**SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT**

# FAX COVER SHEET

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*From the Desk of*

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*From the Desk of*

Ruth Katz
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| | |
|---|---|
| Attention: | Jennifer Klein |
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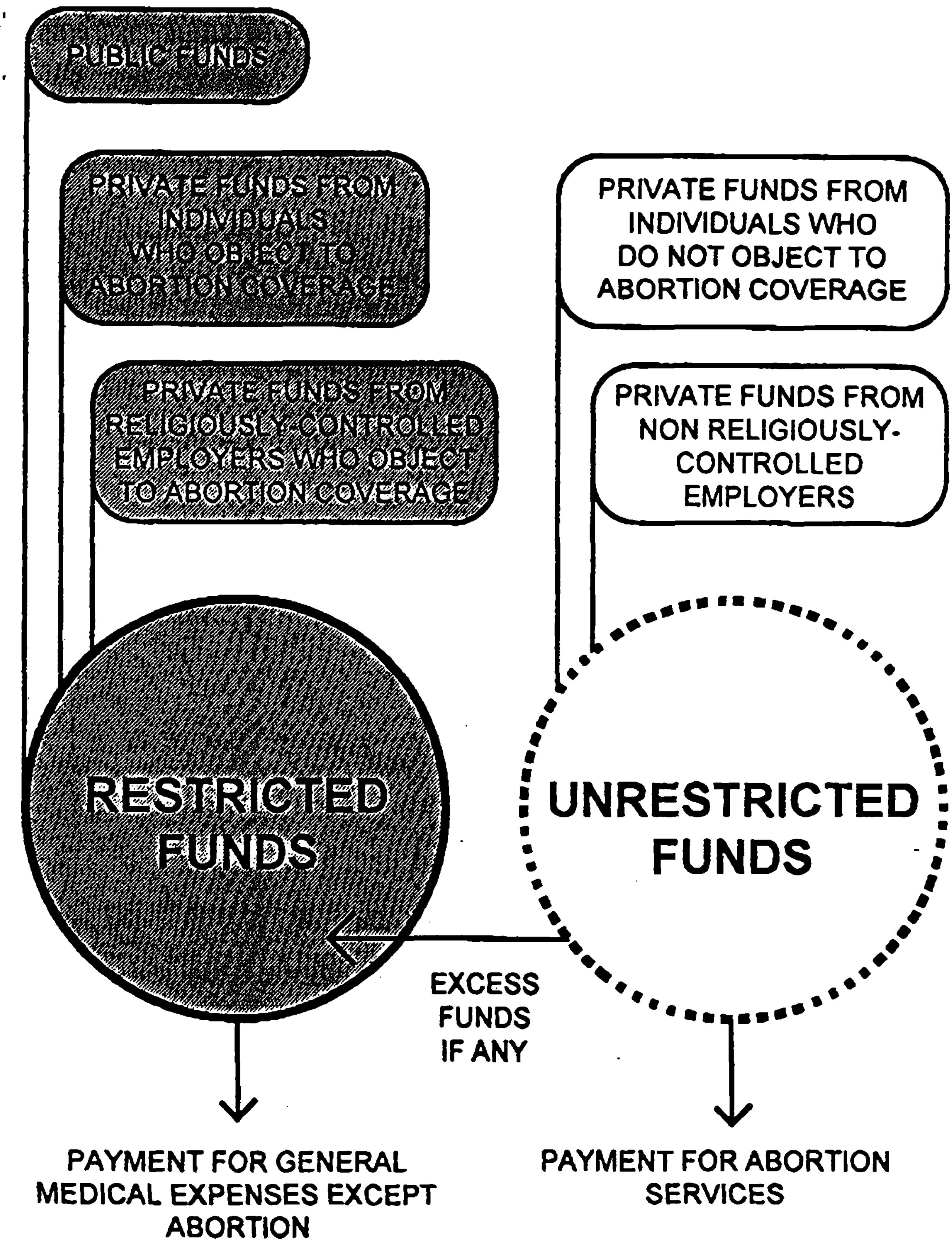
Pages Following Cover Sheet:

Message:

NOT for distribution but
FYI.
(revision to follow)




- No federal funds are used to pay for abortion.
- Any individual who objects to abortion will not have abortion coverage and their insurance premiums will not pay for other's abortions.

August 9

Note to Jen Klein

Here is the latest abortion language from Fran on the individual/religious employer opt out and segregating funds.

The way I read this, only religious employers have the opportunity to delete abortion coverage from the standard benefit package for other people. Individuals also have the opportunity to delete abortion coverage for their own policy. Coverage for abortions that save the life of the mother can never be deleted.

Once these opt outs have been made, insurers are obligated to maintain segregated accounts. Premium dollars from religious employers and from individuals who have opted out, as well as premium dollars from the subsidy pool go into an account that cannot pay claims for abortions (other than for life of the mother, rape and incest). All other premium dollars go into an account that can pay for abortion services.

For subsidized individuals, the net result is that these low income women may (at their own option) retain coverage for abortion, even though premium contributions made on their behalf are in the non-abortion pool.

I believe this will satisfy Rob and Susan. Robyn Lipner called this morning and wants it, too.

Let me know what you think.

KL
Karen

PS- Pls feel free to share with Larry, whomever. - K

SEC._____. OPTION TO DECLINE COVERAGE OF ABORTION SERVICES; SEPARATE ACCOUNTING FOR PREMIUMS.

(a) Individual Option.

(1) In General.--An individual enrolled in a health benefits plan may request the insurer, and the insurer shall agree, to exclude coverage from such individual's policy for abortion services if such service are contrary to the religious beliefs or moral convictions of the individual.

(2) Method of Requesting.--Each individual shall be afforded an opportunity to file a request as provided in paragraph (1) which shall be in writing, signed by the individual, and delivered directly to the insurer (without any employer receiving notice of such request).

(b) Option for Employers Affiliated with Religious Organizations.

(1) In General.--A religious employer (as defined in paragraph (3)) may offer one or more health benefits plans that meet all the requirements of this Act except that the plan or plans exclude abortion services if such services are contrary to the religious beliefs or moral convictions of the religious organization with which the employer is affiliated.

(2) Notice to Prospective Enrollees.--Each employer exercising the option afforded under paragraph (1) shall make information available to each employee, and to each

individual to whom an offer of employment is made, about the exclusion of abortion services under one or more of the health benefits plans provided by such employer.

(3) Definition.--As used in this section, the term "religious employer" means an employer who is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

(c) Exception.--Nothing in this section shall be construed as authorizing exclusion of coverage under a health benefits plan of abortion services necessary to save the life of the mother.

(d) Insurer Obligation to Maintain Separate Account; Prohibition

(1) Maintenance of Separate Accounts.--Each insurer providing a health benefits plan under the Act shall maintain in a separate account--

(A) premiums paid by individuals who, in accordance with subsection (a), have requested that coverage of abortion services be excluded,

(B) premiums paid by employers who, in accordance with subsection (b), have excluded abortion services from the health plans they offer, and

(C) all subsidies provided under a Federal or Federally-assisted program with respect to an individual's share of the premium to obtain coverage under a health benefits plan provided by the insurer.

(2) Prohibition.--No payment shall be made for abortion services from the separate account required by paragraph (1) (other than for an abortion necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest).

(3) Certification.--Each insurer shall certify annually to the Secretary that no expenditure prohibited by paragraph (2) was made from the separate account required under paragraph (1).

1) Rule of construction on State regulation of time, manner, and circumstances.

2) Rule of construction on no construction of abortion clinic facilities or requirement for certification that abortion clinics be within the State.

3) Exemption for religiously controlled employers.

4) Someone (the Secretary?) is to calculate the actuarial value of having abortion coverage in the minimum benefits package, if any. (First choice is community-rated actuarial value (which may include offsets against labor and delivery costs; second choice is community-rated amount, which may not). If there is a cost, call this the Premium Amount. (If there is no cost, all of this is academic.)

5) In Medicare C:

(A) The minimum benefits package for all beneficiaries includes abortion services to be paid for by private funds.

(B) All public funds go into an account that cannot pay for abortion services.

(C) Except as provided below in F, all private funds (from employee share of the premium and from any employers' share of the premium) go into a separate account that can pay for abortion services. A permanent appropriation is created in the HSA to appropriate such sums as may be necessary to carry out this purpose.

