Congress of the United States
Washington, DC 20515

December 18, 2014

The Honorable Sylvia Mathews Burwell
Secretary, Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

Dear Secretary Burwell,

Passage of the Affordable Care Act (ACA) marked a radical departure from the longstanding and bipartisan principles of protecting taxpayer dollars from funding elective abortions. Since the ACA, which is estimated to provide hundreds of billions of dollars in subsidies to insurance plans,[1] circumvents the Hyde amendment, it allows funding for plans that include abortion provided they comply with an accounting gimmick.

We have passed H.R. 7, the "No Taxpayer Funding for Abortion Act" in the House, but it has not been considered by the Senate. H.R. 7 would replace the accounting gimmick with the Hyde amendment. *However, until H.R. 7 becomes law, it is essential that the administration at least follow the minimal statutory requirements related to the accounting gimmick, often referred to as the Nelson amendment. Unfortunately, the proposed rule does the opposite by actually telling issuers how to avoid the requirements outlined in the ACA.*

As a part of the accounting gimmick, statutory language in section 1303 of the ACA[2] requires an abortion surcharge. Specifically, issuers of Exchange plans that cover elective abortion must "collect from each enrollee in the plan" a "separate payment" for elective abortions, defined as abortions in cases other than rape and incest or to save the life of the mother, and a "separate payment" for all other services. The statute even goes on to give the example that "In the case of an enrollee whose premium for coverage under the plan is paid through employee payroll deposit, the separate payments required under this subparagraph shall each be paid by separate deposit."

The required abortion surcharge was explained this way by then-Senator Ben Nelson (D-NE): *"...the insurance company must bill you separately, and you must pay separately from your own personal funds–perhaps a credit card transaction, your separate personal check, or automatic withdrawal from your bank account– for that abortion coverage. Now, let me say that again. You have to write two checks: one for the basic policy and one for the additional coverage for abortion...."*[3]

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[1] http://www.cbo.gov/sites/default/files/cbofiles/attachments/45231-ACA_Estimates.pdf
[2] http://www.law.cornell.edu/uscode/text/42/18023
[3] *155 Cong. Rec. S14134 (Dec. 24, 2009)* http://www.gpo.gov/fdsys/pkg/CREC-2009-12-24/pdf/CREC-2009-12-24-pt1-PgS14134-2.pdf#page=1

In contrast to the law, the proposed rule permits issuers to collect the premium in a single transaction. Additionally, issuers are permitted but *not required* "to separately identify the premium for non-excepted abortion services on the monthly premium bill in order to comply with the separate payment requirement." Therefore, under the proposed rule, the surcharge is not billed separately and will likely be all but invisible to the consumer.

The text of the law and the legislative history is clear. The abortion surcharge must be a separate payment. However, the proposed rule brazenly ignores the separate payment requirement in the law and instead specifies that the abortion surcharge may be collected in a single payment and the surcharge does not even have to be listed on the consumer's bill.

We urge you to modify the proposed rule so that issuers are directed to bill and collect the abortion surcharge separately as described in the plain text of the law.

Sincerely,

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