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TO: NRLC State Affiliates
FROM: Mary Spaulding Balch, J.D.
Director, Department of State Legislation
DATED: December 6, 2010
RE: PREVENTING TAXPAYER SUBSIDIZATION OF HEALTH INSURANCE COVERING
ELECTIVE ABORTIONS

The new federal health care law, known as the Patient Protection and Affordable Care Act, allows states to opt out of abortion coverage in state-based insurance "exchanges" it creates. Below is proposed language for states to do just that. This language allows the state to prohibit all qualified health plans offered through a state Exchange from including abortion coverage, except to prevent the death of the mother. It also has language which would prevent all other health plans, including health insurance contracts, plans or policies, offered outside of the Exchange, but within the State, from providing coverage for elective abortions except by optional separate supplemental coverage for abortion. We are also including another version for those states which would only pass this legislation if it contained an exception for rape and incest.

We strongly encourage state affiliates to bring this language to their state legislatures:

Sec. ____

(a) Pursuant to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, all qualified health plans offered through an Exchange established in the state are prohibited from including elective abortion coverage. Nothing in this section shall be construed as preventing anyone from purchasing optional supplemental coverage for elective abortions for which there must be paid a separate premium in accordance with subsection (d) in the health insurance market outside of the Exchange."

(b) No health plan, including health insurance contracts, plans or policies, offered outside an Exchange, but within the State, shall provide coverage for elective abortions except by optional separate supplemental coverage for abortion for which there must be paid a separate premium in accordance with subsection (d).

(c) For purposes of this section, an "elective abortion" means an abortion for any reason other

than to prevent the death of the mother upon whom the abortion is performed; provided, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which will result in her death.

(d) The issuer of any health plan providing elective abortion coverage:

(i) shall calculate the premium for such coverage so that it fully covers the estimated cost of covering elective abortions, per enrollee, determined on an average actuarial basis, in calculating which the issuer of the plan may not take into account any cost reduction in any health plan covering an enrollee estimated to result from the provision of abortion coverage, including prenatal care, delivery, or postnatal care;

(ii) if the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, shall require a separate signature, distinct from that to enroll in the health plan providing other coverage, in order to enroll in the separate supplemental plan providing elective abortion coverage.

(iii) shall provide a notice to enrollees, at the time of enrollment, that:

(A) specifically states the cost of the separate premium for coverage of elective abortions, distinct and apart from the cost of the premium for any health plan providing any other coverage in any health plan covering an enrollee,

(B) states that enrollment in elective abortion coverage is optional, and

(C) if the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, states that the enrollee, may choose to enroll in the plan providing other coverage without enrolling in the plan providing elective abortion coverage.

(e) The issuer of any health plan providing any coverage other than elective abortion shall not discount or reduce the premium for such coverage on the basis that an enrollee has elective abortion coverage.

(f) Any employer who offers employees a health plan providing elective abortion coverage shall, at the time of beginning employment, and at least once in each calendar year thereafter, provide each employee the option to choose or reject the separate supplemental elective abortion coverage.

(g) Any entity offering a group health plan providing separate supplemental elective abortion coverage, other than employers offering such a plan to their employees shall, at the time each group member begins coverage, and at least once in each calendar year thereafter, provide each group member the option to choose or reject the separate supplemental elective abortion coverage.

(h) Nothing in this section shall be construed to apply in circumstances in which federal law preempts state health insurance regulation.

RAPE/INCEST EXCEPTION LANGUAGE:

Substitute for subsection (c) above the following:

(a) For purposes of this section, an “elective abortion” means an abortion for any reason other than any of the following:

(i) an abortion to prevent the death of the mother; provided, that an abortion may not be deemed one to prevent the death of the mother upon whom the abortion is performed based on a claim or diagnosis that she will engage in conduct which will result in her death;

(ii) an abortion when the pregnancy is the result of criminal sexual conduct as defined in (*insert a citation of the section of the state criminal code prohibiting forcible rape; be careful NOT to include any provision of the state criminal code covering statutory rape [consensual intercourse with a minor]*), and the incident is reported within 48 hours after the incident occurs to a valid law enforcement agency for investigation; provided, however, if the victim is physically unable to report the criminal sexual conduct during any portion of that 48 hours, the incident must be reported within 48 hours after the victim becomes physically able to report the criminal sexual conduct, or

(iii) the pregnancy is the result of incest, as defined in [state statute], in which the mother is a minor, and the incident and relative are reported to a valid law enforcement agency prior to the abortion.