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Myths and Facts: The Capps Amendment to H.R. 3962

On October 6, Reps. Mike Doyle (D-PA), Lois Capps (D-CA) and other supporters of the Capps amendment wrote to Democratic colleagues to claim that their amendment, now included in the House's health care reform bill (H.R. 3962), offers a valid "compromise" that reflects current laws against federal abortion funding such as the Hyde amendment.

However, the authors' claim rests on myths or demonstrably false claims about the amendment and about current law. Some descriptions of the Capps amendment by the authors are actually accurate descriptions of the *Stupak* amendment supported by pro-life organizations, which the authors have *opposed*. The Capps amendment, crafted by members of Congress who have long opposed the Hyde amendment and other restrictions on federal abortion funding, marks a very significant shift away from longstanding current policies and toward government support of abortion. This is documented below.

Myth: "The Capps compromise expressly prohibits the use of federal funds to pay for abortions."

Fact: This is not true for several reasons, discussed further below. One obvious fact is that the amendment allows the Secretary of Health and Human Services to mandate that the "public option," the government-run health plan to be offered nationwide, will include (and therefore provide federal funding for) unlimited abortions. All funds paid out by the Secretary for these abortions will be *federal funds*, whether their original source was in tax dollars or in premiums paid to the federal government. This has been confirmed by the Congressional Research Service, which notes that the Congressional Budget Office classifies all payments for medical procedures under the public option as federal outlays.¹

Myth: "The Capps compromise stipulates that any affordability credits provided by the U.S. Treasury under subtitle C of title II of the bill cannot be used to pay for abortion care beyond cases of rape, life endangerment, or incest."

Fact: Setting aside the authors' repeated reference to abortion as a form of "care," this claim is not true. The accountability credits will directly subsidize any abortions that are eligible for federal funding under the Labor/Health and Human Services appropriations bill in any given year. Members of the House leadership, and prominent supporters of the Capps amendment, support changing that annual policy to allow funding of unlimited abortions – at which point this program would automatically begin using accountability

¹ T. Nicola and J. Shimabukuro, "Questions Related to H.R. 3200, the America's Affordable Health Choices Act of 2009," American Law Division of the Congressional Research Service, Memorandum to the Hon. Christopher H. Smith, October 9, 2009.

credits to fund such abortions as well. Prominent supporters of the Capps amendment helped to *defeat* an amendment in the Energy and Commerce Committee that would have given this permanent health care reform bill an equally permanent policy against federal abortion funding.

Myth: “Section 205(b)(4) of the House bill specifies that individuals enrolled in an Exchange-participating plan will pay their premium payments directly to the plan and not through the federal government. So the government will never be writing checks for premium payments for abortion.”

Fact: Again, this is not true in the public option, where there is no distinction between the plan and the government. The public option is offered and managed by the federal government, and all payments for procedures, including abortions, will be federal payments.

Myth: “[T]he Capps compromise stipulates that abortion care may not be required or deemed a part of the essential benefits package. This means that abortion coverage cannot be mandated under health care reform.”

Fact: It does not mean this at all. The Capps amendment stipulates that the plan’s offering entity will decide to what extent abortion is included. The offering entity of the public option is the HHS Secretary, so the Secretary can mandate abortion coverage in this plan throughout the nation under health care reform.

Myth: “The health benefits plans are required under this amendment to keep funds received from the Federal government segregated from any account that would be used to reimburse for abortion services.”

Fact: Again, this is obviously not true in the public option, where federal funds could directly and overtly be used for abortions. In private plans, the “segregation” is merely what the amendment calls an “actuarial estimate,” a bookkeeping exercise in which one dollar a month from each purchaser is *deemed* to be the amount needed to provide abortions. There is no true segregation of abortion into a separate or supplemental policy. Where an insurer does choose to cover elective abortions, the government’s role will be to estimate the cost of covering these abortions, and to ensure that each purchaser is required to pay for this part of the package using their own dollars. Through this new *mandatory abortion surcharge*, the government will make people who oppose abortion pay for other people’s abortions more specifically and directly than if it were only making them support abortion through general tax revenues.

Myth: “The Capps compromise applies the Hyde amendment to health care reform.”

Fact: Not true. In fact, authors of this letter voted in committee *against* an amendment by Rep. Bart Stupak (D-MI) that would have written the Hyde amendment into this bill. The Hyde amendment forbids federal funding of abortion procedures themselves, which the Capps amendment violates in the case of the public option. Hyde also explicitly forbids spending federal funds for “health benefits coverage that includes coverage of abortion,” which Capps violates in its treatment of federal subsidies for private plans.²

Myth: “The Capps compromise establishes a stringent segregation policy -- not even matched by the Hyde amendment's application to Medicaid.”