(D) All beneficiaries that are partially subsidized are to be offered the opportunity to pay privately the pro rata share of the Premium Amount out of pocket. (E.g., a 100% subsidized person could pay 100% of the Premium Amount; a low-wage person who is receiving a 60% subsidy to reach their 20% share could pay 60% of 20% of the Premium Amount; a small-business person whose company is receiving a 60% premium to reach its 80% share could pay 60% of the 80%; an unsubsidized person will have the Premium Amount included in the basic premium.)

(E) All beneficiaries that are not subsidized are to be offered the full benefits package.

(F) Any beneficiary that has any private payment associated with them can forfeit abortion coverage and receive a pro rata rebate of their unsubsidized premium costs. Premiums on behalf of such beneficiary will be included in the public subsidy account and treated as if they were public subsidies. Attach confidentiality protections to the forfeiture; require aggregate refund of employer share to employer.

6) In private plans:

(A) Except in the case of religious employers, the minimum benefits package for all beneficiaries includes abortion services to be paid for by private funds.

(B) All public subsidy funds go into an account that cannot pay for abortion services.

(C) Except as provided below in F, all private funds (from employee share of the premium and from any employers' share of the premium) go into a separate account that can pay for abortion services.

(D) All beneficiaries that are partially subsidized are to be offered the opportunity to pay privately the pro rata share of the Premium Amount out of pocket. (E.g., a 100% subsidized person could pay 100% of the Premium Amount; a low-wage person who is receiving a 60% subsidy to reach their 20% share could pay 60% of 20% of the Premium Amount; a small-business person whose company is receiving a 60% premium to reach its 80% share could pay 60% of the 80%; an unsubsidized person will have the Premium Amount included in the basic premium.)

(E) All beneficiaries that are not subsidized are to be offered the full benefits package.

(F) Any beneficiary that has any private payment associated with them can forfeit abortion coverage and receive a pro rata rebate of their unsubsidized premium costs. Premiums on behalf of such beneficiary will be included in the public subsidy account and treated as if they were public subsidies. Attach confidentiality protections to the forfeiture; require aggregate refund of employer share to employer.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION

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DATE: 8/3 11:15 a.m.

PAGES: 4
(Including Cover)

REMARKS: description of Robyn Lipner's ~~[illegible]~~ latest request for language.

August 3

Note to Judy Feder, Jennifer Klein, Nan Hunter, Fran White

There is a new request for draft language on abortion amendment options from Robyn Lipner. Robyn continues to work closely with Anita Jensen on Mitchell's staff. However, Sen. Mikulski would like to see drafted her preferred option -- a very narrow exemption from the standard benefits package for religious employers only --- in addition to other fallback options. This is ok with Anita.

By the end of today, Robyn would like language that accomplishes the following:

1. Mikulski preference: narrow religious employer opt out

* The definition of religious employers would rely on language from Title VII. Mikulski and the abortion rights groups, apparently, feel most comfortable with this definition.

* A religious employer would have the option of buying a standard benefits package that supresses coverage for abortion only for the people covered under that employer's plan. There would be no such thing as a "religous plan" option to not provide abortion coverage.

* The religious employer exemption would be limited specifically to abortion. No other exception would be made for other services to which an employer objects on religious or moral grounds.

* Religious employers making this election would see no change in the premium they or their employees pay.

* There would be no opportunity for individuals covered under the religious employer's plan to buy back coverage for abortion.

* The employer would be required to disclose to its employees that it has elected not to provide abortion coverage. No discrimination against employees based on their preference for abortion coverage would be permitted.

[Note, much of this is already drafted. Some rearranging needed]

2. Fallback option: plan conscience clause

* Health plans would have the option of refusing to cover abortion. This option would not be limited to "religious plans."

* Plans exercising the option to not include abortion in the standard benefits package would be required to disclose this in its enrollment materials.

* change in premium?

[Much of this is already drafted, along with religious plan opt-out, below]

3. Fallback option: plan conscience clause for religious plans

[Already drafted]

4. Fallback option: non-religious employer exemption

* Assuming that an exemption for religious employers only might not pass, the fallback would be to extend the option to not cover abortion to a broader, yet limited class of closely held businesses whose owner(s) have a religious or moral objection to covering abortion.

* A "closely held business" would be distinct from other corporate entities because it is owned and controlled largely by one individual or by a limited group of individuals, vs. owned by many stockholders and governed by a hired board of directors. The closely held business owner, it could be argued, might hold strong religious or moral beliefs that would lead him/her to oppose purchasing insurance coverage including abortion for workers. By contrast, it would be more difficult to argue a conscientious objection by a corporation, whose multiple owners and directors could hold widely varying religious and moral beliefs.

* IRS has advised us that language defining closely held businesses could read something like this: A closely held business is (1) a non-corporate entity that is not publicly held; and (2) that meets the definition of businesses described in Sec. 1361(b) or Sec. 542(a)(2) of the Internal Revenue Code; or (3) whose ownership structure is similar to those in (2) above, as described by rules to be promulgated by the Secretary.

[note, Sec. 1361(b) defines subchapter S corporations, for which there can be no more than 35 U.S. individual shareholders. Sec. 542(a)(2) defines a personal holding company, in which no more than 5 individuals must hold a majority of the stock. Other definitions of similar business entities -- general partnerships, limited partnerships, limited liability companies, and sole proprietorships -- are recognized by the IRS but defined according to state statutes and would need to be picked up in federal regulations.]

5. Fallback option: subsidy limitation

[Already drafted]

Karen

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION**

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**ROOM:**

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**FAX:** 456-2878

**DATE:** ~~7-29-94~~ 8-1-94

**PAGES: (Including Cover)** ~~7~~ 10

JK -
Here is the corrected language I sent to Robyn + Anita - Am sharing w/ Nan & Fran + Judy for cleanup, as well
- KP

**REMARKS:** ~~draft abortion language. Ignore my scribble - but I think it needs some work. We only have our draft until 5:30 today - so call or beep when you get this. Thanks - Karen~~

Sec.___. Exclusion of Benefits Because of Religious Beliefs.

(a) Special Rule for Religious Insurer or Religious Employer.

(1) Religious Insurer.--(A) Notwithstanding any other provision of this Act, a religious insurer (as defined in subsection (e)) may provide a health plan that meets the requirements of this Act, except that it does not cover health benefits that are contrary to the religious beliefs or moral convictions of the religious organization with which the insurer is affiliated.

(B) Any plan provided pursuant to the authority in subparagraph (A) must clearly advise each prospective enrollee, through its explanatory literature or other effective means, of the otherwise required health benefits that are excluded pursuant to subparagraph (A).

(2) Religious Employer.-- (A) A religious employer (as defined in subsection(~~e~~f)) may offer one or more health plans that meet all the requirements of this Act except that the plan or plans exclude health benefits that are contrary to the religious beliefs or moral convictions of the religious organization with which the employer is affiliated.

(B) Each employer exercising the option afforded under subparagraph (A) shall make information available to each employee, and to each individual to whom an offer of employment is made, about the exclusion of health benefits under one or more of the health plans provided by such employer.

(3) Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother.

(b) Deletion from Existing Plans of Certain Health Benefits.--A religious employer may provide a health plan offered by a religious insurer or may request any other insurer, and the insurer shall agree, to exclude from its plan that otherwise meets the requirements of this Act those health benefits which are contrary to the religious beliefs or moral convictions of the religious organization with which the employer is affiliated.

(c) Premium Adjustment Prohibited.--An insurer providing a plan that meets the requirements of this Act, shall make no adjustment in the premium amount by reason of the exercise by a religious employer of the option afforded by this section to exclude certain health benefits.

**[Alternative:**

(c) Employer and Employee Options with Respect to Excluded Services.

(1) Employer Option.--A religious employer offering a plan (other than a plan provided by a religious insurer) that excludes health benefits pursuant to the option afforded by subsection (b) may deduct from the premium

amount otherwise payable with respect to each employee electing to enroll in such plan the employer's share of the community rated amount attributable to coverage of the excluded benefits (as determined in accordance with paragraph (3)), and the employee's share of the premium shall be reduced accordingly.

(2) Employee Option.-- An employee of a religious employer who has enrolled in a health benefits plan that excludes health benefits pursuant to the provisions of subsection (b), other than a health plan offered by a religious insurer, may request the insurer, and the insurer shall agree, to restore the excluded health benefits with respect to individuals covered by that employee's enrollment upon the employee's payment of an amount equal to the community-rated amount attributable to coverage of the excluded benefits.]

