

ANSWERS TO FREQUENTLY ASKED QUESTIONS about the new Health Care reform law and the U.S. Bishops *(Prepared by Christopher Dodson, Executive Director, North Dakota Catholic Conference)*

Did the Catholic bishops of the United States support the final version of the health care reform law?

No. Although the bishops have for decades supported universal health care, they opposed the final bill because (1) it failed to preserve the status quo with regards to abortion funding; (2) it unjustly discriminated against immigrants; and (3) it failed to adequately protect conscience rights.

If the bishops really wanted health care reform, why didn't they accept the bill as "less than perfect," but better than nothing?

Certain principles cannot be compromised, especially those concerning the protection of human life, religious liberty, and the dignity of human persons. No matter how much good a proposed law might do, it cannot be supported if it violates those fundamental principles.

Why were the bill's abortion provisions inadequate?

In one sense, it was the absence of a particular abortion provision—one that clearly prohibited all abortion funding—that was the problem. Unlike the House bill passed last year, the Senate bill, which was the basis for the final bill, did not have such a blanket prohibition.

What are the abortion problems in the bill that passed?

Without a global ban on abortion funding, some of the funds appropriated in the bill could be used to fund abortion. For example, the new law provides additional funding for the Community Health Centers, but the law does not prohibit that money from being used for abortions. The law also provides subsidies to help purchase plans that cover abortion.

Doesn't the Hyde Amendment apply to the new law?

No. The Hyde Amendment, which for years has prohibited federal money from paying for abortions—except in the case of rape, incest, and life of the mother—and from being used to purchase insurance policies that include abortion, does not apply to the new law. The Hyde Amendment, which must be passed annually, only applies to appropriation bills with the amendment attached, particularly the appropriations bill for the Department of Health and Human Services.

Even if the Hyde Amendment itself does apply to the new law, aren't there "Hyde-like" provisions in it?

Yes, there are some provisions like the Hyde Amendment in the bill, but they are limited in scope and do not apply to all the funding in the act. For example, school-based health clinics funded through the new law cannot provide abortion services. Also, there are some limits on the use of federal monies to directly pay for abortions. There are, however, other funds appropriated in the new law that have no abortion restrictions.

If the Community Health Centers are funded through the Department of Health and Human Services, why doesn't the Hyde Amendment apply to them?

The Hyde Amendment only covers certain appropriations and is not triggered solely because the funds go through a particular agency.

But I heard that the Community Health Centers do not perform abortions, so what is the problem?

The Community Health Centers do not currently perform abortions with federal dollars because that funding has, until now, been subject to the Hyde Amendment.

Does the new law expressly direct the Community Health Centers to provide and pay for abortions?

No. However, the Community Health Centers must provide primary health services, including “health services related to family medicine, internal medicine ... obstetrics, or gynecology that are furnished by physicians,” and “family planning services.” Courts have ruled that this language requires such facilities to provide abortion services unless Congress expressly acts to exclude such services. In this case, Congress failed to expressly exclude coverage for abortion at the Community Health Centers. The absence of the exclusion makes the centers subject to the court decisions mandating abortion services and funding.

How does the new law subsidize the purchase of insurance policies that include abortion?

Current federal law prohibits the use of federal money to directly pay for abortions and to purchase insurance policies that include abortion. For example, federal employees are not provided health coverage directly from the federal government. Like most of us, they are covered by insurance policies, the premium for which is paid, at least in part, by the employer, which in this case, is the federal government. Employees can choose from hundreds of plans. However, because federal dollars are involved, the Hyde Amendment applies and none of those plans can include abortion.

Congress failed to apply this policy to the new health care reform law. Under the new law, many Americans will have at least part of their insurance premiums paid by the federal government, though you won’t see it directly. Unlike the federal employee system, the plans you can buy can include abortion.

But I thought the money for abortion was paid for by the individual and kept separate?

