

Obama Administration Bans Abortion Coverage in Temporary Plans for Hard-to-Insure Americans

Far from abating, controversy over the issue of insurance coverage of abortion when government funds are in any way involved has perhaps even intensified since landmark health care reform legislation was signed into law earlier this year. In July, antiabortion activists, led by the National Right to Life Committee, began asserting that they had smoking-gun evidence that the administration had lied in its assurances that federal dollars under health care reform would not fund abortions. To support their claim, they cited language on the official Web sites of several states implying, in their view, that “elective” abortions would be covered under those states’ Pre-Existing Condition Insurance Plans (PCIPs), temporary high-risk pools created under the new law and substantially subsidized with federal funds.

A spokeswoman for the U.S. Department of Health and Human Services responded in a news release that none of the PCIPs—whether administered by the federal government or by the states—would be allowed to include abortion coverage except in cases of rape, incest or life endangerment. On July 29, the administration issued regulations on the PCIPs that made this abortion ban official. But in the interim, antiabortion lawmakers trumpeted an analysis from the Congressional Research Service (CRS) concluding that abortion coverage in the PCIPs was not technically banned under the health reform law or any prior law, including the Hyde amendment.

The administration’s action left partisans on both sides of the issue dissatisfied. Lawmakers and advocates supportive of abortion rights, agreeing with the CRS report, argued that the administration had no obligation to impose any restrictions on abortion in the PCIPs—which, they pointed out, are designed specifically for Americans struggling with chronic conditions, some of which might necessitate an abortion to protect a woman’s health. Moreover, they contended, even if the administration felt it politically necessary to comply with the spirit of the compromise abortion restriction in the health reform law, the PCIP ban goes well beyond that in practice. The abortion provision in the law allows plans in the health care exchanges, which ultimately will supplant the PCIPs starting in 2014, to cover abortion as long as the coverage is paid for exclusively by private premiums and guarantees are in place to ensure that no federal funds are used. The PCIPs, similarly, require all participants to pay a substantial premium with private dollars, but the option of coverage using those private dollars is not available under the regulation.

In anticipation of this criticism, the regulation asserts that the PCIP program is federally “created, funded, and administered” and that the “risk is borne by the Federal government”—all of which makes it akin to the Federal Employees Health Benefits Program (FEHBP), which operates under a similarly strict abortion

restriction (that is, no FEHBP plans may include abortion coverage). To reassure abortion rights supporters, White House Director of Health Reform Nancy-Ann DeParle argued that “in reality, no new ground has been broken. The program’s restriction on abortion coverage is not a precedent for other programs or policies given the unique, temporary nature of the program and the population it serves.”

Antiabortion forces, while taking credit for forcing the administration’s hand, pounced on DeParle’s statement as further evidence that the abortion restriction in the health reform law is ineffectual and that the administration is looking for ways to circumvent it. On the same day the regulation was issued, Rep. Chris Smith (R-NJ) introduced a bill with more than 150 cosponsors entitled the No Taxpayer Funding for Abortion Act. The bill’s supporters assert that its purpose is to codify the Hyde amendment and other annually renewed abortion funding restrictions. In fact, the legislation would go considerably further to impose a wide range of permanent legal restrictions on public-sector funding and private-sector insurance coverage. —*Adam Sonfield*