(d) No religious employer shall discriminate in the hiring of an individual because of the individual's expressed preference for or interest in any particular health plan provided by the employer, nor shall such employer discriminate in any way in the terms or conditions of employment because an employee has chosen to enroll in any particular health plan. Action prohibited by this subsection shall constitute a violation of the general nondiscrimination provisions of this Act.

(e) As used in this section, the term "religious insurer" means an insurer who (1) satisfies the definition of "church plan" under Section 3(33)(A) of the Employee Retirement Income Security Act, and (2) is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association or society.

[note - ERISA language on "church plan" follows] tained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 [(45 U.S.C. 215 note)] or 1937 [Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.)] [3-1] applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act (59 Stat. 669) [(22 U.S.C. 288 et seq.)].

(33)(A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986.

(B) The term "church plan" does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1986), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(C) For purposes of this paragraph—

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes—

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under

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[3-1] The Railroad Retirement Act of 1935 was amended in its entirety and completely revised by the Railroad Retirement Act of 1937. Effective January 1, 1975, the Railroad Retirement Act of 1937 was itself amended in its entirety by, completely revised by, and redesignated as the Railroad Retirement Act of 1974 (Public Law 93–445; 88 Stat. 1305).

section 501 of the Internal Revenue Code of 1986 and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(v) If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1986 and which is controlled by or associated with a church or a convention or association of churches, the church plan shall not fail to meet the requirements of this paragraph merely because the plan—

(I) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(II) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7) of the Internal Revenue Code of 1986) at the time of such separation from service.

(D)(i) If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1986 fails to meet one or more of the requirements of this paragraph and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this paragraph for the year in which the correction was made and for all prior years.

(ii) If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this paragraph beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(iii) For purposes of this subparagraph, the term "correction period" means—

(I) the period ending 270 days after the date of mailing by the Secretary of the Treasury of a notice of default with respect to the plan's failure to meet one or more of the requirements of this paragraph; or

(II) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary of the Treasury on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(III) any additional period which the Secretary of the Treasury determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(34) The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term "defined benefit plan" means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

(A) for the purposes of section 202, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 204, shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1986 on plans to which that section applies, without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37)(A) The term "multiemployer plan" means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(iii) which satisfies such other requirements as the Secretary may prescribe by regulation.

(B) For purposes of this paragraph, all trades or businesses (whether or not incorporated) which are under common control within the meaning of section 4001(b)(1) are considered a single employer.

(C) Notwithstanding subparagraph (A), a plan is a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding its termination date.

(D) For purposes of this title, notwithstanding the preceding provisions of this paragraph, for any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amend-

(e) see insert



f

(~~d~~) As used in this section, the term "religious employer" ~~or "religious insurer~~" means an employer, ~~or an insurer, whichever may be applicable,~~ who (1) is exempted from taxation by section 501(a) of the Internal Revenue Code of 1986 by reason of the applicability of section 501(c)(3) thereof on the basis of the employer's religious purposes, and (2) is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

g (~~f~~) Reduction of Federal or Federally assisted Subsidies.-- (1) If a subsidy is being provided under any Federal or Federally-assisted program with respect to an individual's share of the premium to obtain coverage under a health benefits plan ~~(other than such a plan offered by a religious insurer)~~ that INCLUDES ~~excludes~~ abortion services ~~(or other services, or both) pursuant to the provisions of subsection (b),~~ such subsidy shall be reduced by an amount equal to the product of (i) the community-rated amount attributable to abortion coverage ~~or the community-rated amount attributable to such other excluded services, or both as may be applicable~~, (ii) the ratio of the individual's share of the premium to the total amount of the premium applicable to such plan, and (iii) the ratio of the subsidy (before any reduction) to the employee's share of the premium (before application of the subsidy).

(2) For purposes of this section, the Secretary shall determine the community-rated amount attributable to abortion coverage based on the ratio of --

(A) the total amounts expended for health benefits that may be excluded pursuant to this section (but not including amounts expended for abortions necessary to save the life of the mother or to terminate a if the pregnancy that is the result of an act of rape or incest), to

(B) the total amount expended for all health benefits required to be covered pursuant to the provisions of this Act (without application of this section),

and the Secretary shall determine the community-rated amount attributable to services that may be excluded other than abortions in accordance with the same methodology.

(3) Notwithstanding paragraph (1), no reduction shall be made in the subsidy payable with respect to an individual enrolled in a plan ~~provided by a religious insurer, and no reduction shall be made in the subsidy with respect to an employee of an employer who has exercised the option under subsection (b) and with respect to whom the premium has been reduced under subsection (c)~~. that does not cover abortion.

DEPARTMENT OF HEALTH & HUMAN SERVICES·USA

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION**

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**TO:**

**NAME:** Jen Klein

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**DATE:**

**PAGES:** 14
**(Including Cover)**

**REMARKS:**

August 4

Note to Robyn Lipner

Per your request, we have drafted language on a series of possible abortion amendments. Based on Finance action in committee, a series of amendments could be anticipated providing for "conscience clause" opt outs for employers, health plans, and individuals who choose not to cover abortion. Also anticipated would be an amendment to restrict federal subsidy dollars in so taxpayers do not fund insurance coverage for abortion.

Employer options - On the employer opt out, we have drafted your preferred amendment (#1) which would permit only religious employers (as defined in Title VII) to opt not to cover abortion. Such employers would be required to disclose this lack of coverage to their employees and prospective employees, and would be prohibited against discriminating against individuals based on their preference for abortion coverage.

In the event a religious-employer-only amendment does not prevail, we have also drafted a broader, though not total, employer opt out amendment (#2) as a fallback. Added to the religious employer amendment, this would permit secular employers who have religious/moral views to elect not to cover abortion. This broader class of employers would be limited to closely held businesses that are owned and operated by a small number of individuals who, arguably, could hold like religious and moral views on abortion. Not included in this class would be corporations owned and governed by many stockholders and directors who, arguably, would hold divergent religious and moral views.

Premium changes due to opt out - Under either employer opt-out, you would face the question about whether the dropping coverage for abortion triggers a change in the plan premium. We have discussed two possibilities in this regard. The law could direct that there is no change in a premium when an employer elects not to purchase abortion coverage. Alternatively, the law could direct that there is a change in the premium, but that the changed amount is limited to a small amount, essentially reflecting the ratio of spending for abortion to spending for all covered services under the standard benefits package. Neither of these options appear in the employer amendments attached, although they are drafted in the language we sent you a few days ago.

The advantage of permitting no change in premium when employers opt to drop abortion coverage is that the financial incentive to do so is neutralized. The advantage of permitting a small change in premium is that employees can have the opportunity of "buying back" the abortion coverage by replacing the small premium reduction. (See individual options, below.)

Health plan options - Employers could exercise their abortion opt out in several ways, depending on what you accomplish with respect to an insurance plan opt out. First, they could elect to purchase insurance through a relgious plan which also has chosen not to cover abortion due to a moral objection (Amendment #3). If only religious plans had the option to drop abortion coverage, their market would effectively be limited to those employers/individuals who are permitted to not purchase abortion coverage. Second, employers could purchase insurance through any plan which has decided not to cover abortion. (Amendment #4). Permitting any insurer to decline to cover abortion leaves the biggest potential gap in available abortion coverage. Finally, the employer could purchase coverage through any secular plan and require that plan to suppress coverage for abortion. Health plans would be required to cover abortion for all other employers who did not make this election. This option is not drafted as a separate amendment. However, language to accomplish this was included in amendment we sent you a few days ago.

Individual options - A third area of amendments would involve individual opt outs and opt ins. (Amendment #5) We have drafted for you a straight individual election to drop abortion coverage. It is important to note that, as drafted, this amendment is silent on what happens to individuals enrolled in family policies. For example, can a husband elect to drop abortion coverage from his families policy altogether, or does the wife need to concur in writing? The amendment also is silent on whether individuals are required to formally certify their moral objection to abortion in order to drop coverage. For example, a person might be required to present a notarized statement of their moral objection to their insurer before the policy can be changed.

If individuals face an option to drop abortion coverage, you would again face the question about impact on premiums. You could direct that premiums are the same, regardless of the individual election. Alternatively, you could direct that the individual's share of the premium be reduced by the community rated amount attributable to abortion.