Fact: The opposite is the case. The Hyde amendment prevents elective abortions from being supported by federal funds, *or* by “a State's or locality's contribution of Medicaid matching funds” that mingle with federal funds in a benefits package. If a state chooses to fund abortions excluded by the Hyde policy, it must set up a separate account that is not part of the federal Medicaid program. Similarly, the Federal Employees Health Benefits Program (FEHBP) prevents federal funds *or* matching private premium dollars from being used for abortion coverage; private funds can be used to purchase abortions or abortion coverage only by paying out-of-pocket or by privately contracting with an insurer to purchase an entirely separate supplemental policy. The Capps amendment provides for no such segregation. Its “actuarial estimate” approach ensures that matching nonfederal funds *can* be used for elective abortions, and that insurers wanting to cover such abortions can require all purchasers to pay an abortion surcharge to subsidize them.

Myth: “[T]he Medicaid program allows coverage of abortion, but federal matching funds are only available for abortion care in cases of rape, life endangerment, or incest.”

Fact: Again, this is not true. The Hyde amendment, and parallel provisions in other laws (e.g., FEHBP, Children’s Health Insurance Program) explicitly forbid *nonfederal* matching funds from being used for abortions beyond these rare cases as well.

Myth: “There is no comparison between the health insurance exchange and the Federal Employees Health Benefits Program. Under employer-sponsored health insurance, like FEHBP, health plans are a part of a larger benefit package, and employers maintain the right to determine what benefits to cover, as they subsidize the majority of their employees' premiums.”

Fact: The public option is even more completely managed by the federal government than federal employees’ benefits are, as the latter program involves hundreds of private insurers that offer varied benefits to purchasers. Here the federal government is the entity offering the plan – and the Capps amendment allows the government, the plan’s sponsor, to mandate unlimited abortion coverage, directly contrary to every other federal program. Moreover, for many purchasers who take private plans on the insurance exchange, the federal

² For the text of the Hyde amendment and other current laws see “Current Policy on Federal Abortion Funding: What is the Status Quo?”, www.usccb.org/prolife/issues/healthcare/abortionfunding.pdf.

subsidies will make up the majority of the premium. In any case, federal policy on abortion funding does not depend on whether federal funds make up more than half the premium. For example, the Children's Health Insurance Program forbids 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)(A)). Clearly the "part" need not be greater than 50% for federal policy to apply.

Myth: "The Capps compromise ensures that both pro-choice and pro-life Americans can find a plan that meets their needs by ensuring that in each area, there is at least one plan that does not cover abortion and one plan that does cover abortion beyond the Hyde limitations."

Fact: The amendment does *not* ensure that the one plan that excludes abortion will meet families' health needs in other ways; nor does it ensure a plan without any abortions (as even this plan may cover any abortions eligible for federal funding under the Hyde rider then in effect). Moreover, if the sponsors succeed in their efforts to weaken or rescind the annual Hyde rider in any future year, the option of a health plan without abortion will also disappear. If, as the authors claim, most private plans cover abortion now, there is no reason to impose a mandate that each area have a plan with abortion. And all other federal health programs seek to *exclude* abortions from health benefits plans receiving federal funds, not to "ensure" access to them.

Myth: "There are several current examples where tax policy and abortion intersect, but it is not considered taxpayer funding or subsidization of abortion."

Fact: While this is true as far as it goes, its relevance to the Capps amendment is contradicted throughout the rest of the authors' letter. They repeatedly claim that this bill *does* raise the problem of federal abortion funding, and that the Capps amendment, like the Hyde amendment, prevents such use of "federal funds" for abortions. Clearly the authors do not believe their own claim that the accountability credits subsidizing health coverage in H.R. 3962 are similar to a mere declaration that certain income is not taxable.

The authors close by offering to work with colleagues to "improve the language and clarify the intentions of the Capps Amendment." But all they need to do is change the Capps amendment *so it actually conforms to their stated intent of reflecting the Hyde amendment in this program*. Then the amendment will explicitly prevent federal support for abortion or benefits packages covering abortion, except in cases of rape, incest or danger to the life of the mother; and it will allow the purchase of elective abortion coverage, using only the truly *private* premium dollars of those who want such coverage. An amendment of this description already exists; it is called the Stupak amendment.