Radical Expansions of Taxpayer-funded Abortions in Democrats' Multi-Trillion Dollar Tax & Spend Reconciliation Bill

Democrats' revised multi-trillion dollar tax and spend reconciliation bill (H.R. 5376, Rules Committee Print 117-18) creates radical expansions of taxpayer funding for abortion:

- Mandates abortion funding for the Medicaid coverage gap population in the 12 non-expansion States through Obamacare exchange plans in 2024 and 2025, overriding state laws
- $30 billion for subsidizing cost-sharing and reinsurance for individual market health coverage without any restrictions on funding abortions or plans that cover abortions
- Massive expansions of taxpayer funding for Obamacare exchange plans that cover abortions
- More than $21 billion in health-related grants without any limits on funding abortions

Below is an overview of these and other pro-life problems in the revised bill:

(1) Mandates Abortion Funding for the Medicaid Coverage Gap Population in Non-Expansion States through Affordable Care Act (ACA) exchange plans in 2024 and 2025 (§ 30601(c), pgs. 468-471)

This provision mandates that silver ACA exchange plans cover abortion and transportation to obtain abortions (without cost sharing) in 2024 and 2025 for the Medicaid coverage gap population (<138% federal poverty level (FPL)) in the 12 states that have chosen not to expand Medicaid (Alabama, Florida, Georgia, Kansas, Mississippi, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Wisconsin, Wyoming). The language provides unlimited appropriations to finance this abortion mandate, and overrides state laws in 11 of the 12 non-expansion states that have laws prohibiting ACA exchange plans from covering abortion. (In Wyoming, there is no state law, but insurers voluntarily elect not to cover abortions on the exchanges). The provision also guarantees that funded abortions may be obtained at the individual's "choice of a qualified provider", ensuring Planned Parenthood's eligibility.

This provision refers to abortions in an underhanded way as "services described in subsection (a)(4)(C) of section 1905 of such [the Social Security] Act ["family planning services"] for which Federal payments would have been so available ["under title XIX of the Social Security Act had such services been furnished to an individual enrolled under a State plan (or waiver of such plan) under such title"]; which are not otherwise provided under such plan as part of the essential health benefits package described in section 1302(a)".

Since this provision only references Medicaid's *authorization*, not the Labor/HHS appropriation bills where Hyde is carried, Hyde restrictions are not incorporated by this language. Neither does the Hyde amendment apply to the direct appropriation provided to reimburse insurers for abortions, as House Democrats' Energy and Commerce counsel admitted during markup.

Title XIX has no Hyde protections within it. Court precedents dictate that "family planning services" in Medicaid's authorization automatically include abortion except to the extent the Hyde Amendment limits Medicaid's funding in the annual Labor/HHS appropriations bill. The Biden Administration confirmed it maintains this pro-abortion interpretation of Medicaid's

authorizing law in a declaration filed last month in the case *United States* v. *Texas*—a case challenging the Texas Heartbeat Act.

Abortion is excluded from being required as an essential health benefit under ACA section 1303—which would be effectively overridden here. Contraceptives for women are already covered/mandated without cost-sharing by all ACA plans as essential health benefits, so abortions, not such contraceptives, are clearly the "family planning services" that are being specifically mandated and funded here.

(2) Funds Abortions via a New Health Insurance Affordability Fund to States for Cost Sharing and Reinsurance Payments through 2025 (§ 30602, pgs. 475-486)

This provision provides $30 billion over 2023, 2024, and 2025 to states which can be used for cost sharing subsidies for ACA exchange plans and reinsurance for individual market plans. Neither Hyde protections nor the more modest separation requirements of ACA § 1303 would apply. Accordingly, these funds can be used (1) to reduce out of pocket costs for abortions (deductibles, co-pays, co-insurance), (2) to pay reinsurance claims for abortions by insurers, and (3) to subsidize overall plans that cover abortion. A pro-abortion state could use these funds to eliminate all out of pocket costs for abortions for enrollees in ACA exchange plans, greatly increasing the incentives for abortions at the taxpayers' expense.

(3) Funds Abortion Coverage via Expanded ACA Premium Tax Credits through 2025 (§ 137301, pg. 1655)

The bill extends through 2025 the expansions of the ACA premium tax credits that were made by the American Rescue Plan Act (ARP) for 2021 and 2022. The ARP expansions further subsidize Obamacare exchange plans that cover abortion, giving millions of people taxpayer-funded plans that cover abortion on demand for as little as $1/month.

