

111TH CONGRESS
2D SESSION

S. 3723

To prohibit taxpayer funding of insurance plans or health care programs
that cover abortion.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. COBURN (for himself, Mr. HATCH, Mr. VITTER, Mr. BENNETT, Mr. INHOFE, Mr. CRAPO, Mr. BOND, Mr. GRASSLEY, Mr. GRAHAM, Mr. CORNYN, Mr. MCCAIN, Mrs. HUTCHISON, Mr. RISCH, Mr. BROWNBACK, Mr. WICKER, Mr. ROBERTS, Mr. CHAMBLISS, Mr. VOINOVICH, Mr. JOHANNES, Mr. ISAKSON, Mr. ENZI, Ms. MURKOWSKI, Mr. THUNE, Mr. BARRASSO, Mr. BURR, and Mr. ENSIGN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit taxpayer funding of insurance plans or health
care programs that cover abortion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Excluding Abortion
5 Coverage from Health Reform Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings.

1 (1) On September 9, 2009, in a speech to a
2 joint session of Congress, the President pledged that
3 under health reform “no Federal dollars will be used
4 to fund abortions”.

5 (2) It has been longstanding Federal policy that
6 no Federal funds are used to pay for elective abor-
7 tions.

8 (3) Legislative language prohibiting any tax-
9 payer-funding of abortion was included in the
10 House-passed health reform bill (H.R. 3962; 111th
11 Congress) which passed as an amendment by a vote
12 of 240 to 194, but did not become law.

13 (4) Public Laws 111–148 and 111–152 (the
14 health care reform bills passed into law without bi-
15 partisan support) do not prohibit taxpayer dollars
16 from funding elective abortions or subsidizing cov-
17 erage for such abortions.

18 (5) Presidential Executive Order 13535 regard-
19 ing abortion funding restates accounting loopholes in
20 Public Law 111–148. Current law fails to restrict
21 abortion coverage in the newly created health insur-
22 ance exchanges, and lacks other necessary protec-
23 tions against Federal subsidies for abortion.

24 (6) Presidential Executive Order 13535 regard-
25 ing abortion funding does not contain a prohibition

1 on abortion coverage in the federally funded Pre-Ex-
2 isting Condition Insurance Plan program.

3 (7) In July 2010, independent, nonpartisan
4 groups revealed that several States had plans in
5 place that would have resulted in Federal funding
6 for elective abortions.

7 (8) The Department of Health and Human
8 Services issued regulations to prevent taxpayer-fund-
9 ed abortion coverage in the pre-existing conditions
10 insurance plan program, but the Administration in-
11 dicated that this action “is not a precedent for other
12 programs or policies given the unique, temporary na-
13 ture of the program and the population it serves”.

14 (9) Numerous recent polls have found a major-
15 ity of Americans oppose requiring people to pay for
16 abortion coverage through their taxes.

17 (10) Taxpayers cannot be confident that fund-
18 ing provided under Public Law 111–148 will not be
19 used to subsidize abortion and insurance coverage
20 that includes abortion in the many programs created
21 in that Act.

22 (11) Therefore, legislation preventing Federal
23 funds from being used to pay for elective abortions
24 is necessary to continue longstanding Federal policy
25 against the use of Federal funds for elective abor-

1 tions and to respond to the high demand from con-
 2 stituents that prohibitions be put in place.

3 **SEC. 3. EXCLUDING ABORTION COVERAGE FROM THE PA-**
 4 **TIENT PROTECTION AND AFFORDABLE CARE**
 5 **ACT.**

6 (a) IN GENERAL.—Section 1303 of the Patient Pro-
 7 tection and Affordable Care Act (Public Law 111–148),
 8 as amended by section 10104(e) of such Act, is amend-
 9 ed—

10 (1) by redesignating subsections (c) and (d) as
 11 subsections (e) and (f), respectively;

12 (2) by redesignating paragraph (4) of sub-
 13 section (b) as subsection (d) and transferring such
 14 subsection (d) after the subsection (c) inserted by
 15 paragraph (4) of this subsection with appropriate in-
 16 dentation;

17 (3) by amending subsection (b) to read as fol-
 18 lows:

19 “(b) SPECIAL RULES RELATING TO COVERAGE OF
 20 ABORTION SERVICES.—Nothing in this Act (or any
 21 amendment made by this Act) shall be construed to re-
 22 quire any health plan to provide coverage of or access to
 23 abortion services or to allow the Secretary or any other
 24 Federal or non-Federal person or entity in implementing

1 this Act (or amendment) to require coverage of or access
2 to such services.”;

3 (4) by inserting after subsection (b) the fol-
4 lowing new subsection:

5 “(c) LIMITATION ON ABORTION FUNDING.—

6 “(1) IN GENERAL.—No funds authorized or ap-
7 propriated by this Act (or an amendment made by
8 this Act), including credits applied toward qualified
9 health plans under section 36B of the Internal Rev-
10 enue Code of 1986 or cost-sharing reductions under
11 section 1402 of this Act may be used to pay for any
12 abortion or to cover any part of the costs of any
13 health plan that includes coverage of abortion, ex-
14 cept in the case where a woman suffers from a phys-
15 ical disorder, physical injury, or physical illness that
16 would, as certified by a physician, place the woman
17 in danger of death unless an abortion is performed,
18 including a life-endangering physical condition
19 caused by or arising from the pregnancy itself, or
20 unless the pregnancy is the result of an act of rape
21 or incest.

