

From: Richard Doerflinger

Re: Summary of Current Amendments to Health Care Bill

Dear Friends:

Here's an analysis of amendments on abortion in health care reform, as approved in House Energy and Commerce Committee last night.

While meeting last night to mark up the health care reform legislation (HR 3200), the House Energy and Commerce Committee approved a confusing set of amendments on abortion -- some of them helpful, others showing that more work needs to be done.

The **Capps amendment**, presented as a compromise, has the following features. Beginning with the most unacceptable features and working our way down to those that are more positive:

- The "public plan" (government-run health plan offered in every region of the country) will include whatever abortions are eligible for federal funding in a given year, and will include ALL abortions if the HHS Secretary approves that.
- Federal subsidies will help pay the premiums for health benefits that include unlimited abortions. But if abortions in the plan do go beyond what the Hyde amendment allows funding for in that year, the premium amount for the additional abortions must be paid for by the covered party's private funds. This is a bookkeeping exercise, a complicated actuarial exercise that artificially separates the abortion premium on paper from the rest of the premium. The plans including elective abortions will cost (at a minimum) one dollar more a month. This is a major departure from the Hyde amendment and similar provisions in current law, which simply prohibit federal funding of elective abortions and of any benefits package that includes them.
- Each regional pool or "Exchange" must have at least one plan that includes abortions, and at least one that does not include them beyond the Hyde exceptions (and the latter may, if it wishes, exclude all abortions).
- Neither the Act nor the HHS Secretary may mandate that private plans either include or exclude abortions.
- Nothing in the Act alters rights and responsibilities under Title VII of the Civil Rights Act (religious accommodation for employees) or current state or federal laws requiring provision of emergency services. (The federal law on this subject, known as EMTALA [Emergency Medical Treatment and Active Labor Act], does not mention abortion and has never been used to require anyone to perform an abortion.)
- No health plan in an Exchange may discriminate against a health care provider or facility based on his, her or its willingness OR unwillingness to provide abortions.
- Nothing in the Act may be construed to preempt state laws on abortion or abortion coverage, or federal laws on conscience protection or discrimination based on abortion.

Also approved was a very positive **Pitts/Stupak amendment** that writes the Weldon amendment on conscience protection into the Act: A federal agency, or state or local government receiving federal funds under the Act, may not discriminate against an individual or institutional health care provider because the provider does not provide, pay for, provide coverage of, or refer for abortions. (The amendment originally included a provision on conscience rights in contexts other than abortion, but this drew strong opposition and had to be dropped.)

There was a second **Stupak/Pitts amendment** to apply the traditional Hyde amendment language to federal funding under this Act, so federal funds would not subsidize any part of a health plan that includes elective abortions. This would mean purchase of such abortion coverage would be truly private and voluntary, done by purchasing an optional rider with one's own funds. This amendment failed late Friday afternoon.

In addition to the "paper separation" provision of the Capps Amendment, weakening application of the Hyde amendment, the **major objectionable abortion-related provision** in the bill now is the requirement that the "public plan" (the government-run plan that may become a norm for health plans across the country) will include abortions, contrary to the practice in every other federal government-run health program in the nation. However, we have made good progress in terms of retaining current abortion laws, preserving conscience rights (at least on abortion), and ensuring that some private plans excluding abortion will be available. We hope to improve the legislation further on the House floor and to pursue better solutions to some of these problems in the Senate.

In this situation I would simply like to acknowledge the special and courageous role played by Rep. Bart Stupak (D-MI), Democratic co-chair of the House Pro-Life Caucus. He tried to negotiate a solution with committee chair Henry Waxman, and when that broke down over the issues of public funding and mandates for abortion he stood up to his own party leadership by insisting that Congress should do a better job of advancing health care reform that respects human life. He will continue to work to improve this legislation and will need our help.

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