If individuals can opt out of abortion, they could also be extended the right to restore coverage for abortion if their employer opts to drop coverage. Similarly, individuals could be permitted to restore any reduction in premium subsidies if Hyde-type language is adopted. (see below)

Subsidies - As we discussed, a way to limit the impact of Hyde-like restrictions on subsidies is to restrict the amount of reduction applied. You would use the same methodology as used in premium reductions for employers/individuals who opt out of abortion coverage. We estimate this methodology would produce a subsidy reduction would be approximately $8.67 per policy per year for a full subsidy and smaller, prorated amounts for partial subsidies.

Please let me know if you have any questions.

Enclosures

## Amendment #1 - Religious Employers

SEC.____. OPTION FOR EMPLOYERS AFFILIATED WITH RELIGIOUS ORGANIZATIONS.

(a) In General.--A religious employer (as defined in subsection (e)) may offer one or more health plans that meet all the requirements of this Act except that the plan or plans exclude abortion services if such services are contrary to the religious beliefs or moral convictions of the religious organization with which the employer is affiliated.

(b) Notice to Prospective Enrollees.--Each employer exercising the option afforded under subsection (a) shall make information available to each employee, and to each individual to whom an offer of employment is made, about the exclusion of abortion services under one or more of the health plans provided by such employer.

(c) Exception.--Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother.

(d) Nondiscrimination.--No religious employer shall discriminate in the hiring of an individual because of the individual's expressed preference for or interest in any particular health plan provided by the employer, nor shall such employer discriminate in any way in the terms or conditions of employment because an employee has chosen to enroll in any particular health plan. Action prohibited by this subsection shall constitute a violation of the general nondiscrimination provisions of this Act.

(e) Definition.--As used in this section, the term "religious employer" means an employer who is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

Amendment #2 - Secular employers with religious objections

SEC.____. EMPLOYER OPTION BASED ON RELIGIOUS OBJECTION OR MORAL CONVICTION.

(a) In General.--A employer that is a closely held business (as defined in subsection (e)) may offer one or more health plans that meet all the requirements of this Act except that the plan or plans exclude abortion services if such services are contrary to the religious beliefs or moral convictions of the employer.

(b) Notice to Prospective Enrollees.--Any plan provided pursuant to the authority in subsection (a) must clearly advise each prospective enrollee, through its enrollment literature or other effective means, that abortions services are excluded pursuant to subsection (a).

(c) Exception.--Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest.

(d) Nondiscrimination.--No employer shall discriminate in the hiring of an individual because of the individual's expressed preference for or interest in any particular health plan provided by the employer, nor shall such employer discriminate in any way in the terms or conditions of employment because an employee has chosen to enroll in any particular health plan. Action prohibited by this subsection shall constitute a violation of the general nondiscrimination provisions of this Act.

(e) Definition.--As used in this section, the term "closely held business" means an organization or other business entity, whether or not incorporated, that --

(1) is a personal holding company within the meaning of section 542 of the Internal Revenue Code of 1986,

(2) is a so-called "subchapter S corporation" as defined in section 1361 of such Code, or

(3) is organized in accordance with the laws of a State that recognize an ownership structure that is limited or defined (by number, personal relationships among the owners, or other specified connections) and with respect to which it is therefore reasonable to conclude, as determined in accordance with regulations of the Secretary, that there is a commonality of religious belief or moral conviction among a majority of the owners.

## Amendment 3 - Religious plans

SEC.___. OPTION FOR PLANS PROVIDED BY INSURERS AFFILIATED WITH RELIGIOUS ORGANIZATIONS.

(a) General Rule.-- Notwithstanding any other provision of this Act, a religious insurer (as defined in subsection (d)) may provide a health plan that meets the requirements of this Act, except that it does not cover abortion services contrary to the religious beliefs or moral convictions of the religious organization with which the insurer is affiliated.

(b) Notice to Prospective Enrollees.--Any plan provided pursuant to the authority in subsection (a) must clearly advise each prospective enrollee, through its enrollment literature or other effective means, that abortion services are excluded pursuant to subparagraph (A).

(c) Exception.--Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother.

(d) Definition.-- As used in this section, the term "religious insurer" means an insurer who (1) satisfies the definition of "church plan" under section 3(33) the Employee Retirement Income Security Act of 1974, and (2) is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

Amendment 4 - All insurer opt-out

SEC. _____. INSURER OPTION TO COVER ABORTION.

(a) In General.--Notwithstanding any other provision of this Act, an insurer may provide a health plan that meets the requirements of this Act except that it does not cover abortion services.

(b) Notice to Prospective Enrollees.--Any plan provided pursuant to the authority in subsection (a) must clearly advise each prospective enrollee, through its enrollment literature or other effective means, that abortion services are excluded pursuant to subparagraph (A).

(c) Exception.--Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest.

## Amendment 5 - Individual options

SEC.____. INDIVIDUAL OPTION. [Could accompany option with respect to employers or subsidies.]

(a) Option to Decline Coverage of Abortion Services.--

(1) An individual who is enrolled in a health benefits plan may request the insurer, and the insurer shall agree, to exclude coverage for the abortion services if such services are contrary to the religious beliefs or moral convictions of the individual.

(2) A health plan shall make no change in the premium for individuals making an election under paragraph (1).

[Alternative (2) A health plan shall reduce the premium for an individual electing the option under paragraph (1) by an amount equal to the individual's share of the community-rated amount attributable to the excluded benefits.]

(b) Option to Restore Coverage.-- An employee who has enrolled in a health benefits plan that excludes abortion services at the option of the employer pursuant to the provisions of section ___, may request the insurer, and the insurer shall agree, to restore the excluded abortion services with respect to individuals covered by that employee's enrollment upon the employee's payment of an amount equal to the community-rated amount attributable to coverage of the excluded benefits.

(c) Option to Replace Subsidy Reduction.-- An individual whose subsidy has been reduced under section ___ shall have the option to replace the reduced subsidy (by increasing by an equal amount the portion of the premium paid by the individual) and upon payment of such increased share of the premium, coverage of the abortion services that would have been excluded shall be restored.

## Amendment 6 - Subsidies

SEC.___. REDUCTION OF FEDERAL OR FEDERALLY ASSISTED SUBSIDIES.

(a) If a subsidy is being provided under any Federal or Federally-assisted program with respect to an individual's share of the premium to obtain coverage under a health benefits plan under this Act that includes abortion services, such subsidy shall be reduced by an amount equal to the product of--

(1) the community-rated amount attributable to abortion coverage,

(2) the ratio of the individual's share of the premium to the total amount of the premium applicable to such plan, and

(3) the ratio of the subsidy (before any reduction) to the employee's share of the premium (before application of the subsidy).

(b) For purposes of this section, the Secretary shall determine the community-rated amount attributable to abortion coverage based on the ratio of --

(1) the total amounts expended for abortion services (other than amounts expended for abortions necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest), to

(2) the total amount expended for all health benefits required to be covered pursuant to the provisions of this Act (without application of this section).

(c) Notwithstanding subsection (a), no reduction shall be made in the subsidy payable with respect to an individual enrolled in a plan that does not cover abortion services in addition to abortions necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest.

August 4

Note to Robyn Lipner

Per your request, we have drafted language on a series of possible abortion amendments. Based on Finance action in committee, a series of amendments could be anticipated providing for "conscience clause" opt outs for employers, health plans, and individuals who choose not to cover abortion. Also anticipated would be an amendment to restrict federal subsidy dollars so taxpayers do not support insurance coverage for abortion.

Employer options - On the employer opt-out, we have drafted your preferred amendment (#1) which would permit only religious employers (as defined in Title VII) to elect not to cover abortion. Such employers would be required to disclose this lack of coverage to their employees and prospective employees, and would be prohibited against discriminating against individuals based on their preference for abortion coverage.

In the event a religious-employer-only amendment does not prevail, we have also drafted a broader, though not total, employer opt-out amendment (#2) as a fallback. Added to the religious employer amendment, this would permit secular employers who have religious/moral views to elect not to cover abortion. This broader class of employers would be limited to closely held businesses that are owned and operated by a small number of individuals who, arguably, could hold like religious and moral views on abortion. Not included in this class would be corporations owned and governed by many stockholders and directors who, arguably, would hold divergent religious and moral views.

