



TO: Interested Parties

FR: Sara Rosenbaum, Hirsh Professor and Chair

RE: Abortion provisions in the Senate Managers Amendment

December 21, 2009

Several individuals have asked for an assessment on the potential industry effects of the abortion provisions in the Senate Managers Amendment made available on December 18th, 2009. Our earlier analysis of the Stupak/Pitts Amendment can be found at http://www.gwumc.edu/sphhs/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_FED314C4-5056-9D20-3DBE77EF6ABF0FED.pdf

Taken together, the provisions of the amendment can be expected to have a significant impact on the ability or willingness of insurance issuers to offer Exchange products that cover a full range of medically indicated abortions. Furthermore, as with insurance laws generally, and for the reasons stated in our earlier analysis, the amendment could be anticipated to have considerable spillover effects. This is because companies that issue insurance products (or administered products in the case of sales to self-insured plans) obviously desire to sell these products in as many markets as possible. If one purchaser market places significant restrictions on one or more aspects of product design, it is likely that sellers will attempt to design their products to a common denominator, so that the product can be sold across all markets in which the company desires to do business. This is particularly true with modern health insurance coverage products, where the concern is not only the coverage but the provider network through which coverage will be obtained. Negotiating the elements of such a product is extremely difficult, and it is just as difficult to have to explain to providers that some of their patients will be insured for certain medical procedures while others will not.

The Senate amendment (§1303) provides as follows:

- Section 1303(a) provides that states may “elect to prohibit abortion coverage in qualified health plans offered through an Exchange in such state if such state enacts a law to provide for such prohibition.” A state making this election could reach all of the markets to which state insurance law applies, both for products sold in the Exchange and those sold outside the Exchange. Together these markets could represent a considerable proportion of all insured persons in a state, particularly states without large self-insured employer markets. Furthermore, because the amendment reaches the design of the product itself, it extends beyond the Hyde Amendment. The Hyde Amendment deals with the use of federal funding to directly pay for abortions, not with the nature of products sold by private insurers. Issuers doing business in such states presumably may determine that it is not sensible to sell a product covering medically indicated abortions in

any of the state's geographic markets, regardless of whether the purchaser is an individual in the exchange or a self-insuring employer.

- Section 1303(b) also allows issuers to offer products (unless prohibited under state law) that include many types of medically indicated abortions whose funding is prohibited under the Hyde Amendment. At the same time however, the amendment appears to require that the issuer collect --“from each enrollee in the plan without regard to the enrollee's age, sex, or family status” -- a separate payment for the prohibited abortions. Payments would have to be strictly segregated, subject to state insurance commissioner oversight and adherence to federal segregation requirements. For several reasons this provision could be expected to chill issuers' willingness to sell products that cover a range of medically indicated abortions. They would have to comply with complex audit standards and more importantly, they would have to collect an additional fee from each member of their plan, a step that could be expected to encounter broad resistance. (It is also not clear what the consequences would be for plan members who do not make the payment or whether non-payment would place them in arrears). The more logical response would be not to sell products that cover abortion services.