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MEMORANDUM

March 19, 2010

To: Hon. Vic Snyder
Attention: Katheryn Hargis

From: Jon O. Shimabukuro
Legislative Attorney
American Law Division
Ext. 7.7990

Subject: H.R. 3590 and Coverage for Elective Abortions by Qualified Health Plans

This memorandum responds on a rush basis to your request for a discussion of coverage for elective abortions by qualified health plans that would be available through a health insurance exchange pursuant to H.R. 3590, the Patient Protection and Affordable Care Act.¹ H.R. 3590 indicates that an issuer of a qualified health plan that provides coverage for elective abortions could not use any funds attributable to a premium assistance credit or cost-sharing reduction to pay for such services.² Individuals who would be eligible for a premium assistance credit or cost-sharing reduction could select a plan that provides coverage for elective abortions, subject to funding segregation requirements that would be imposed on both the plan issuer and the enrollees in such a plan.

Under H.R. 3590, the Secretary of the Treasury would make premium assistance credit or cost-sharing reduction payments to the plan issuers.³ Issuers of qualified health plans that provide coverage for elective abortions would be required to collect two separate payments from each enrollee in the plan: one payment that reflects an amount equal to the portion of the premium for coverage of health services other than elective abortions (after any reduction resulting from the application of the premium assistance credit or cost-sharing reduction); and another payment that reflects an amount equal to the actuarial value of the coverage for elective abortions.⁴ The plan issuer would be required to deposit these separate payments into separate allocation accounts that would consist solely of each type of payment and would be used exclusively to pay for the specified services.⁵ Payment for elective abortion services provided to an

¹ For additional information on abortion and the House- and Senate-passed health reform measures, see CRS Report R41013, *Abortion and the House- and Senate-Passed Health Reform Measures*, by Jon O. Shimabukuro. The term “elective abortions” is used to describe abortions for which the expenditure of federal funds appropriated for the Department of Health and Human Services is not permitted, based on the law in effect six months prior to a plan year.

² H.R. 3590, 111th Cong. § 1303(b)(2)(A) (as amended by § 10104(c)) (2009). Under § 1303(a)(1) of H.R. 3590 (as amended by § 10104(c)), a state could elect to prohibit abortion coverage in qualified health plans offered through a health insurance exchange by “enact[ing] a law to provide for such prohibition.”

³ H.R. 3590, 111th Cong. § 1412(a)(3) (2009).

⁴ H.R. 3590, 111th Cong. § 1303(b)(2)(B) (as amended by § 10104(c)) (2009).

⁵ H.R. 3590, 111th Cong. § 1303(b)(2)(C) (as amended by § 10104(c)) (2009).

enrollee would appear to be made from the account that includes only those premium payments that reflect the elective abortion coverage.

State health insurance commissioners would ensure compliance with the segregation requirements in accordance with applicable provisions of generally accepted accounting requirements, Office of Management and Budget circulars on funds management, and Government Accountability Office guidance on accounting.⁶

To determine the actuarial value of the coverage for elective abortions, the plan issuer would estimate the basic per enrollee, per month cost, determined on an average actuarial basis, for including such coverage.⁷ The estimate could take into account the impact on overall costs of including coverage for elective abortions, but could not take into account any cost reduction estimated to result from such services, such as prenatal care, delivery, or postnatal care.⁸ The per month cost would have to be estimated as if coverage were included for the entire population covered, but could not be less than \$1 per enrollee, per month.

⁶ H.R. 3590, 111th Cong. § 1303(b)(2)(E) (as amended by § 10104(c)) (2009).

⁷ H.R. 3590, 111th Cong. § 1303(b)(2)(D)(i) (as amended by § 10104(c)) (2009).

⁸ H.R. 3590, 111th Cong. § 1303(b)(2)(D)(ii) (as amended by § 10104(c)) (2009).