Premium changes due to opt out - Under either employer opt-out, you would face the question about whether dropping coverage for abortion triggers a change in the plan premium. We have discussed two possibilities in this regard. The law could direct that there is no change in premium when an employer elects not to purchase abortion coverage. Alternatively, the law could direct that there is a change in the premium, but that the change is limited to a small amount, essentially reflecting the the cost of abortion services per policy, assuming universal coverage for abortion. The option to hold premiums unchanged is not included in the employer amendments attached, although they are drafted in the language we sent you a few days ago. The language to limit the change in premiums is reflected in Amendment #6.

The advantage of permitting no change in premium when employers elect to drop abortion coverage is that the financial incentive to do so is neutralized. The advantage of permitting a small change in premium is that employees can have the opportunity of "buying back" abortion coverage by replacing the small premium reduction. (See individual options, below.)

Health plan options - Employers could exercise their abortion opt-out in several ways, depending on what happens with respect to an insurance plan opt-out.

First, they could elect to purchase insurance through a religious plan which also has chosen not to cover abortion due to a moral objection (Amendment #3). The market for religious plans would effectively be limited to those employers/individuals who are permitted to not purchase abortion coverage.

Second, the employer could purchase coverage through any secular plan and require that plan to suppress coverage for abortion. Health plans would continue to cover abortion for all other employers who did not make this election. This option is not drafted as a separate amendment. However, language to accomplish this was included in amendment we sent you a few days ago.

Finally, any plan could elect to drop coverage for abortion and employers could choose coverage under those plans. (Amendment #4). Permitting any insurer to decline to cover abortion leaves the biggest potential gap in available abortion coverage.

Individual options - A third area of amendments would involve individual opt-outs and opt-ins. (Amendment #5) We have drafted a straight individual election to drop abortion coverage. It is important to note that, as drafted, this amendment is silent on what happens to individuals enrolled in family policies. For example, can a husband elect to drop abortion coverage from his family's policy altogether, or does the wife need to concur in writing? The amendment also is silent on whether individuals are required to formally certify their moral objection to abortion in order to drop coverage. For example, a person might be required to present a notarized statement of their moral objection to their insurer before the policy can be changed.

If individuals have an option to drop abortion coverage, you would again face the question about impact on premiums. You could direct that premiums are the same, regardless of the individual election. Alternatively, you could direct that the individual's share of the premium be reduced by the community rated amount attributable to abortion.

If individuals can opt out of abortion, they could also be extended the right to restore coverage for abortion if their employer elects to drop coverage. Similarly, individuals could be permitted to restore any reduction in premium subsidies if Hyde- type language is adopted. (see below)

<u>Subsidies</u> - As we discussed, a way to limit the impact of Hyde-like restrictions on subsidies is to restrict the amount of reduction applied. (Amendment #6) You would use the same methodology used in premium reductions for employers/individuals who opt out of abortion coverage. We estimate this methodology would produce a subsidy reduction of approximately $8.67 per policy per year for a full subsidy, with prorated reductions for partial subsidies.

For administrative purposes, it would be simpler to apply any subsidy reduction only to individual premium contributions. Because the amount of subsidy reduction involved is so small, the difficulty of tracing the employer and individual subsidies for each policy in order to apportion the reduction would render the effort not cost effective.

Please let me know if you have any questions.

Enclosures

Amendment #1 - Religious Employers

SEC.___. OPTION FOR EMPLOYERS AFFILIATED WITH RELIGIOUS ORGANIZATIONS.

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(b) Notice to Prospective Enrollees.--Each employer exercising the option afforded under subsection (a) shall make information available to each employee, and to each individual to whom an offer of employment is made, about the exclusion of abortion services under one or more of the health plans provided by such employer.

(c) Exception.--Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother.

(d) Nondiscrimination.--No religious employer shall discriminate in the hiring of an individual because of the individual's expressed preference for or interest in any particular health plan provided by the employer, nor shall such employer discriminate in any way in the terms or conditions of employment because an employee has chosen to enroll in any particular health plan. Action prohibited by this subsection shall constitute a violation of the general nondiscrimination provisions of this Act.

(e) Definition.--As used in this section, the term "religious employer" means an employer who is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

Amendment #2 - Secular employers with religious objections

SEC.____. EMPLOYER OPTION BASED ON RELIGIOUS OBJECTION OR MORAL CONVICTION.

(a) In General.--An employer that is a closely held business (as defined in subsection (e)) may offer one or more health plans that meet all the requirements of this Act except that the plan or plans exclude abortion services if such services are contrary to the religious beliefs or moral convictions of the employer.

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(e) Definition.--As used in this section, the term "closely held business" means an organization or other business entity, whether or not incorporated, that --

(1) is a personal holding company within the meaning of section 542 of the Internal Revenue Code of 1986,

(2) is a so-called "subchapter S corporation" as defined in section 1361 of such Code, or

(3) is organized in accordance with the laws of a State that recognize an ownership structure that is limited or defined (by number, personal relationships among the owners, or other specified connections) and with respect to which it is therefore reasonable to conclude, as determined in accordance with regulations of the Secretary, that there is a commonality of religious belief or moral conviction among a majority of the owners.

Amendment 3 - Religious plans

SEC.___. OPTION FOR PLANS PROVIDED BY INSURERS AFFILIATED WITH RELIGIOUS ORGANIZATIONS.

(a) General Rule.-- Notwithstanding any other provision of this Act, a religious insurer (as defined in subsection (d)) may provide a health plan that meets the requirements of this Act, except that it does not cover abortion services contrary to the religious beliefs or moral convictions of the religious organization with which the insurer is affiliated.

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(d) Definition.-- As used in this section, the term "religious insurer" means an insurer who (1) satisfies the definition of "church plan" under section 3(33) the Employee Retirement Income Security Act of 1974, and (2) is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

Amendment 4 - All insurer opt-out

SEC.____. INSURER OPTION TO COVER ABORTION.

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Amendment 5 - Individual options

SEC.____. INDIVIDUAL OPTION. [Could accompany option with respect to employers or subsidies.]

(a) Option to Decline Coverage of Abortion Services.--

(1) An individual who is enrolled in a health benefits plan may request the insurer, and the insurer shall agree, to exclude coverage for the abortion services if such services are contrary to the religious beliefs or moral convictions of the individual.

(2) A health plan shall make no change in the premium for individuals making an election under paragraph (1).

**[Alternative (2)** A health plan shall reduce the premium for an individual electing the option under paragraph (1) by an amount equal to the individual's share of the community-rated amount attributable to the excluded benefits.]

(b) Option to Restore Coverage.-- An employee who has enrolled in a health benefits plan that excludes abortion services at the option of the employer pursuant to the provisions of section ___, may request the insurer, and the insurer shall agree, to restore the excluded abortion services with respect to individuals covered by that employee's enrollment upon the employee's payment of an amount equal to the community-rated amount attributable to coverage of the excluded benefits.

(c) Option to Replace Subsidy Reduction.-- An individual whose subsidy has been reduced under section ___ shall have the option to replace the reduced subsidy (by increasing by an equal amount the portion of the premium paid by the individual) and upon payment of such increased share of the premium, coverage of the abortion services that would have been excluded shall be restored.

Amendment 6 - Subsidies

SEC.____. REDUCTION OF FEDERAL OR FEDERALLY ASSISTED SUBSIDIES.

(a) If a subsidy is being provided under any Federal or Federally-assisted program with respect to an individual's share of the premium to obtain coverage under a health benefits plan under this Act that includes abortion services, such subsidy shall be reduced by an amount equal to the product of--

(1) the community-rated amount attributable to abortion coverage,

(2) the ratio of the individual's share of the premium to the total amount of the premium applicable to such plan, and

(3) the ratio of the subsidy (before any reduction) to the employee's share of the premium (before application of the subsidy).

(b) For purposes of this section, the Secretary shall determine the community-rated amount attributable to abortion coverage based on --

(1) the total amounts expended for abortion services (other than amounts expended for abortions necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest), divided by

(2) the total number of health insurance policies.

(c) Notwithstanding subsection (a), no reduction shall be made in the subsidy payable with respect to an individual enrolled in a plan that does not cover abortion services in addition to abortions necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest.

Who has enrolled in a family?

SEC.____. INDIVIDUAL OPTION. [Could accompany option with respect to employers or subsidies.]

