

Comparison of Stupak-Pitts Amendment and Senate Abortion Funding in "Patient Protection and Affordable Care Act" H.R. 3590

Summary: The House struck the Capps abortion funding amendment and adopted the Stupak-Pitts amendment by 240 votes to prevent federal funding of abortion and subsidies for plans covering abortion as part of the health bill (H.R. 3962). The Stupak-Pitts amendment allowed women to purchase plans with elective abortion coverage with non-federal funds. The House also adopted Rep. Stupak's conscience amendment on abortion. However, like the Capps abortion funding amendment rejected in the House, the Senate version of the health bill (H.R. 3590) in Sec. 1303, as amended, authorizes the Secretary of HHS to subsidize health plans in the government run Exchange that cover elective abortion. It requires everyone in such plans to pay an abortion fee, and weakens conscience protections for health care workers. The Senate bill also allows abortion to be subsidized in the government managed multi-state plans. It also directly funds elective abortion in 3 new government plans: a high-risk insurance pool, community health centers and non-profit co-op programs.

H.R. 3590 passed the House and became Public Law 111-148 on March 23, 2010 with no prohibition on abortion funding. The "Reconciliation Act" (H.R. 4872) also passed Congress and became law (P.L. 111-0152) on March 30. It does not prevent funding for abortion and increases funding for community health centers that can pay for abortion. The White House Executive Order on abortion signed on March 24 does not trump the statutory weight of the new health care law. Moreover, it reasserts the subsidy scheme for abortion covering plans, and it has no legal effect in overturning the law's abortion funding. Courts have ruled that abortion is a necessary medical service, and that abortion must be funded unless Congress explicitly excludes it as a fundable service. The new health care law contains no such Stupak type prohibition, so the Executive Order does nothing to stop direct payments for abortion. Below is chart comparing the abortion provisions in the new health care law with the Stupak-Pitts amendment.

Provision	Stupak-Pitts in H.R. 3962 as Passed	Reid abortion funding provisions in H.R. 3590 (Now P.L. 111-148)
Co-Ops Fund Elective Abortion	None	Yes—p. 180* (Sec. 1322) Appropriates \$6 billion for loans and grants to assist the establishment of non-profit health co-ops with no restrictions on funding elective abortion.
Community Health Centers Fund Elective Abortion	None	Yes—pp. 2355-56 (Sec. 10503) Appropriates \$10 billion for community health centers (CHC) with no abortion funding restrictions. Funds are NOT subject to the Hyde amendment in the LHHS appropriations bill which governs money "under this Act." Appropriated funds would not be subject to Hyde (only \$33.9 billion authorized Sec. 5601 p. 1279 would be). The Reconciliation bill (H.R. 4872) increases to \$12.5 billion that could pay for elective abortion (Sec. 2303, p. 55[†]).
High-Risk Pools Fund Elective Abortion	None	Yes—p. 45 (Sec. 1101) Appropriates \$5 billion to create a temporary high risk health insurance pool program, funds this program, and contains no restrictions on paying for elective abortion.
Government Run Health Plans and Elective Abortion Subsidies	No	Yes—p. 2086 (Sec. 1334) Replacing the public option, this section authorizes the Director of the Office of Personnel Management to contract with multi-state plans in each state Exchange and subsidize these plans even if they include coverage for elective abortion.
Exchange Plans	No—but allows	Yes—p. 2070 (Sec. 1303) Authorizes qualified health plans receiving

* Page numbers correspond to H.R. 3590, Engrossed Amendment as Agreed to by Senate.

† Page number corresponds to H.R. 4872, Enrolled as Agreed to or Passed by Both House and Senate.

Subsidize Elective Abortion	plans in Exchange to include plans that cover elective abortion, and abortion riders, so long as federal funds are not used.	federal subsidies (tax credits and cost-sharing credits) in each state exchange to cover elective abortion.
State Opt-Out of Only Elective Abortion	N/A	Yes—p. 2069 (Sec. 1303) Allows states to opt out of abortion coverage in state exchanges.
Required Elective Abortion Surcharge	N/A	Yes—p. 2072 (Sec. 1303) Requires every person in a qualified health plan that includes abortion coverage to pay an abortion surcharge to cover the cost of abortion on top of a separate payment to cover cost of the remainder of the health plan. Forces everyone in a qualified health plan in state exchange that does not opt-out to pay for someone else’s elective abortion. Cost must be a minimum of \$12 per year or more.
Accounting Gimmick — Segregation of Funds	N/A	Yes—p. 2073 (Sec. 1303) Requires the insurer receiving tax subsidies for qualified health plans covering elective abortion to place the abortion surcharge in a separate account from the federal subsidies and premium payments. This provision violates the Hyde amendment by paying for people to purchase plans with elective abortion, regardless of which accounts funds are placed.
Informed Consent Requirement	N/A	Weak—p. 2076 (Sec. 1303) Requires insurers provide plan participants information about the abortion surcharge <i>only</i> in the summary of benefits at the time of enrollment, in other words, in fine print.
Preemption of State Laws	No	Weak—p. 2077 (Sec. 1303) Prevents preemption of state laws regulating abortion, but not state laws banning procedures (e.g., PBA). Does not protect state conscience laws.
Abortion Plan Mandate	No	Yes—p. 21 (Sec. 1001) Requires preventative services to be covered by individual and group plans in accordance with Administration regulations, and requires preventative services for women per HRSA regulations. If HRSA includes elective abortion, as is likely since there is no abortion exclusion, then abortion must be covered in all health plans.
Conscience Protections (Current law under the Hyde/Weldon appropriations provision protects plans and providers who refuse to participate in abortion for any reason.)	Yes--separate amendment passed to protect current law (Sec. 259).	Weak—p. 2076 (Sec. 1303) Instead of the House passed Stupak conscience protection, the Senate includes a nondiscrimination provision that does not prevent discrimination by the federal government or protect individual health care providers from being discriminated against for refusing to participate in abortion. It only says that health plans may not discriminate against facilities and providers, not that facilities cannot discriminate against providers.
Indian Health Reauthorization and Abortion Funding	No	Possibly—p. 2175 (Sec. 20221) Contains no abortion funding restriction, but references restrictions in the LHHS bill which currently includes the Hyde amendment. If Hyde were removed, abortion would be funded under Indian health services.