- Those under 150% FPL would receive a 100% taxpayer subsidy for the benchmark silver plan.
- Those between 150% and 400% FPL would receive a much more generous subsidy than under current law after 2022, such that the benchmark silver plan premium does not exceed an applicable percentage of household income ranging from 0 to 8.5% of household income.
- Those above 400% FPL, who are ineligible for subsidies under current law after 2022, would become eligible for significant subsidies, such that the benchmark silver plan premium does not exceed 8.5% of household income.
- Those who receive unemployment, regardless of income, would receive the maximum level of premium tax credits and cost sharing reductions through 2022 (§§ 30605 and 137305). This ARP-created entitlement was set to expire at the end of this year.
- In determining subsidy eligibility through 2025, the threshold to determine whether a person has access to affordable insurance through an employer is reduced from 9.5% to 8.5% of household income (§ 137302).
- Other expansions to eligibility for the premium tax credits through 2025 (§137304).

(4) Funds abortions through more than $21 billion in health-related grants without Hyde protections

Title II—Committee on Education and Labor
Subtitle C—Workforce Development Matters
Part 1—Department of Labor

- $500 million for Job Corps (§ 22008). Agency guidance indicates that JobCorps Centers fund abortions to the extent the Hyde Amendment does not prevent it (and those restrictions do not apply here).

Subtitle F—Human Services and Community Supports

- $30 million for services for survivors of sexual assault, through the Family Violence Prevention Act (FVPA) (§ 25002). FVPA funds are normally prohibited from funding health services, but the ARP provisions that these funds would carry out are not subject to restrictions on funding health services.
- $75 million for the Pregnancy Assistance Fund (PAF) (§ 25003). Before the PAF expired, "health care services" were among the most common services it provided, including "reproductive health care".

Subtitle G—National Service and Workforce Development in Support of Climate Resilience and Mitigation

- $450 million for climate-related workforce development under Job Corps (§26002(b)).

Title III—Committee on Energy and Commerce
Subtitle I – Public Health
Part 1 – Health Care Infrastructure and Workforce

- $7 billion for public health activities at the CDC, including for "health equity activity" (§ 31001). Abortion advocates view abortion as a means of achieving "health equity".
- $2 billion for funding capital projects at community health centers – without restrictions on purchasing abortion-related equipment (§ 31002).
- $3.37 billion for teaching health center graduate medical education (§ 31003).
- $2 billion for the National Health Service Corps (§ 31005).
- $500 million for the Nurse Corps (§ 31006).
- $500 million for schools of medicine in underserved areas (§ 31007).
- $500 million for schools of nursing in underserved areas (§ 31008).

Part 2 - Pandemic Preparedness

- $1.3 billion for public health preparedness (§ 31022). Among the allowable uses of funds are the construction of facilities to "respond" to a public health emergency and to purchase "essential medicines", without limits on constructing abortion facilities or purchasing abortion drugs.

Part 3 – Maternal Mortality

- $100 million for maternal health grants for addressing social determinant of health (as described in Health People 2030), including social determinants of maternal health, for pregnant…individuals" and "training to perinatal workers, including clinical and community-based staff members that provide direct care and support services to pregnant…individuals" (§ 31031). Health People 2030's recommendations to address "social determinants of health" include several family planning-related objectives that could include abortion, and thereby fund or promote them, for example: reducing unintended pregnancies, reducing pregnancies in adolescents, reducing pregnancies conceived within 18 months of a previous birth.
- $75 million for the Office of Minority Health for "addressing… social determinations of maternal health, for pregnant…individuals" through programs and resources and conducting demonstration projects, and supporting health care workers providing "support services to pregnant…individuals" (§ 31032).
- $170 million for the nursing workforce in maternal and perinatal health (§ 31033). Besides raising the issue of funding for abortions or abortion training, this program "includes training programs on bias…discrimination", which raises conscience concerns if a health care provider's conscientious objection to participating in, referring for, or counseling on abortion (or contraception) is deemed bias or discrimination.
- $50 million for funding "quality collaboratives to improve perinatal care and perinatal health outcomes for pregnant and postpartum individuals and their infants" (§ 31034). Perinatal care can include abortion.
- $50 million for the doula workforce, would include "abortion doulas" (§ 31035).
- $100 million to address maternal mental health for pregnant women, which raises questions about whether abortion might be integrated as a potential response to mental distress for pregnant women. (§ 31037).
- $85 million for education and training for "addressing health risks associated with climate change for pregnant… individuals" (§ 31038). This funding raises the question of promoting abortion in curricula as a "relevant service" through "patient counseling" as a means of combatting climate change. Funded curricula also include "implicit and explicit bias… and discrimination" training "in providing care to pregnant….individuals and individuals with the intent to become pregnant", which raises conscience concerns for pro-life health care professionals.
- $50 million for funding maternal mortality research without Hyde or Dickey-Wicker embryo protections (§ 31039).
- $15 million for research regarding the effects of COVID-19 on pregnant women, without Hyde or Dickey-Wicker embryo protections (§ 31045).
- $30 million for training maternal health care providers through collaborative learning and capacity building models, without prohibitions on training for abortions or use of abortion drugs (§ 31046).
- $30 million for maternal health digital tools, including telehealth services, and training providers, which raises concerns about funding telehealth abortions (§ 31047).
- $50 million for national nonprofit organizations and health professional training programs for training "to reduce discrimination and bias in the provision of health care, with a focus on