(a) Option to Decline Coverage of Abortion Services.--

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(2) A health plan shall reduce the premium for an individual electing the option under paragraph (1) by an amount equal to the individual's share of the community-rated amount attributable to the excluded benefits.

(b) Option to Restore Coverage.-- An employee who has enrolled in a health benefits plan that excludes abortion services at the option of the employer pursuant to the provisions of section ___, may request the insurer, and the insurer shall agree, to restore the excluded abortion services with respect to individuals covered by that employee's enrollment upon the employee's payment of an amount equal to the community-rated amount attributable to coverage of the excluded benefits.

(c) Option to Replace Subsidy Reduction.-- An individual whose subsidy has been reduced under section ___ shall have the option to replace the reduced subsidy (by increasing by an equal amount the portion of the premium paid by the individual) and upon payment of such increased share of the premium, coverage of the abortion services that would have been excluded shall be restored.

SEC.___. OPTION FOR PLANS PROVIDED BY INSURERS AFFILIATED WITH RELIGIOUS ORGANIZATIONS.

(a) General Rule.-- Notwithstanding any other provision of this Act, a religious insurer (as defined in subsection (d)) may provide a health plan that meets the requirements of this Act, except that it does not cover services if such services are contrary to the religious beliefs or moral convictions of the religious organization with which the insurer is affiliated.

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(c) Exception.--Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother or to terminate a pregnancy that is the result of an act of rape or incest.

(d) Nondiscrimination.--No employer shall discriminate in the hiring of an individual because of the individual's expressed preference for or interest in any particular health plan provided by the employer, nor shall such employer discriminate in any way in the terms or conditions of employment because an employee has chosen to enroll in any particular health plan. Action prohibited by this subsection shall constitute a violation of the general nondiscrimination provisions of this Act.

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Religious or Moral reason?

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Plans shall certify that it had suff. non-subsidy $s to cover costs of abortion services.

SEC.___. REDUCTION OF FEDERAL OR FEDERALLY ASSISTED SUBSIDIES.

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(b) For purposes of this section, the Secretary shall determine the community-rated amount attributable to abortion coverage based on the ratio of --

all legal residents under 65 [illegible] by persons

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This is not how figured

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(e) Definition.--As used in this section, the term "religious employer" means an employer who is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF THE GENERAL COUNSEL
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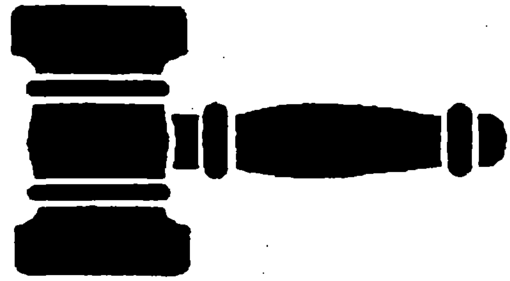

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| | Telephone No. | Fax No. |
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| TO : Jennifer Klein | | 456-2878 |
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| | | |

FROM: Nan Hunter

OFFICE: OS/Immediate Office

PHONE NO. 690-7780

FAX NO. 690-7998

COMMENTS: Tim requested language on the "no construction of abortion clinics required" issue, so I combined Senate Finance amendment w/ text of HSA §1406(a). Any thoughts?

No. of Pages (including cover) 2

"( ) Nothing in this Act shall be construed--

"(1) to require the creation or maintenance of abortion clinics or other abortion providers within any state or region of a state, or

"(2) to authorize any federal agency or State--

"(A) to require the creation or maintenance of abortion clinics or abortion providers, or

"(B) to deny certification or any other benefit granted by this Act to a health plan based on the number of or the presence or absence of abortion clinics or other abortion providers in or affiliated with the plan so long as the health plan enters into such agreements or other arrangements with health care providers as may be necessary to assure the provision of all services covered by the comprehensive benefit package to eligible individuals enrolled with the plan."

Sen. Hatch

AMENDMENT NO. __

Purpose: To exclude abortions from the comprehensive benefit package except in certain circumstances

In the Committee on Finance, United States Senate, 103d Cong., 2nd Sess.

AMENDMENT intended to be proposed by Senator Hatch.

Viz:

At the end of subpart IV.B on page 21, after item 16, add: "Notwithstanding the foregoing, abortion shall not be a covered service under this Act, except where (a) a woman suffers from a physical disorder, illness, or injury that would, as certified by a physician, place the woman in danger of death if the fetus were carried to term; or (b) the pregnancy is the result of rape or incest. This exclusion shall not be construed to remove or diminish coverage of any reproductive health service, family planning service, or service for pregnant women otherwise provided for under this Act, except abortions."

At the appropriate place, add: "Notwithstanding any other provision of this Act, the National Health Benefits Board may not expand any benefit package provided for under this Act to include any abortion that is excluded under the covered services provisions of this Act."

failed 11-9.

Sen. [redacted]

AMENDMENT NO. __

Purpose: To preserve constitutional State authority regarding abortions

In the Committee on Finance, United States Senate, 103d Cong., 2nd Sess.

AMENDMENT intended to be proposed by Senator [redacted] Grassley

Viz:

At the appropriate place, add: "Nothing in this Act shall be construed to conflict with any constitutionally permissible regulation of abortion by a State."

2020 11-9.

AMENDMENT NO. ______________ Ex:________ Calendar No. ____

Purpose: ______________________________

IN THE SENATE OF THE UNITED STATES-103rd Cong., 2nd Sess.

S. ______________

H.R. ______________ (or TREATY ______________) short title

(title)______________________________

---

( ) Referred to the Committee on ______________ and ordered to be printed

( ) Ordered to lie on the table and to be printed

INTENDED to be proposed by Senator Danforth

Viz: At the appropriate place, insert the following:

"Nothing in this Act shall be construed to require the creation or maintenance of abortion clinics or other abortion providers within any state or region of a state; nor shall anything in this Act be construed to authorize any federal agency or State to require the creation or maintenance of abortion clinics or abortion providers or to deny certification or any other benefit granted by this Act to a health plan based on the number of or the presence or absence of abortion clinics or other abortion providers in or affiliated with the plan" subject to Kual req. to provide all services in benefit package.

pass 12-8

AMENDMENT NO. ______________ Ex. ________ Calendar No. ____

Purpose: ______________________________

IN THE SENATE OF THE UNITED STATES-103rd Cong., 2nd Sess.

S. ______________

H.R. ______________ (or TREATY ______________)
short title

(title) ______________________________

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( ) Referred to the Committee on ______________ and ordered to be printed

( ) Ordered to lie on the table and to be printed

INTENDED to be proposed by Senator Danforth

Viz: At the appropriate place, insert the following:

"Nothing in this Act shall be construed to:

1. prevent any individual from purchasing a standard benefits package excluding coverage of abortion, if the individual objects to abortion on the basis of a religious belief or moral conviction;

2. prevent any employer from contributing to the purchase of a standard benefits package excluding abortion or other services, if the employer objects to doing so on the basis of a religious belief or moral conviction;

3. require any health professional or health facility to perform or assist in the performance of any benefit or service, if the health professional or health facility objects to doing so on the basis of a religious belief or moral conviction; and

4. require any commercial insurance company, Blue Cross Plan, integrated health plan or any other organization that assumes health insurance risk to offer a package including abortion or other services, if the plan objects to doing so on the basis of a religious belief or moral conviction.

Danforth
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**AMENDMENT TO PREVENT FORCED SUBSIDIZATION OF ABORTIONS BY [THO]SE WITH STRONG MORAL OBJECTIONS**

**Present Law:** Because there is no federally defined benefits package, there is no provision on whether abortion must be included or excluded from a federally defined benefits package. The Hyde Amendment insures that Medicaid dollars are not spent for abortions, unless the life of the mother would be endangered if the child were carried to term or the pregnancy resulted from rape or incest. Other federal programs, including the Federal Employees Health Benefits Plan, Department of Defense, Veterans, the Peace Corp have been interpreted to include coverage of abortions, but the procedure is now excluded in some of these programs through annual appropriation riders. Subscribers are free to choose a health plan which offers abortion under the Federal Employees Health Benefits Plan.

**Amendment Proposal:**

Under the Chairman's mark, "[h]ealth plans would be required to offer a standardized set of covered services. Categories of covered services would be specified in statute." This amendment would require that if "abortion" were interpreted to be a covered service under the categories set in statute, each plan offering the standard benefits package would be required to offer a package which would explicitly exclude coverage for abortion, except when the life of the mother would be endangered if the child were carried to term or the pregnancy resulted from rape or incest. The same requirement would apply if changes were made to the benefits package by the Benefits Commission.