To maintain the appearance that federal money is not being used to cover abortion, the law states that if an individual chooses a plan that covers abortion, the person must write two checks, one for the coverage of abortion and one for everything else. The federal government adds its own money stream to help cover the individual’s premiums. Only the “abortion” money paid by the individual is supposed to be used to pay for abortions. However, the fact remains that the policy subsidized by the federal government includes abortion and that the funding segregation does not alter the fact that money from one pocket is being transferred to another. Moreover, the “segregation” policy presents another problem in that it forces people to pay for someone else’s abortion.

Will everyone have to pay the “abortion premium?”

That depends. Any family that has to buy a subsidized plan that happens to cover abortion—for example, because its coverage or provider network are necessary to meet the family’s health need—will be forced by the new law to provide a separate payment, on a regular basis, solely to pay for other enrollees’ abortions. There are no exceptions.

What if there are no plans in my area that do not include abortion?

The law requires that there be at least one plan within a regional exchange that does not cover abortion. However, not every plan will be identical. It may be that the plan or plans within the regional exchange that do not cover abortion do not meet your family’s needs for other reasons.

Can states opt out of abortion coverage altogether?

Yes. That is some good news. In those states, none of the plans offered will cover abortion, except, depending on the state law, in the case of rape, incest, and life of the mother.

If states can opt out of the abortion provisions, what is the problem?

Although states can opt out, we are still part of the federal system and our tax dollars will indirectly subsidize policies that cover abortion and our laws would still force people in other states to pay for another person’s abortion with the abortion premium.

Did the executive order signed by President Obama fix these problems?

No. An executive order cannot change provisions of the new law or run afoul of the interpretation that courts will give to the new law. In fact, the executive order signed by the President does not even purport to fix the law's funding problems.

If all this is true, why does my Congress member say that the new law does not fund abortions?

Look closely at what is being said and not said. The representative or senator might say that the bill does not directly "provide funding for abortion" or something to that effect. It is true that the bill does not explicitly authorize abortion funding. Nor does it mandate abortion funding. However, the absence of an explicit prohibition on all types of abortion funding combined with the court-created law on abortion opens the door for abortion funding.

Also, note that few politicians are now saying that the new law preserves the Hyde Amendment. The Hyde Amendment, in addition to preventing abortion funding, prohibits the use of federal money to subsidize plans that include abortion, something that the new law clearly permits.

Similarly, note that the politicians are avoiding the very serious problem of mandating the payment of an abortion premium by some families.

In short, pay attention to what the member of congress is not saying. Ambiguity in what they are saying could be purposely misleading or might actually reflect a lack of understanding about how a complicated piece of legislation ties in with years of sometimes complicated court cases about abortion.

If these problems exist, why did some "Catholic" organizations support the bill?

Only the organizations can answer that question. Here are a few possibilities:

- Despite calling themselves "Catholic" some organizations favored health care reform under any form, including earlier proposals that made no attempt at all to prevent abortion funding; (Likewise, there were some groups claiming to be Catholic that opposed any health care reform.)
- The organization lacked the expertise in abortion law to understand how the bill's language could open up the possibility for abortion funding;
- The organization, not really being grounded in church teaching, was willing to accept the possibility of expanding an evil in order to achieve what it perceived was a "greater good."

Whatever the reason, only the bishops can speak for the Catholic Church. Also, although some organizations may have expertise in certain subjects, the United States Conference of Catholic Bishops possesses unparalleled expertise in abortion law, religious liberty, and immigration policies. Finally, when it comes to ascertaining the moral aspects of a particular law or political action, Catholics should give deference to their bishops.

Why did the bishops oppose the bill's immigration provisions?

The final bill not only denies legal immigrants access to Medicaid for five years, but also prohibits undocumented immigrants from buying insurance for their families in the exchanges using their own money. People should never be denied coverage because they can't afford it, because of where they live or work, or because of where they come from and when they got here. The basic premise of health care reform is that people should have insurance coverage because, in our system, emergency care is not a substitute for genuine health care. Forbidding immigrants from participating in the health care system unjustly denies a basic human right.



