would ensure that no health care provider or entity is excluded from contracting with an insurance plan participating in "the Gateway" (the HELP bill's health care exchange framework) on the basis that the provider or entity refuses to perform abortions if performing abortions would be contrary to the religious or moral beliefs of the individual or entity. This amendment was accepted. *The scope of the Kennedy amendment is limited however*. It does not cover providers who refuse to pay for or refer patients for abortion services. In addition, the amendment provides an exception for "cases of emergency," which is undefined and can be stretched to fit almost any situation, effectively stripping providers of any protection the amendment may have offered them. Medical providers need true rights of conscience protection and an ability to object meaningfully to performing abortions.

Sen. Tom Coburn (R-Okla.) offered an amendment (a codification of the Hyde/Weldon conscience protection law), which would ensure health care providers are not forced to participate in abortions or discriminated against because they choose not to do abortions (amendment 246) and a second that would ensure that Americans have professional ethicists informing any Government-funded medical decisions (amendment 264). The Coburn amendments were defeated.