Each purchaser of insurance would then be given the option of choosing the benefit package which excludes coverage of abortion, except when the life of the mother would be endangered if the child were carried to term or the pregnancy resulted from rape or incest. No plan is required to include coverage of abortion, but if the plan chooses to cover that service, it must offer the plan which explicitly excludes coverage of abortion, except when the life of the mother would be endangered if the child were carried to term or the pregnancy resulted from rape or incest.

Packages must be priced by the plan using actuarial principles, and proof of the actuarial methodology must be given to the state before certification. Health plans must charge the same premium for both packages, except for the differential in cost for covering abortions.

Under the Chairman's mark, subsidies for health insurance will be given to those below 200% of poverty. A full subsidy will be given to those below 100% of poverty. The full subsidy must equal the average cost of the premium for a certified standard health plan in the community rating area which excludes coverage of abortion, except when the life of the mother would be endangered if the child were carried to term or the pregnancy resulted from rape or incest.

The agency administering the subsidies will only be permitted to pay a subsidy for which an individual or family qualifies directly to a plan for a package which does not cover abortions, except when the life of the mother would be endangered if the child were carried to term or the pregnancy resulted from rape or incest.

Sec.___. Exclusion of Benefits Because of Religious Beliefs.

(a) Special Rule for Religious Insurer or Religious Employer.

(1) Religious Insurer.--(A) Notwithstanding any other provision of this Act, a religious insurer (as defined in subsection (e)) may provide a health plan that meets the requirements of this Act, except that it does not cover health benefits that are contrary to the religious beliefs or moral convictions of the religious organization with which the insurer is affiliated.

(B) Any plan provided pursuant to the authority in subparagraph (A) must clearly advise each prospective enrollee, through its explanatory literature or other effective means, of the otherwise required health benefits that are excluded pursuant to subparagraph (A).

(2) Religious Employer.-- (A) A religious employer (as defined in subsection(e)) may offer one or more health plans that meet all the requirements of this Act except that the plan or plans exclude health benefits that are contrary to the religious beliefs or moral convictions of the religious organization with which the employer is affiliated.

(B) Each employer exercising the option afforded under subparagraph (A) shall make information available to each employee, and to each individual to whom an offer of employment is made, about the exclusion of health benefits under one or more of the health plans provided by such employer.

(3) Nothing in this section shall be construed as authorizing exclusion of coverage under a health plan of abortion services necessary to save the life of the mother.

(b) Deletion from Existing Plans of Certain Health Benefits.--A religious employer may provide a health plan offered by a religious insurer or may request any other insurer, and the insurer shall agree, to exclude from its plan that otherwise meets the requirements of this Act those health benefits which are contrary to the religious beliefs or moral convictions of the religious organization with which the employer is affiliated.

(c) Premium Adjustment Prohibited.--An insurer providing a plan that meets the requirements of this Act, shall make no adjustment in the premium amount by reason of the exercise by a religious employer of the option afforded by this section to exclude certain health benefits.

**[Alternative:**

(c) Employer and Employee Options with Respect to Excluded Services.

(1) Employer Option.--A religious employer offering a plan (other than a plan provided by a religious insurer) that excludes health benefits pursuant to the option afforded by subsection (b) may deduct from the premium

amount otherwise payable with respect to each employee electing to enroll in such plan the employer's share of the community rated amount attributable to coverage of the excluded benefits (as determined in accordance with paragraph (3)), and the employee's share of the premium shall be reduced accordingly.

(2) Employee Option.-- An employee of a religious employer who has enrolled in a health benefits plan that excludes health benefits pursuant to the provisions of subsection (b), other than a health plan offered by a religious insurer, may request the insurer, and the insurer shall agree, to restore the excluded health benefits with respect to individuals covered by that employee's enrollment upon the employee's payment of an amount equal to the community-rated amount attributable to coverage of the excluded benefits.]

(d) No religious employer shall discriminate in the hiring of an individual because of the individual's expressed preference for or interest in any particular health plan provided by the employer, nor shall such employer discriminate in any way in the terms or conditions of employment because an employee has chosen to enroll in any particular health plan. Action prohibited by this subsection shall constitute a violation of the general nondiscrimination provisions of this Act.

(e) As used in this section, the term "religious employer" or "religious insurer" means an employer, or an insurer, whichever may be applicable, who (1) is exempted from taxation by section 501(a) of the Internal Revenue Code of 1986 by reason of the applicability of section 501(c)(3) thereof on the basis of the employer's religious purposes, and (2) is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society.

(f) Reduction of Federal or Federally assisted Subsidies.--(1) If a subsidy is being provided under any Federal or Federally-assisted program with respect to an individual's share of the premium to obtain coverage under a health benefits plan (other than such a plan offered by a religious insurer) that excludes abortion services or other services, or both, pursuant to the provisions of subsection (b), such subsidy shall be reduced by an amount equal to the product of (i) the community-rated amount attributable to abortion coverage or the community-rated amount attributable to such other excluded services, or both as may be applicable, (ii) the ratio of the individual's share of the premium to the total amount of the premium applicable to such plan, and (iii) the ratio of the subsidy (before any reduction) to the employee's share of the premium (before application of the subsidy).

(2) For purposes of this section, the Secretary shall determine the community-rated amount attributable to abortion coverage based on the ratio of --

(A) the total amounts expended for health benefits that may be excluded pursuant to this section (but not including amounts expended for abortions if the pregnancy is the result of an act of rape or incest), to

(B) the total amount expended for all health benefits required to be covered pursuant to the provisions of this Act (without application of this section),

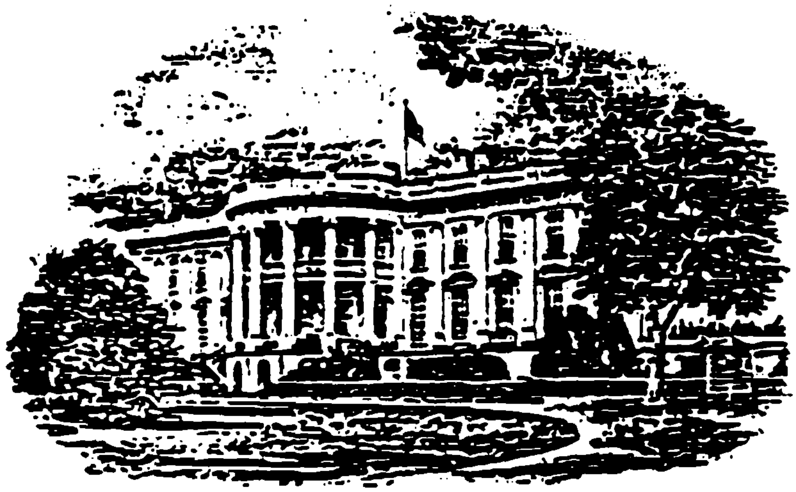
and the Secretary shall determine the community-rated amount attributable to services that may be excluded other than abortions in accordance with the same methodology.

(3) Notwithstanding paragraph (1), no reduction shall be made in the subsidy payable with respect to an individual enrolled in a plan provided by a religious insurer, and no reduction shall be made in the subsidy with respect to an employee of an employer who has exercised the option under subsection (b) and with respect to whom the premium has been reduced under subsection (c).

DATE: ____________
TIME: ____________

# THE WHITE HOUSE

## WASHINGTON



## FAX COVER SHEET

TO: Anita Jenson

________________________________

PHONE: (____) ________________

FAX: (____) 228-4538

FROM: Jennifer Klein

PHONE: (202) 456–2599

PAGES FOLLOWING COVER SHEET: ____________

## Coverage for Abortion Services

### Cost:

The cost of abortion coverage is $8.67 per policy, based on the estimated community rate required to fund abortions. Therefore, if a religious employer chooses for moral or religious reasons to purchase the comprehensive benefit package without abortion coverage, the premium payment is reduced by the appropriate share of $8.67.

### Religious Employers:

All policies include coverage for abortions that are necessary to save the woman's life or as a result of rape or incest.