How does the new law fail to protect conscience rights?

- For one thing, as discussed above, it forces some people to pay for another person's abortion, even when doing so violates their religious or moral beliefs. But there are other problems as well.
- Although the new law prevents insurance plans from discriminating on the basis of a refusal to participate in abortion, the law does not prevent government from discriminating on that basis. In fact, the Senate expressly rejected such a provision.
- Except in the case of abortion, the law does not prevent the federal government from mandating health insurers to pay for procedures that might violate the religious or moral beliefs of insurance purchasers or plan sponsors.
- Because the new law gives the executive branch some authority to regulate the selection of providers by health plans, these plans may also be required to exclude providers because they have a conscientious objection to particular procedures.
- While the law provides for the non-preemption of some state laws regarding abortion, there is no comparable provision with respect to state conscience laws. The failure to include such a provision places those state conscience laws at risk.

Was Congress made aware of the bishops' concerns about these three issues (abortion, immigrants, and conscience protection) before the final vote and their position on the final bill?

Yes. The bishops made their priorities and concerns known throughout the process. As late as the day before the House vote, the bishops let every member know that if the bill could not be fixed, they should vote no on the bill.

Were the pro-life members of Congress made aware that the executive order would not fix the bill's problems?

Although the language of the executive order was not finalized and made public until shortly before the House vote on Sunday, representatives from the USCCB expressed on Saturday that the bishops' legal advisors did not think an executive order could legally solve the problems.

Some say that the reconciliation process would not have allowed for these types of issues to be fixed. In light of that, why did the bishops keep pushing for a fix?

When it comes to Washington, if there is a will, there is a way. Parliamentarians gave a range of opinions regarding what could or could not be accomplished through reconciliation. If, in fact, there was no way to fix these problems through reconciliation, then Congress should have pursued another course, even if that meant starting over. Political convenience or opportunity cannot justify violating fundamental moral principles.

Did the bishops secretly want health care reform to fail?

No. Catholic teaching states that access to adequate health care is an essential good. The U.S. bishops have supported comprehensive health care reform since World War I and have never wavered from that position.

Did the bishops secretly want the bill to pass, even with the abortion funding problems?

No. Catholic teaching states that the dignity of all human life must be protected. The U.S. bishops have opposed federal funding for abortion since before Roe and have never wavered from that position.

The new law expands Medicaid coverage. Does that mean more abortions will be funded?

Medicaid is still subject to the Hyde Amendment, which means that only abortions for rape, incest, and life of the mother will be funded. The exception to this is those states that have opted include funding for all abortions with their share of the Medicaid responsibility.

Does the new law mandate school-based health clinics?

No. However, the law does provide new funding for the creation of school-based health clinics.

Would those school-based health clinics provide abortions?

No. School-based clinics were one of the few areas where Congress expressly prohibited abortion funding.

Does the new law fund sex education?

Yes and no. The new law appropriates new money for programs that teach “comprehensive” sex education that includes teaching about contraception. At the same time, the law also authorizes new money for abstinence only programs. The states, however, must come up with matching funds to access the money.

Does the new law mandate end-of-life counseling?

No. One of the earlier versions of the bill allowed Medicare to pay for end-of-life counseling, but did not require it. Nevertheless, Congress removed the provision from the final bill. It remains to be seen whether end-of-life counseling will be considered an essential service that insurance companies would be required to include in order to participate in the insurance exchanges. However, even if that were to happen, it would just be a reimbursable service, not a mandate.

Where can I find out more?

- Go here for a more detailed legal analysis of the new law and the executive order. (<http://ndcatholic.org/latestnews/wordpress/wp-content/uploads/2010/03/03-25-10-Memo-re-Executive-Order-Final.pdf>)
- Go here for more information from the United States Conference of Catholic Bishops on health care reform. (<http://usccb.org/healthcare/>)



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