



Senate Bill More Closely Preserves Abortion Status Quo

How Abortion Funding Would Be Affected by Health Reform Bills

Jessica Arons November 23, 2009

Opponents and supporters of abortion rights agreed early on, in theory, to maintain the “status quo” with “abortion neutral” health care legislation. The idea was that health care reform is not the appropriate place to continue the fight over abortion and neither side should attempt to use health care reform as a vehicle to further expand or restrict access to abortion.

In pursuit of this objective, Rep. Lois Capps (D-CA) introduced an amendment in the House Energy & Commerce Committee that attempted to strike a balance and preserve the status quo on abortion funding. This proposal was adopted and ultimately included in the original House bill. The Senate Finance Committee also passed a bill that closely mirrored the Capps Amendment’s treatment of abortion funding.

Yet some abortion rights opponents refused to accept the Capps compromise and continued to lobby for further restrictions. Negotiations broke down and House Speaker Nancy Pelosi (D-CA) let Rep. Bart Stupak (D-MI) introduce an amendment that placed additional restrictions on abortion funding. In contrast, the merged Senate bill—released November 18—maintains most of the Capps compromise, but inserts additional provisions to ensure that no federal money will be used to pay for abortion services beyond those currently allowed by federal law. These provisions may go further toward addressing abortion rights opponents’ concerns, but they may also require new concessions from abortion rights advocates. Further analysis is necessary to determine the full ramifications of this new language on abortion coverage.

This chart explains the current law on abortion funding and shows how the House and Senate bills would maintain or change the status quo.

	Current law	Original House health reform bill (Capps Amendment)	Senate health reform bill (Reid language)	House health reform bill (Stupak Amendment)
The Hyde Amendment	The <u>Hyde Amendment</u> prohibits federal Medicaid and Medicare money from being spent on most types of abortion, including pregnancies that threaten the woman's health or involve fetal anomalies. Federal money can only be used to pay for an abortion when the pregnancy threatens the life of the woman or results from rape or incest.	The Hyde Amendment restrictions would apply to all insurance plans that participate in the health insurance exchange, whether those plans are operated by private insurers or by the federal government's public option plan. In other words, no federal funding, including affordability credits or other subsidies, would be used to pay for abortions beyond what is currently allowed. Private premiums would be segregated from public funds and only the private premiums could pay for abortion services beyond those allowed by the Hyde Amendment.	The Hyde Amendment restrictions would apply to all public and private insurance plans that participate in the health insurance exchange. In other words, no federal funding, including affordability credits or other subsidies, would be used to pay for abortions beyond what is currently allowed. Private premiums would be segregated from public funds and only private premiums could pay for abortion services beyond those allowed by the Hyde Amendment. In addition, the HHS Secretary could only offer full abortion coverage in a community health insurance option if he or she assures compliance with the rule requiring segregation of funds in accordance with a variety of accounting standards and takes all necessary steps to ensure the U.S. government does not bear the insurance risk for the additional abortions services.	The public option would not be allowed to cover abortion, no matter how it is funded. No taxpayer money could be used to pay for abortion services or for insurance plans that include abortion services beyond those allowed by Hyde, even if those services are paid for entirely with private money. Insurers could only sell plans that include abortion to customers who can pay 100 percent of their premiums without government assistance.
Other government programs	Laws similar to the Hyde Amendment that restrict coverage of abortion services also apply to military employees and their dependents, federal employee health plans, members of the Peace Corps, women in federal prisons and detention centers, and Native Americans who receive health care through the Indian Health Services.	Current restrictions on federal spending for abortion services in government programs would not change.	Current restrictions on federal spending for abortion services in government programs would not change.	Current restrictions on federal spending for abortion services in government programs would not change. It is possible that government <u>payments to employer-sponsored insurance plans</u> outside the exchange might carry the Stupak restrictions.
States	States have the option to use their own money to pay for abortion services beyond what is permitted under the Hyde Amendment, and <u>17 states</u> currently do so. Federal money subsidizes these state Medicaid programs even though they cover abortion.	Federal money would subsidize plans that cover abortion—just like they currently do for state Medicaid plans and employer plans—but no public money would be used to pay for abortion services not allowed by the Hyde Amendment. Government money would only be used to help pay for the other medical services covered by those plans.	Federal money would subsidize plans that cover abortion—just like they currently do for state Medicaid plans and employer plans—but no public money would be used to pay for abortion services not allowed by the Hyde Amendment. Government money would only be used to help pay for the other medical services covered by those plans. A state may require coverage of abortion services beyond those allowed by the Hyde Amendment in a community health insurance option, as long as no funds flowing through or from the government option or any other federal funds pay for those services, and as long as the U.S. government bears no insurance risk for those services.	Unlike the Hyde Amendment, which allows states to use their own money to finance abortions, private insurers would not be able to use private premiums to finance abortions if there is even one person in the plan who used a government subsidy to pay a share of their premium.
Private insurance	Private insurance companies are allowed to decide whether to cover abortion services, and <u>87 percent</u> of typical employment plans currently provide such coverage. The federal government subsidizes these plans through an employer tax credit, even if the plans include abortion.	Each plan in the exchange could decide whether to cover abortion services beyond those allowed by the Hyde Amendment, provided that at least one plan in each market area offers such services and one plan does not. This provision goes beyond current law to guarantee that consumers have the option to purchase a plan that suits their medical needs and their values. No abortion services—even those allowed by the Hyde Amendment for cases that threaten the woman's life or result from rape or incest—can be mandated as part of a minimum benefits package.	Each plan in the exchange could decide whether to cover abortion services beyond those allowed by the Hyde Amendment, provided that at least one plan in each market area offers such services and one plan does not. This provision goes beyond current law to guarantee that consumers have the option to purchase a plan that suits their medical needs and their values. No abortion services—even those allowed by the Hyde Amendment for cases that threaten the woman's life or result from rape or incest—can be mandated as part of a minimum benefits package.	Because approximately <u>86 percent</u> of exchange participants will rely on some government assistance to purchase health insurance, it is unlikely private insurers will try to offer abortion services in their plans. Insurers would be allowed to sell abortion-only insurance riders in the exchange, but, again, it is unlikely they will do so. There is <u>no evidence</u> that any insurance companies sell such riders in the five states where abortion coverage is required to be sold in this manner.