A religious employer may choose not to pay for abortion coverage other than abortions that are necessary to save the woman's life or as a result of rape or incest. If the employer chooses not to pay for abortion coverage, the employer's premium contribution is reduced by the employer share of the community-rated amount attributable to abortion coverage. An employee may elect not to pay the difference.

A religious employer is an employer that: (1) qualifies for tax exemption (under 501(c)(3) or ERISA "church plan" definitions); and (2) is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religion or by a particular religious corporation, association or society.

### Religious Plans:

A religious plan sponsor may decline to include abortion services other than abortions that are necessary to save a woman's life or as a result of rape or incest. A religious plan sponsor is a sponsor that meets the definition above.

### Subsidies:

Subsidies are reduced by the appropriate share of the community-rated amount attributable to abortion coverage.

# [DISCUSSION DRAFT]

## AMENDMENT TO COMMITTEE PRINT (H.R. 3600)

## OFFERED BY ____________________

**(Page & line nos. refer to Committee Print of June 8, 1994)**

Page 509, after line 2, insert the following (and conform the table of contents of title I accordingly):

**SEC. 1913. PRESERVATION OF STATE AUTHORITY REGARDING ABORTIONS.**

Nothing in this Act shall be construed to preempt any constitutionally permissible regulation by a State of the time, place, and circumstances under which abortions may be performed, that applies regardless of the source of payment for an abortion.

# [DISCUSSION DRAFT]

## AMENDMENT OFFERED BY ___________

## TO MR. KLECZKA'S AMENDMENT

• Limit the application of the Kleczka amendment to plans that are sponsored by a religious organization.

• If an employer that is not a religious organization offers its employees a plan the sponsor of which is a religious organization that exercises the conscience clause, the employer must also offer a plan that is at or below the average weighted premium and the sponsor of which has not exercised that clause.

• "Religious organization" would be either a church (as defined in section 7611(h) of the IRC) or a 501(c)(3) religious, educational, or charitable organization that is controlled by such a church.

OPTIONAL FORM 99 (7-90)

**FAX TRANSMITTAL** # of pages ► 2

| | |
|---|---|
| To Jennifer Klein | From Sharman |
| Dept./Agency | Phone # |
| Fax # | Fax # |

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Per your request

It is also important to consider how close the patient may be to the planned end of his rehabilitation hospital stay when further progress becomes unlikely. If a patient is within a few days of discharge, it would usually not be appropriate to transfer him to a less intensive setting in another facility even though further progress in the hospital setting is unlikely. However, it could be appropriate to utilize a "swing bed" arrangement, if it exists in the same facility, for rendering necessary services to the patient pending discharge.

When discharge or transfer to another facility is appropriate, the cut-off point for coverage should not be the last day on which improvement actually occurred. Rather, coverage should continue through the time it would have been reasonable for the physician, in consultation with the rehabilitation team, to have concluded that further improvement would not occur and to initiate the patient's discharge.

Since discharge planning is an integral part of any rehabilitation program and should begin upon the patient's admittance to the facility, an extended period of time for discharge action would not be reasonable after established goals have been reached, or a determination made that further progress is unlikely, or that care in a less intensive setting would be appropriate.

## Pregnancy

3101.12 Health Care Associated with Pregnancy.--Reasonable and necessary services associated with pregnancy are covered and reimbursable under the Medicare program. Because pregnancy is a condition which is sufficiently at variance with the usual state of health, it is appropriate for a pregnant woman to seek medical care. The increased possibility of illness or injury which accompanies this condition is well recognized, and medical supervision is required throughout pregnancy and for a brief period beyond. Skilled medical management is appropriate throughout the events of pregnancy, beginning with diagnosis of the condition, continuing through delivery, and ending after the necessary postnatal care. Similarly, in the event of termination of pregnancy, regardless of whether terminated spontaneously or for therapeutic reasons (i.e., where the life of the mother would be endangered if the fetus were brought to term), the need for skilled medical management and/or medical services is equally as important as in those cases carried to full term. After the infant is delivered items and services furnished to the infant cannot be covered and reimbursed under the program on the basis of the mother's eligibility.

## Infertility

7/13/94

## Summary

* Premium differential established to reflect cost of full abortion services as part of premium.

* Individuals and employers can opt out and premium differential is deducted.

* Government funds subsidize individual premiums only up to amount without the differential.

* Individuals with subsidies or with opt-out employers who wish full abortion coverage can pay differential.

* All plans except religious plans required to offer coverage of full abortion services.

*"Full abortion services" means all medically necessary or appropriate abortions.*
*"Restricted abortion coverage" means only abortions necessary to save woman's life or as a result of rape or incest.*

## Individual Conscience Clause

1. Individuals can elect to waive full abortion coverage.

2. Amount of check-off would be set by Board to reflect value of abortion services as a portion of total premium amount. We estimate $5 to $10.

3. In enrollment unit consisting of married couple, both signatures required to waive.

## Subsidized individuals

1. Subsidy for low-income persons would be available to purchase only restricted abortion coverage.

   DOES THIS APPLY REGARDLESS OF HOW SMALL THE SUBSIDY?

2. Individual would have to pay premium differential in order to secure full abortion coverage.

   THIS COULD CREATE WINDFALL FOR PLANS. DOES GOV'T DEDUCT UP FRONT THE AMOUNT OF THE DIFFERENTIAL? IF NOT, PLANS GET PAID TWICE IF THE INDIVIDUAL OPTS IN.

## Employers

1. Employer could elect not to pay for full abortion services in premium contribution, and premium differential would be deducted.

   THIS CREATES ENORMOUS FINANCIAL INCENTIVE TO OPT OUT, ESPECIALLY FOR BIG EMPLOYERS. TO WHOM WOULD THE REBATE GO? IF EMPLOYER IS PAYING LESS THAN 100% OF PREMIUM, WOULD EMPLOYER AND EMPLOYEE SPLIT THE REBATE?

2. Preservation of individual choice - Individual employee could pay the premium differential to secure full abortion coverage.

## Plan Conscience Clause

1. Religious exemption

a) Religious plan sponsor could decline to include abortion services beyond restricted abortion coverage.

b) Definition of religious:

i) 501(c)(3) and ERISA "church plan" - entity that qualifies for tax exemption.

ii) Title VII: if entity is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association or society.

2. Premiums to be set by market

a) Plans with and without abortion coverage are priced out actuarially and individuals choose among them. Plan with abortion coverage may cost less.

7/6/94

## Summary

* All plans except religious plans required to offer full abortion services.
* Allow individuals with religious or moral objection to abortion to opt out.
* Allow religious employers and religious plans to decline to offer full abortion services.
* Structure so that federal government funds do not purchase full abortion services.

## Individual Conscience Clause

1. Option A: Waiver of abortion coverage

a) Individuals can elect to waive abortion coverage on basis of religious or moral belief:

i) by voluntarily dropping that coverage, which would not affect the premium cost, or

ii) by selecting a religious plan, if one is available.

b) In households with married couple, both signatures required to waive.

c) Individual could waive all coverage except for abortions necessary to save woman's life or as a result of rape or incest.

2. Option B: Check-off

a) Household waiver would lead to re-allocation of specified amount to another service paid for by premium.

b) Amount of check-off would be set by Board to reflect value of abortion services as a portion of total premium amount. We estimate $5.

c) No difference in premium costs because of check-off.

d) Same as 1(b) and (c).

3. Either option: Subsidized individuals

a) Subsidy substituting for Medicaid would be available only to purchase only coverage excluding full abortion services (subject to minimum coverage requirement as stated in 1(c)).

b) Board shall set an amount as in 2(b). Individual would have to pay this amount in order to secure full abortion coverage.

## Employer Conscience Clause

1. Religious exemption

a) Religious entity could decline to offer any plans that include full abortion coverage.

b) Definition of religious employer:

i) 501(c)(3) and ERISA "church plan" - entity that qualifies for tax exemption.

ii) Title VII: if entity is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association or society.

2. Preservation of individual choice

a) If a non-religious employer offers a religious plan (see below), that employer must also offer at least one plan that does cover full range of abortion services and that is priced at or below the weighted average premium, the premium for a religious plan, or a comparable price level.

## Plan Conscience Clause

1. Religious exemption

a) Religious plan sponsor could decline to include abortion services beyond minimum.

b) Definition of "religious" for plan same as in employer section.

2. Premiums to be set by market

a) Plans with and without abortion coverage are priced out actuarially and individuals choose among them. Plan with abortion coverage may cost less.