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On May 20, 2010, the Secretariat of Pro-Life Activities of the United States Conference of Catholic Bishops issued a statement supporting H.R. 5111, sponsored by Congressmen Pitts and Lipinski. H.R. 5111 is pro-life legislation intended to protect the unborn and the consciences of health care providers, and it is not surprising that the USCCB should support this bill. Unfortunately, the USCCB used this occasion to attack once again another major pro-life piece of legislation, the Patient Protection and Affordable Care Act (PPACA). The USCCB continues to misunderstand the provisions of PPACA and contribute to confusion about its content. This analysis is intended to correct the USCCB's erroneous characterizations of PPACA and clarify what it actually says and does.

First, the USCCB letter reasserts earlier claims that under PPACA federal funds will be used to subsidize health plans that cover abortions. Section 1303(b)(2) of PPACA, entitled "Prohibition of the use of federal funds" states clearly that the premium tax credits and cost-sharing reductions available under PPACA cannot be used by any health plan to pay for an abortion that could not currently be paid for by federal programs under the Hyde amendment, that is, in instances of rape, incest, or physical life endangerment of the mother. For health plans that cover abortion, the abortion coverage must be paid for separately by the enrollee with his or her own funds, and this private premium must fully cover the cost of any non-Hyde abortions. This private premium must also be kept in a separate account that must be audited by the states. Given the added costs of administering these separate funds, it is likely that insurers will have little interest in offering such plans. This is particularly true because of the pressure PPACA's minimum loss ratio requirements put insurers under to limit their administrative costs.

To claim that PPACA allows federal funds to pay for abortions because it provides premium subsidies to assist individuals in paying for health plans that independently—with private funds—cover abortions is as inaccurate as claiming that Medicare and Medicaid funds pay for abortions because they pay hospitals that independently, with payment from other sources, provide abortions. The issue is not whether federal funds pay insurers or providers that independently also cover or provide abortions, but whether

federal money can be used to pay for abortions. Under PPACA, federal subsidies simply cannot be used to pay for abortions. It is illegal.

Second, the USCCB letter claims H.R.5111 is necessary because appropriations under PPACA for community health centers can be used to pay for elective abortions. This statement ignores the plain facts that, 1) regulations governing community health centers prohibit CHC's from providing elective abortions, 42 C.F.R. § 50.303, and 2) the funds appropriated for CHC's under section 10503 are not paid directly and separately to CHC's but are rather "transferred to the Secretary of Health and Human Services to provide enhanced funding" for CHC's. These funds will be inextricably commingled with funds otherwise appropriated for the CHC's, which are covered by the Hyde Amendment. Finally, the executive order issued by the President under his constitutional authority to oversee the executive agencies prohibits the use of these funds for abortions not permitted under the Hyde Amendment.

The USCCB letter also once again raises the canard that "a long line of federal court decisions" has interpreted similar statutes to fund abortions in the absence of an explicit congressional prohibition. The USCCB has not been able to point to a single federal court decision that has ordered the funding of abortions that were prohibited by a federal regulation and an executive order. Court decisions have required states to fund abortions not prohibited by the Hyde Amendment under their Medicaid programs, but these cases have no relevance to a situation involving a federal regulation and an executive order, to which courts pay much greater deference than state laws. The most closely analogous case, *Rust v. Sullivan*, 500 U.S. 173 (1991), upheld a federal regulation prohibiting abortion counseling as a permissible interpretation of a federal law prohibiting abortion, even though it went well beyond the law. Similarly, in the case of PPACA, a federal court would uphold the regulation and executive order as permissible interpretations of the law governing CHC's, particularly because CHC's receive funding subject to the Hyde amendment.

Third, the USCBB letter challenges the conscience protection provisions of PPACA as inadequate. Section 1303(c) of PPACA expressly preserves all federal laws regarding "conscience protection, willingness or refusal to provide abortion, or discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion, or to provide or participate in training to provide abortions." The federal law to which this section refers is the Hyde/Weldon provision, which appears in the annual HHS appropriation bill and prohibits discrimination against individual or institutional providers that are unwilling to provide or facilitate abortions on grounds of conscience -- not only in federal programs, but also federally assisted state and local programs. PPACA does, therefore, protect providers and professionals against discrimination or violation of their conscience, in federal, state and local programs.

The USCCB letter specifically claims that section 1303(d) of PPACA, which provides that PPACA does not relieve providers of their obligation to comply with the Emergency Medical Treatment and Active Labor Act (EMTALA), results in a conflict with federal conscience protection law. In their statement of April 19, 2005, however, the USCCB

acknowledged that a conflict between EMTALA and the conscience protections of federal law is not possible. An elective abortion is never an emergency procedure.

There is nothing inherently objectionable in H.R. 5111 from a pro-life perspective, but it is not necessary, as the USCCB claims, to prevent federal funding of abortion and ensure conscience protections in health reform. Under PPACA, federal funds cannot be used to pay for abortion and the consciences of health care providers are protected. PPACA is pro-life. In its clarifying statement of May 21, the Bishops acknowledge that PPACA “expands health care coverage, implements many needed reforms, and provides welcome support to parenting women and adoptive families” moving toward the Church’s goal of universal access to health care. States are already enacting laws permitted by PPACA’s provisions that allow states to bar abortion coverage entirely from the exchanges. PPACA’s provisions allowing dependent coverage up to age 26, tax credits for small businesses that insure their employees, and providing high-risk pool coverage for uninsured Americans with pre-existing conditions are already in effect or will be shortly. In 2014, Medicaid expansions and health insurance subsidies will go into effect insuring millions of Americans. Many of these Americans, studies tell us, would die without care. The adoption tax credits created by PPACA are already in effect, helping Americans adopt children that might otherwise have been aborted.

Public polling repeatedly reveals that Americans are confused about what the health reform legislation does. The legislation is long and complicated, and some misunderstanding of the bill is inevitable. It is unfortunate, however, that this confusion continues to be fed by mischaracterizations of the terms of this legislation by the USCCB.