maternal health care" (§ 31048). This funding raises conscience concerns on the basis that refusal to counsel, refer for, or provide abortions (or contraception) could be deemed a form of discrimination or bias.

Part 4 – Other Public Health Investments

- $75 million for the Ryan White HIV/AIDS program to provide primary care, support services to communities affected by HIV/AIDS, and to carry out Public Health Service Act section 2692(a), which includes "to develop protocols for the medical care of women with HIV/AIDS, including prenatal and other gynecological care for such women" (§ 31057).

Part 5- Native Hawaiian Provisions

- $50 million for health care infrastructure and telehealth infrastructure for Native Hawaiian populations, without limits on abortion-related equipment or use of telehealth services for abortion using such infrastructure (§ 31071).
- $224 million for "comprehensive health promotion services" and "primary health services" for Native Hawaiian populations (§ 31072). As defined, the term "health promotion" includes "pregnancy…care" and "family planning" and primary health services includes physician services or services of other health professionals (42 U.S.C. 11705, 42 U.S.C. 11711).

Title XIII—Committee on Ways and Means
Part 1—Provisions relating to Pathways to Health Careers

- $1.98 billion for career pathways in health-related professions (§ 134101). This includes $108 million set aside providing career pathway projects and education "for professions such as doulas…midwives, and other community health worker professions, for individuals to enter and follow a dedicated career pathway in the field of pregnancy…" and "a career pathway in the health professions" for those with criminal backgrounds. Allowable uses include such "support services as deemed necessary….[for] success in the project, and progress toward career goals". The pregnancy-specific program, in particular, raises concerns that this program could be used to fund careers for abortionists, abortion clinic staff, or abortion doulas.

(5) Expands and Makes Permanent the Health Coverage Tax Credit without Hyde protections (§ 137306, pg. 1664)

This provision would expand and make permanent the Health Coverage Tax Credit for health insurance premiums for COBRA coverage for certain displaced workers, which lacks Hyde protections. This refundable tax credit was created in 2002, was previously extended by Congress in 2015, 2019, and 2020, and is set to expire at the end of this year under current law. This provision would also increase the level of its premium subsidies from 72.5% to 80%.

(6) $90 million in grants relating to palliative and hospice care without specific protections relating to assisted suicide and euthanasia (§§ 31009-31013, pgs. 664-671)

Sections 31009 through 31013 provide $90 million in funding related to end-of-life palliative and hospice care, but omit important pro-life provisions contained in section 5 of the Palliative Care and Hospice Education and Training Act, S.2080, that would have prohibited workarounds of the Assisted Suicide Funding Restriction Act (ASFRA) by (1) prohibiting funding to "provide, promote, or provide training with regard" assisted suicide or euthanasia, and (2) stating clearly that "palliative care and hospice shall not be furnished for the purpose of causing, or the purpose of assisting in causing, a patient's death, for any reason":

- $25 million for training health professionals in palliative and hospice care (§ 31009).
- $20 million for schools of schools of medicine, teaching hospitals, and GME programs to train physicians in palliative medicine (§ 31010).
- $20 million for career development for teaching physicians in hospice and palliative medicine (§ 31011).
- $20 million for training nurses in hospice and palliative care (§ 31012).
- $5 million for funding for dissemination of palliative care information (§ 31013).