

WebMemo



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Abortion Coverage in President Obama's Health Care Reform Bill

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President Obama has put forward another variant of health care reform whose foundation is H.R. 3590. Nearly a year after the President launched the health reform process with a White House summit, public opinion has moved even more strongly in the direction of keeping longstanding prohibitions on federal financing of abortion and plans that cover abortion. Despite this fact, H.R. 3590 includes multiple provisions that facilitate abortion funding, including new grants to federally qualified health centers (FQHCs) that contain no restriction on abortion payments whatsoever.

Moreover, H.R. 3590 provides ample room for administrative agencies of government, including the Department of Health and Human Services (HHS) and the Office of Personnel Management (OPM), to dramatically expand federal involvement in abortion without further congressional authorization. Without inclusion of the Stupak–Pitts amendment, H.R. 3590 marks a historic departure from the federal policy on taxpayer-funded abortions that has prevailed for more than three decades.

Public Rejects Taxpayer Coverage for Abortion. Polls taken in the U.S. have routinely showed majority support for limits on taxpayer funding of abortion.¹ Since 1976, restrictions on such funding have grown to span numerous public programs, including Medicaid, the Federal Employee Health Benefits Program, the Indian Health Service, appropriations for the District of Columbia, and many more. Nearly two dozen federal programs or agencies are covered by such policies, which include

measures to protect the right of medical personnel and health care researchers not to participate in abortions.

In March 2009, President Obama convened a summit of insurance industry leaders at the White House to discuss reform proposals. The summit did not include a discussion of one of the most likely sticking points in any health care reform proposal: the future application of the appropriations limit known as the Hyde Amendment. This annual amendment—and similar provisions applied to entities ranging from the Indian Health Service to the Defense Department to the District of Columbia—bars coverage of abortions except in narrow circumstances. The Hyde Amendment was first adopted by Congress in 1976 and has been renewed each year since.²

When consensus on abortion funding eluded congressional negotiators last summer, President Obama addressed Congress and asserted, “One more misunderstanding I want to clear up—under our plan, no federal dollars will be used to fund abortions.”³ However, it took a bipartisan amendment by Congressmen Bart Stupak (D–MI) and Joe Pitts (R–PA) to bar all funds authorized or appropri-

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ated under the bill—including plans purchased using its new system of affordability credits—from covering abortion. The vote on Stupak–Pitts was 240–194 in favor of the amendment.

The margin of victory for Stupak–Pitts clearly reflected continuing public sentiment. A CNN poll taken shortly after the House vote found that 60 percent of Americans oppose public funding of abortion. One month later, a Quinnipiac University poll showed 72 percent of Americans oppose abortion funding with taxpayer dollars.⁴

Senate Bill Funds Abortion in Multiple Ways.

Despite this level of public support for excluding abortion subsidies from health care reform, H.R. 3590 effectively finances abortions in several ways, even creating a new appropriation for FQHCs⁵ that contains no limit at all on abortion subsidies. Among the most important of these provisions, the Senate bill⁶ would:

- Establish a mechanism for permitting the funding of elective abortions by private health plans that receive federal subsidies in the form of premium tax credits. The bill creates a policy of segregating funds that presumptively keeps the premium payment for the overall plan separate from a premium of not less than \$1 per month

per subscriber that pays for elective abortions. All enrollees in these plans would be required to make both types of premium payments, irrespective of age, sex, or family status.

- Directly appropriate \$7 billion over five years in operating funds for FQHCs. Because these funds would not need to be included in the annual appropriations bill for the Department of Labor and HHS, and because the underlying statute includes no limitation on abortion funding, these funds—as well as \$1.5 billion in appropriations for the National Health Service Corps and \$1.5 billion for FQHC construction and renovation—could be used to pay directly for elective abortions and to expand abortion facilities.
- Require OPM to contract with private insurers to offer at least two multi-state health insurance plans in each state. By law, at least one of these plans must exclude abortion coverage, but OPM will have discretion to organize and promote the other multi-state plan so that it includes elective abortion coverage. This multi-state plan would be governed by the same “segregation of funds” device that would oblige every enrollee in these plans to pay not less than \$1 per month for abortion coverage. This abortion premium would be

