



The Stupak Amendment to H.R.3962 – Maintaining Existing Law

Introduction

While pro-abortion groups claim that the [Stupak Amendment](#), added to H.R. 3962 by a vote of 240-194, with 64 Democrats voting in favor of the amendment, is broader than existing federal law, they are incorrect. In reality, the Stupak Amendment, which ensures that funds authorized and appropriated through the bill will not pay for abortions or subsidize insurance plans that cover abortions mirrors the [“principle that has been in place for a very long time.”](#)¹the [Hyde Amendment](#),² and thus maintains the status quo. Furthermore, its inclusion is necessary as part of health care reform because the Hyde Amendment and other existing federal prohibitions on abortion coverage and funding will **not** apply to the new programs created by H.R. 3962.³

I. Current Federal Law

The Hyde Amendment has been added yearly to the Labor, Health and Human Services (LHHS) appropriations bill to prohibit federal funding from being used to pay for abortions (except in the cases of rape, incest or life of the mother) since 1976. Spending is covered by Hyde if (1) the money is allocated through the yearly appropriations process, **AND** (2) the money flows through HHS (as with Medicaid).⁴

¹ See Nov. 9, 2009 interview with President Obama, <http://abcnews.go.com/Politics/abc-news-exclusive-obama-jobs-health-care-ft/story?id=9033559>.

² See http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2764enr.txt.pdf, pg. 365.

³ See Congressional Research Service Memo: Availability of Funds in the Public Health Insurance Option Account in Section 222(b)(1) of H.R. 3200, August 31, 2009; Congressional Research Service Memo: Availability of Funds in the Health Insurance Exchange Trust Fund in Section 207 of H.R. 3200, August 28, 2009.

Both 1 & 2 are required for Hyde to apply. The Hyde Amendment is used to prevent federal Medicaid dollars (as well as state matching funds) from being used to pay for abortions. Individuals who fall within 150% of the federal poverty level qualify for Medicaid.

Also, federal dollars are prohibited from subsidizing private plans that cover abortion. Private plans participating in the Federal Employee Health Benefits Program (FEHBP) cannot offer coverage of abortion because the plans are subsidized by the government (and, thus, by taxpayer funds). In other words, federal employees cannot purchase an insurance plan that includes abortion coverage.

Thus, two principles were established in federal law before health care reform was even being considered – federal dollars are not used to pay for abortions and federal dollars are not used to subsidize insurance plans that cover abortions.

II. **Programs Created Through H.R. 3962**

Before H.R. 3962 was modified by the Stupak Amendment, the bill allowed the government health plan, or “public option,” to cover elective abortion and permitted federal dollars to be used towards private insurance plans that cover abortion via “affordability credits.” Under H.R. 3962, individuals who are between 150% and 400% of the federal poverty level can qualify for federally subsidized “affordability credits” as a means of offsetting the cost of purchasing health insurance. These affordability credits can be applied to any health care plan participating in the newly created healthcare “Exchange.”

The Stupak Amendment ensures that the public option does not cover abortions and that, while private insurance plans that cover abortion may participate in the Exchange, they may not receive government subsidization through affordability credits. In other words, the Stupak amendment ensures that individuals who fall within 150 to 400% of the federal poverty level, who choose to accept affordability credits from the government to help pay for insurance, must choose a plan that does not cover elective abortions.

⁴ 25 U.S.C. Sec. 1676 applies any abortion funding limitation found in HHS appropriations (the Hyde Amendment) to the Indian Health Service (even though it is funded through the Interior Appropriations Bill).

It is important to note that, under the Stupak Amendment, every insurance company that includes a plan in the Exchange that covers abortion must include a second plan that is identical to the first plan in every aspect *except* that it does not cover abortion. Therefore, everyone who purchases insurance through the Exchange has access to the same coverage, with the only exception being that those who receive affordability credits cannot use those government dollars to purchase insurance plans that include abortion coverage.

III. The Hyde Amendment Mirrored in the Stupak Amendment

The Hyde Amendment and the Stupak Amendment address different laws. However, the amendments' provisions and their effects on the laws to which they apply are virtually identical.

- Both the Hyde Amendment and the Stupak Amendment prohibit federal funds that are authorized or appropriated in connection with their underlying legislation from being used to pay for abortion (Hyde 507(a), Stupak 265(a)).
- Hyde and Stupak also both prevent federal funds from being used to subsidize health care plans that offer abortion coverage (Hyde 507(b) and (c), Stupak 265(a)).
- Both Amendments make exceptions to the federal funding ban for abortions in the cases of rape, incest, and life of the mother. (Hyde 508(a)(1-2), Stupak (265(a)).
- Both Amendments permit states to offer supplemental abortion coverage (Hyde 508(b), Stupak 265(b)).
- Both Amendments specify that supplemental abortion coverage must be funded from separate funds, not tied to federal funding. Specifically, supplemental abortion coverage cannot be covered by state Medicaid dollars because state Medicaid money is matched by the federal government with federal funds (Hyde 508(b), Stupak 265 (b)(1) and (b)(2)(A-B)), and federal funds are prohibited from paying for abortions.

- Both Amendments permit private health plans to offer abortion coverage, (Hyde 508(c), Stupak 265(c)) and the Stupak amendment specifies in 265(c)(3) that private health insurance plans participating in the health care exchange may choose to offer two different plans, one that covers abortion and one that does not (but identical in every other respect), with the plan that covers abortion being available only to individuals who do not receive federally subsidized affordability credits.

Conclusion

The Hyde Amendment prohibits federal funding of abortion through Medicaid, while similar laws prohibit federal funding of abortion through other government programs. **The status quo on abortion funding is this: The federal government does not pay for abortions or subsidize plans that cover abortions.** The Stupak Amendment applies these principles to H.R. 3962 by ensuring that the public option does not pay for abortions, as with Medicaid, and that private plans that cover abortions do not receive federal subsidies, as with the Federal Employees Health Benefits Program.