22 “(2) OPTION TO PURCHASE SEPARATE COV-
23 ERAGE OR PLAN.—Nothing in this subsection shall
24 be construed as prohibiting any non-Federal entity
25 (including an individual or a State or local govern-

1 ment) from purchasing separate coverage for abor-
2 tions for which funding is prohibited under this sub-
3 section, or a plan that includes such abortions, so
4 long as—

5 “(A) such coverage or plan is paid for en-
6 tirely using only funds not authorized or appro-
7 priated by this Act; and

8 “(B) such coverage or plan is not pur-
9 chased using—

10 “(i) individual premium payments re-
11 quired for a qualified health plan offered
12 through an Exchange towards which a
13 credit is applied under section 36B of the
14 Internal Revenue Code of 1986; or

15 “(ii) other non-Federal funds required
16 to receive a Federal payment, including a
17 State’s or locality’s contribution of Med-
18 icaid matching funds.

19 “(3) OPTION TO OFFER COVERAGE OR PLAN.—
20 Nothing in this subsection or section
21 1311(d)(2)(B)(i) shall restrict any non-Federal
22 health insurance issuer offering a qualified health
23 plan from offering separate coverage for abortions
24 for which funding is prohibited under this sub-

1 section, or a plan that includes such abortions, so
2 long as—

3 “(A) premiums for such separate coverage
4 or plan are paid for entirely with funds not au-
5 thorized or appropriated by this Act;

6 “(B) administrative costs and all services
7 offered through such coverage or plan are paid
8 for using only premiums collected for such cov-
9 erage or plan; and

10 “(C) any such non-Federal health insur-
11 ance issuer that offers a qualified health plan
12 through an Exchange that includes coverage for
13 abortions for which funding is prohibited under
14 this subsection also offers a qualified health
15 plan through the Exchange that is identical in
16 every respect except that it does not cover abor-
17 tions for which funding is prohibited under this
18 subsection.”;

19 (5) in subsection (e), as redesignated by para-
20 graph (1)—

21 (A) in the heading, strike “REGARDING
22 ABORTION”;

23 (B) in the heading of each of paragraphs
24 (1) and (2), strike each place it appears “RE-
25 GARDING ABORTION”; and

1 (C) in paragraph (1), insert “conscience
2 protection, abortion, or” after “State laws re-
3 garding”;

4 (6) in subsection (f), as redesignated by para-
5 graph (1), by striking “Nothing” and inserting
6 “Subject to subsection (g), nothing”; and

7 (7) by adding at the end the following new sub-
8 section:

9 “(g) NONDISCRIMINATION ON ABORTION.—

10 “(1) NONDISCRIMINATION.—A Federal agency
11 or program, and any State or local government that
12 receives Federal financial assistance under this Act
13 (or an amendment made by this Act), may not—

14 “(A) subject any individual or institutional
15 health care entity to discrimination; or

16 “(B) require any health plan created or
17 regulated under this Act (or an amendment
18 made by this Act) to subject any individual or
19 institutional health care entity to discrimina-
20 tion,

21 on the basis that the health care entity does not pro-
22 vide, pay for, provide coverage of, or refer for abor-
23 tions.

24 “(2) DEFINITION.—In this subsection, the term
25 “healthcare entity” includes an individual physician

1 or other health care professional, a hospital, a pro-
2 vider-sponsored organization, a health maintenance
3 organization, a health insurance plan, or any other
4 kind of health care facility, organization, or plan.

5 “(3) ADMINISTRATION.—The Office for Civil
6 Rights of the Department of Health and Human
7 Services is designated to receive complaints of dis-
8 crimination based on this subsection, and coordinate
9 the investigation of such complaints.”.

10 (b) CONFORMING AMENDMENT.—Section 1334(a)(6)
11 of such Act is amended to read as follows:

12 “(6) COVERAGE CONSISTENT WITH FEDERAL
13 POLICY.—In entering into contracts under this sub-
14 section, the Director shall ensure that no multi-State
15 qualified health plan offered in an Exchange pro-
16 vides coverage for abortions for which funding is
17 prohibited under subsection 1303(c) of this Act.”.

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