1. CNN Politics, “Poll: Majority Favor Abortion Funding Ban,” November 18, 2009, at <http://www.cnn.com/2009/POLITICS/11/18/abortion.poll> (March 3, 2010). Reflecting public sentiment, 33 of the 50 states have strict legislative limits on use of state funds for elective abortions. Of the remaining 17 states, only four voted legislatively to use state funds for elective abortions; the remainder fund abortions under court order.
2. National Committee for a Human Life Amendment, “The Hyde Amendment,” April 2008, at <http://www.nchla.org/datasource/factsheets/4FSHydeAm22a.08.pdf> (March 3, 2010).
3. *The New York Times*, “Obama’s Health Care Speech to Congress,” September 9, 2009, at <http://www.nytimes.com/2009/09/10/us/politics/10obama.text.html> (March 3, 2010).
4. Quinnipiac University, “U.S. Voters Oppose Health Care Plan by Wide Margin, Quinnipiac National University Poll Finds; Voters Say 3-1, Plan Should Not Pay for Abortions,” December 22, 2009, at <http://www.quinnipiac.edu/x1295.xml?ReleaseID=1408> (March 3, 2010).
5. FQHCs, sometimes called Community Health Centers, are primary health clinics that serve low-income Americans. Grants to the centers were authorized under Section 330 of the Public Health Service Act of 1944 (PHSA). By law, the centers must assist a medically underserved population and offer a sliding-fee scale. There are an estimated 1,250 such centers operating in the U.S. Section 330 of the PHSA requires the centers to offer “family planning,” “prenatal services,” and “perinatal services.” Abortion is not specifically excluded from FQHC services, and the Hyde Amendment limitation applies only to those FQHC funds that derive from specific appropriations through the annual Department of Labor/HHS spending bill.
6. For a detailed comparison of the House and Senate bills, see Americans United for Life, “Abortion Funding in Existing Law and Health Care Reform Legislation,” January 6, 2010, at <http://www.realhealthcarerespectslife.com/wp-content/uploads/2009/10/Comparison1.pdf> (March 3, 2010).

executed by check or even a separate monthly payroll deduction for abortion.

- Leave to the discretion of HHS whether a mandate for “preventative services” for women under the bill could be interpreted to include elective abortions. Efforts to include language clarifying that this does not include abortion were rebuffed.
- Leave unanswered whether its non-preemption provisions include state laws on abortion beyond those specifically enumerated in the bill. State laws on abortion funding and parental notification and consent are specifically protected from preemption. The Senate bill is silent on whether it could be construed to preempt these state laws regarding such topics as late-term abortions.

Reconciliation Offers Little Hope. The President’s own proposal for health care reform⁷ acknowledges that it works from the premises of H.R. 3590. It adds nothing new with respect to the abortion language of H.R. 3590, and it can therefore be presumed to envision its enactment. In fact, the White House proposes to boost the direct appropriation for FQHCs to \$11 billion over five years. Again, these funds are governed by no abortion funding limitation whatsoever.

Moreover, the prospect of using the budget reconciliation process to implement House-supported changes to the Senate bill holds out little hope for congressional approval of Stupak–Pitts. On March 2, House Speaker Nancy Pelosi acknowledged that changes to abortion law could not occur in reconciliation because “under the budget resolution you can only take up issues that are central to the budget,” and abortion is not among those issues.⁸

Hyde on the Chopping Block. It is clear that the Obama Administration and congressional leadership are intent on providing taxpayer funds for the coverage of elective abortion. Direct subsidies to FQHCs, exclusion of the Stupak–Pitts Amendment, and refusal to include clarifying language excluding such coverage all indicate that the Hyde Amendment is on the chopping block.

Members of Congress should demand that taxpayer coverage of abortion be excluded from the final health care bill. As numerous polls indicate, they will have the American people on their side.

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7. The White House, “The President’s Proposal,” February 22, 2010, at <http://www.whitehouse.gov/sites/default/files/summary-presidents-proposal.pdf> (March 3, 2010).

8. Steven Ertelt, “Pelosi Admits Reconciliation Won’t Stop Abortion Funding in Health Care Bill,” LifeNews.com, March 2, 2010, at <http://www.lifenews.com/nat6061b.html> (March 3, 2010).