

Congress of the United States
Washington, DC 20515

May 27, 2011

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

As members of Indiana's Congressional Delegation, we write to you concerning a matter of urgency to our state and of far reaching importance to every state that administers its own Medicaid program.

As you know, Governor Mitch Daniels signed HEA1210 into law on May 10, 2011. This law prohibits state and federal funds from going to "any entity that performs abortions or maintains or operates a facility where abortions are performed" except for hospitals or ambulatory surgical centers. On May 12, the Indiana Family and Social Services Administration (FSSA) submitted a Medicaid State Plan that reflects changes made by Indiana law HEA1210.

We understand that the Centers for Medicare and Medicaid Services (CMS) must now review this plan. We trust that, in accordance with federal guidelines, you will give the state plan ready consideration. Your sanction would respect the intent of the state legislature, accept the will of the people of Indiana, and ensure future Medicaid services. As you weigh issues of grave consequence, we draw your attention to three essential facts.

First, the Indiana legislature has prudently fulfilled Medicaid's commitment to provide non-abortion services. Despite persistent claims to the contrary, Indiana's law *does not change Medicaid recipients' benefits*. It would only change where Hoosiers receive their benefits. It is our understanding that FSSA determined that HEA1210 may impact twenty-one counties. FSSA then identified approximately 800 provider locations, in those same counties, which are eligible to provide Medicaid clients with health and family planning services. As hundreds of facilities will still provide the same non-abortion services, we believe that the Indiana plan meets its obligation to provide care.

We do not dispute that the Social Security Act, 1905(1)(4)(C) and codified at 42 U.S.C. 1396(a)(4)(C), requires non-abortion family planning services. In this matter, we agree with a letter you received on May 26, 2011 from several United States Senators. However, we also note that the Medicaid Act declares that "[i]n addition to any other authority, a state may exclude any individual or entity [from participation in the state's Medicaid program] for *any reason* for which the Secretary could exclude the individual or entity from participation in [Medicare]." We

believe that the Hyde Amendment provides a sufficient and time-honored foundation for such an exclusion.

Second, by passing HEA1210 and revising the State Plan to reflect that change, Indiana enforced a philosophy that is enshrined in the federal restriction commonly known as the Hyde Amendment. Since 1976, this bipartisan legislation has sought to prevent federal funding of abortions. However, Planned Parenthood, the single largest abortion provider in the nation, still receives funds for non-abortion services. In reality, by paying for total operational costs, these subsidies free other funds for abortions. Passage of HEA1210 has effectively closed any potential loophole and committed Hoosiers to the true intent of the Hyde Amendment.

Finally, let us clearly assert that HEA1210 does nothing to prohibit Hoosiers from seeking abortions from an unsubsidized affiliate. If a health care provider firmly believes that abortions are an indispensable part of its business model, it is free to pursue that model. The people of Indiana simply demand that they do so without taxpayer support.

Hoosiers and their elected representatives have spoken clearly. As other states consider similar legislation, your actions will send a strong message to a national audience. We ask that you affirm each state's ability to structure its own Medicaid program. For all of the above reasons, we trust that you will find that HEA1210 and the Indiana Medicaid Plan not only comply with federal Medicaid guidelines and the Hyde Amendment- they improve them.

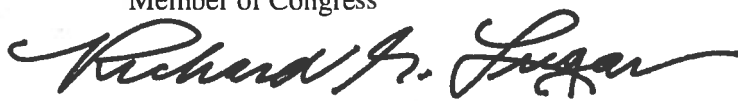
Sincerely,



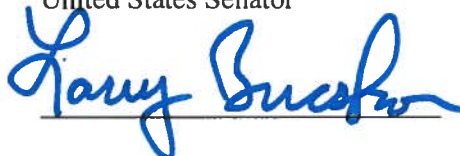
Marlin Stutzman
Member of Congress



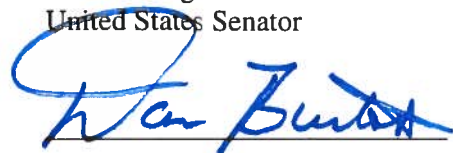
Dan Coats
United States Senator



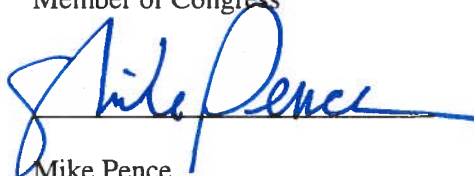
Richard Lugar
United States Senator



Larry Bucshon
Member of Congress




Dan Burton
Member of Congress



Mike Pence
Member of Congress



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