

To: Energy and Commerce Committee GOP Members and Staff
From: Autumn Christensen, Policy Director, Susan B. Anthony List
Date: September 13, 2021
Subject: Legislative Recommendations for Budget Reconciliation

The Energy and Commerce Committee Legislative Recommendations for Budget Reconciliation are replete with abortion funding. This memo outlines many of the major anti-life approaches and policies contained in the legislative text. We strongly support all efforts to address these issues and are prepared to oppose the entire package if those efforts are not adopted.

Subtitle F: Recommendations related to the Affordable Care Act

Subtitle F expands coverage under the Affordable Care Act (ACA) through additional cost-sharing reduction assistance and provides ACA subsidies to those with incomes below 100% of the federal poverty level. When it was originally enacted, the ACA was carefully drafted to avoid application of the Hyde Amendment. Instead of stopping funding for health insurance plans that cover elective abortion consistent with Hyde, the ACA expressly permits subsidies for health insurance plans that cover elective abortion provided an abortion surcharge is paid and accounting gimmicks are followed. This approach is a radical departure from the Hyde amendment.

Section 30601(c) creates a new abortion coverage mandate for 2024 for plans that cover individuals or families under 138% of the federal poverty level (FPL). This section is crafted circuitously to establish the mandate without categorizing it as an essential benefit. Mandating abortion coverage in the form of an essential benefit is expressly prohibited in section 1303 of the ACA. This novel approach bypasses essential benefits and instead mandates abortion coverage in the form of an independent requirement for issuers to cover abortion for the designated population to be considered a qualified health plan.

Section 30601(c) accomplishes this by requiring issuers to cover “services described in subsection (a)(4)(C) of section 1905 of the Social Security Act without any restriction on the choice of qualified provider...” The referenced subsection states “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.” Section 30601(c) then limits the family planning services and supplies affected by the section to those that are “not otherwise provided under such plan as part of the essential benefits package...”

Since contraceptive coverage is already mandated, and this section is limited to services not otherwise provided as an essential health benefit, the only logical conclusion is that it is intended to mandate abortion, which is not currently mandated. This mandate would surely be welcomed by Secretary Becerra who has demonstrated through repeated refusals to acknowledge the federal Partial-Birth Abortion ban that there is no abortion he won’t defend.

Section 30601(c) may also require ACA health insurance issuers to pay for abortion and family planning services and supplies provided by any qualified provider – meaning that Planned

Parenthood and other abortion providers are given carte blanche rights to reimbursement under ACA plans.

Section 30601(c) also includes a mandate for nonemergency medical transportation services. While SBA List takes no position on transportation to life-affirming health care, this language must be amended to avoid federal taxpayers funding transportation to obtain an abortion. Of particular concern is whether this requirement would involve taxpayer funding for flights to obtain abortions in states that allow abortion throughout pregnancy. Abortion is not healthcare. It brutally dismembers an unborn child and harms women.

Subtitle F also gives \$10 billion annually to states to establish a reinsurance program to reduce out-of-pocket health costs. There are no limitations on the use of funds for abortion. Since abortion is considered included in health programs unless expressly excluded, this fund would clearly fund abortion on demand.

Subtitle G: Recommendations related to Medicaid

Section 30701 in Subtitle G creates a new program directed toward the twelve states that have not opted to expand Medicaid under the option provided under the Affordable Care Act. This new program slated for launch in 2025 is characterized as a Medicaid program or a Medicaid “look alike,” but unlike Medicaid, the program is structured so that it is not subject to the Hyde amendment.

In the absence of Hyde protections, it will fund elective abortion in many of the states that are most protective of the unborn. None of the 12 targeted states use state funds to pay for abortion and 11 of the 12 have specifically prohibited abortion in their state ACA exchanges. The intention to use this program to underwrite abortion on demand is made crystal clear by the ACA abortion coverage mandate discussed above. The ACA mandate applies one year prior to this one and covers the same population that will be covered by the Medicaid “look alike.”

For more information about the Hyde amendment and how taxpayer funding for abortion leads to more abortions, please see [Hyde Saves Lives - Susan B. Anthony List \(sba-list.org\)](https://www.sba-list.org/hyde-saves-lives).

Subtitle H: Recommendations related to CHIP

Many federal health programs rely on annual appropriations limitations amendments (Hyde amendments) to stop taxpayer funding for abortion. However, the CHIP program signed into law by President Clinton contains permanent prohibitions on taxpayer funding for elective abortion and those pro-life protections are not disturbed in Subtitle H.

These pro-life protections can be found in 42 U.S.C. 1397ee which expressly excludes funding for “health benefit coverage that includes coverage of abortion” except when necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest, and in 42 U.S.C. 1397jj, which defines “child health assistance” as including “abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.”

Subtitle J: Recommendations related to Public Health

None of the funding streams made available in this subtitle are covered by Hyde protections. Therefore, each of them is vulnerable to funding elective abortion and/or underwriting abortion facilities.

Funding made available for infrastructure through Part 1 could be used to improve medical facilities that perform elective abortions. Funding made available for workforce development in the same part could be used to train providers on brutal abortion procedures.

The abortion lobby has frequently [lamented](#) the lack of providers willing to carry out elective abortions. Each of the following workforce development sections could be used to train doctors and nurses in abortion procedures and the emphasis on underserved areas will be used as the basis for promoting dangerous mail-order chemical abortion.

- Sec. 31005: Funding for schools of medicine in underserved areas prioritizes activities to “develop, implement, and expand curriculum that emphasizes care for rural and underserved populations...”
- Sec. 31006: Funding for nursing education enhancement and modernization grants in underserved areas for “creating, supporting, or modernizing educational programs and curricula at such school.”
- Sec. 31007: Funding for Teaching Health Center and Graduate Medical Education funds programs with “payments to establish new approved graduate medical residency training programs.”
- Sec. 31008: Funding for the Nurse Corps without limits on abortion funding.

Advanced Research Projects for Health Funding in Part 3 could be used to fund abortion and research involving abortion-derived human fetal tissue.

Funding to grow and develop the doula workforce in Sec. 31044 (in Part 4) would include funding for “abortion doula” training. While many doulas specialize in helping women in delivery and are not involved in abortion, there is a growing push for doulas who specialize in abortion.