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WHAT DOES THE STUPAK AMENDMENT REALLY DO?

On November 7, 2009, during consideration of the Affordable Health Care for America Act (H.R. 3962), Rep. Bart Stupak (D-MI) and other pro-life members offered an amendment to prevent the health care reform bill from subsidizing coverage of elective abortions. Other sponsors included Rep. Joseph Pitts (R-PA), Brad Ellsworth (D-IN), Marcy Kaptur (D-OH), Kathy Dahlkemper (D-PA), Chris Smith (R-NJ) and Dan Lipinski (D-IL). The amendment was adopted 240 to 194, with the support of 64 Democrats. The bill was later approved 220 to 215, and sent to the Senate where debate will continue.

There are a number of misunderstandings and false claims regarding the Amendment adopted by the House. Here is a summary of what it really does,¹ and some answers to frequently asked questions:

What does the Stupak Amendment do?

1. It applies to this legislation the longstanding policy of the Hyde Amendment, which has governed other federal health programs for over three decades: No funds authorized or appropriated under this Act (including the "affordability credits" used to help individuals purchase health coverage) may be used for elective abortions, or for benefits packages that include such abortions.

2. This does not apply to abortions in cases of danger to the mother's life or rape/incest.

3. The amendment clearly states that it does *not* prevent the following:

(a) Any individual whose private coverage is *not* federally subsidized may purchase (or continue to be covered by) a plan that includes elective abortions, paid for with that individual's premium dollars. This includes individuals who receive health insurance through their employers, and those who may want to purchase it individually on the new Exchange (where health plans will compete to sell insurance to those who lack employer-based coverage).

(b) A private insurer participating in the Exchange may sell a health plan that includes elective abortions to non-subsidized individuals on the Exchange, but then must also offer the same plan *without* elective abortions (selling only the latter version to federally subsidized purchasers).

¹ The National Public Radio web site has a brief but accurate summary, www.npr.org/templates/story/story.php?storyId=120251035. The Amendment text is posted at www.rules.house.gov/111/SpecialRules/hr3962/111_part3_hr3962.pdf.

(c) Any individual, even someone whose overall health plan was purchased with the help of affordability credits, may use private funds to purchase a supplemental policy covering abortions; any private insurer may sell such a policy.

4. All contrary provisions in the bill are deleted – provisions allowing the HHS Secretary to include elective abortions in the government-run “public plan”; allowing federal subsidies to support plans that include such abortions; forbidding health plans to “discriminate” between abortion facilities and other health facilities; etc.

Questions about the Amendment

1. What other federal health programs are currently covered by provisions like the Stupak Amendment?

All current programs are. Medicaid (covering 53 million people), Medicare (35 million), and other programs funded through the Department of Health and Human Services are covered by the same policy through the Hyde Amendment. Some other examples:

- The Federal Employees Health Benefits Program (covering 8 million federal employees) prevents the use of federal funds for “the administrative expenses in connection with any health plan... which provides any benefits or coverage for abortions.” Federal employees may choose from a menu of over 200 private health plans nationwide, but each plan offered to these employees must exclude elective abortions because federal funds help pay the premiums.
- The Children’s Health Insurance Program (CHIP), reauthorized with President Obama’s signature this year, has for twelve years prohibited the use of federal funds “to assist in the purchase, in whole or in part, of health benefit coverage that includes coverage of abortion” (42 USC §1397ee(c)(7)).

2. Is the Stupak amendment broader than the Hyde Amendment that has prevented federal funding of abortion for decades?

No. Critics of the Stupak Amendment have said that the Hyde Amendment prevents the use of federal funds only for the abortion procedure itself, not for entire benefits packages that include abortion. But this is simply not true. For many years the annual Hyde amendment has said that no funds appropriated in the Labor/HHS appropriations bill may support “health benefits coverage that includes coverage of abortion.” This and other current federal health programs already bar use of federal funds to subsidize health plans that include elective abortions.² The Stupak amendment follows this same policy.

² For texts see “Current Policy on Federal Abortion Funding: What is the Status Quo?”, www.usccb.org/prolife/issues/healthcare/abortion_funding_102309.pdf.

3. Does the Stupak amendment forbid abortion coverage in health plans that use only private funds?

No. In fact, it explicitly says that people not using federal subsidies to purchase a health plan may purchase a plan with elective abortion coverage. Even people who use federal subsidies to buy their overall health coverage may use their own private funds to purchase a supplemental policy covering abortion if they wish to do so.³

Some have objected to the fact that the health plan run directly by the federal government nationwide, the “public option,” will not include elective abortions even if a particular purchaser is not receiving affordability credits to help pay premiums. However, the public option is simply a federal program, directly managed by the Secretary of HHS and closely modeled on the Medicare program. The bill establishes an Account in the U.S. Treasury for “receipts and disbursements” involved in the program, beginning with \$2 billion from general tax revenues for “start-up” costs; “receipts” going into this Account are treated the same way as “payments or premiums” in Medicare (sec. 322 (b)), and are paid out as federal funds.

So premiums paid into this plan begin as private dollars, but tax dollars begin that way too. They are paid to the government, and the government then pays for medical procedures (including abortions, if the plan were to include those). So this is a clear instance where the bill, if not for the Stupak amendment, would be using federal funds directly for elective abortions.

4. Will women lose whatever private abortion coverage they have now?

No. Anyone who has employer-based or other private insurance coverage now can keep it as before, because anyone who can afford such coverage without a federal subsidy will not be covered by the Hyde policy. Individuals who do not get insurance from their employer, but do not qualify for a subsidy, are free to buy a plan on the Exchange that includes abortions. Someone who does qualify for a subsidy can use it to purchase a plan without elective abortions, then purchase a supplemental abortion policy using only private funds if they wish to do so.

5. What are public attitudes about federal funding of abortion coverage?

Numerous polls show that most Americans oppose public funding of abortion. A September 2009 survey conducted by International Communications Research is of special interest: Strong majorities opposed “measures that would require people to pay for abortion coverage with their federal taxes” (67% against to 19% in favor), as well as

³ A claim by Rep. Nita Lowey (D-NY) that the Amendment would restrict women’s access to private abortion coverage “even when they would pay premiums with their own money” has been rated by the “Truth-O-Meter” at the fact-checking web site Politifact as completely “false”: www.politifact.com/truth-o-meter/statements/2009/nov/09/nita-lowey/lowey-says-stupak-amendment-restricts-abortion-cov/.

measures requiring them to pay for such coverage with their "health insurance premiums" (56% against, 32% in favor). Respondents were also asked: "If the choice were up to you, would you want your own insurance policy to include abortion?" Sixty-eight percent said no, with 24% saying yes. Opposition to abortion coverage was somewhat higher among women (69%), and people in lower income and education brackets; those who lack insurance now, the people most affected by this legislation, opposed abortion coverage 82% to 15%.

In short, the Stupak amendment is a modest and reasonable measure. It reflects the Hyde amendment and all other existing federal abortion funding policies in the context of health care reform. Under this policy, anyone who actually wants abortion coverage can buy it with their own money; the government does not use taxpayer funds for abortions; and no one who opposes abortion is forced through their health premiums to pay for other people's abortions. Congress should retain this amendment in any final health care reform legislation.

11/12/09