

Comparison of the Hyde Amendment to the House and Senate Abortion Provisions

	Issues for Comparison	Hyde Amendment ¹	House Bill ²	Senate Bill ³
1	The law / bill pertains to:	Funds appropriated through LHHS appropriations, i.e. Medicaid. ⁴	Funds authorized and appropriated under the House bill.	Funds authorized and appropriated under the Senate bill.
2	Prohibits the use of federal funds in underlying legislation from being used to pay for abortions	YES. §507(a). ⁵	YES. §265(a).	YES; § 1303(b)(2)(A).⁶ HOWEVER, the prohibition is dependant on the existence of the Hyde Amdt; if the Hyde Amdt is ever eliminated, the prohibition on federal funding for abortions in this bill would be rendered meaningless. ⁷ Further, the prohibition on federal funding in this bill is not as comprehensive as that found in the Hyde Amdt and the House bill. ⁸
3	Prohibits the use of federal funds to subsidize health insurance plans that cover abortions	YES. §§507(b) and (c).	YES. §265(a).	NO. In departure from longstanding federal policy, insurance plans in the exchanges that receive federal funds are not prohibited from covering abortions. Therefore, federal dollars will subsidize insurance plans that offer abortion coverage.
4	Provides exceptions to funding prohibitions for abortions in cases of rape, incest, and the life of the mother	YES. §§508(a)(1) and (2).	YES. §265(a).	YES. (Implied in § 1303(b)(2)(A)). These exceptions are tied to the exceptions in the Hyde Amendment. If the Hyde Amendment were ever eliminated, federal funding for ALL abortions would be permitted.

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5	Explicitly allows state and local governments and private individuals to provide supplemental abortion coverage so long as it is not tied to federal funding or funding for which there are federal matching funds (like Medicaid)	YES. §508(b).	YES. §265(b).	NO. While §265(b) in the House bill (see center column) was crafted to mirror the Hyde Amendment (in that it clarifies that nonfederal entities may offer supplemental abortion coverage as long as it is not tied to federal funding or funding for which there are federal matching funds) the Senate bill does not include such a provision because federally-subsidized insurance plans that cover abortions are included in the exchanges.
6	Explicitly permits private insurance plans to offer abortion coverage so long as the coverage is not subsidized by federal dollars	YES. §508(c).	YES. §265(c). (Insurance providers can include an insurance plan that covers abortion in the Exchange so long as they also offer an Exchange-participating health benefits plan that is identical in every respect except that it does not cover abortion.)	NO. While §265(c) in the House bill (see center column) was crafted to mirror the Hyde Amendment (in that it clarifies that the bill does not prohibit private insurance plans from offering abortion coverage so long as private plans are not subsidized by the federal government) the Senate bill permits federal dollars to subsidize plans that cover abortions.

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7	Prevents Preemption of State Abortion Funding or Coverage Laws	The Hyde Amendment has no effect on state laws related to abortion funding or coverage as long as the laws do not pertain to federal funding or the use of federal matching funds (See 508(b)).	YES. §258(a).	YES; HOWEVER, ALSO PLACES NEW BURDEN ON STATES. §1303(a); §1303(c)(1). The Senate bill allows states to “opt out” of allowing abortion coverage in their exchanges. HOWEVER , this provision places a burden on States to enact new laws that prohibit abortion coverage by qualified health plans.
8	Offers conscience protection for providers who do not want to participate in abortions	YES. §508(d). (Prohibits discrimination by “a Federal agency or program” or “a State or local government.”)	YES. § 304(d); §259. (Prohibits discrimination by any “Exchange participating health benefits plan” or “[a] Federal agency or program, and any State or local government that receives Federal financial assistance under this Act.”)	INADEQUATELY. §1303(b)(4). This provision is much more limited in that it ONLY mirrors the first part of the House language. The bill DOES NOT include a prohibition on discrimination by government entities.
9	Ensures that neither the underlying legislation nor an individual or entity may mandate abortion coverage by private insurance plans	Not applicable because does not address private insurance plans.	YES. §222(e)(1). (To the extent that the concern exists in the H.R. 3962.)	INADEQUATELY. §1303(b)(1)(A)(i). This provision is narrow and does not address the concern that private plans may be required to cover abortions under other provisions, such as the Mikulski amendment, which allows an administrative agency to determine what is “preventive care.” If abortion is categorized as “preventive care,” private insurance plans will be required to cover abortions.

¹ As included in the Omnibus Appropriations Act, 2009 (H.R. 1105), signed into law March 11, 2009 (PL 111-8).

² H.R. 3962 (as amended by the Stupak-Pitts Amendment).

³ H.R. 3590, the Senate Health Care Reform Bill (as amended by the Reid Manager's Amendment).

⁴ **Not permanent law; added yearly to Labor, Health and Human Services appropriations bill to prohibit federal funding of abortion.**

⁵ While the Hyde Amendment is the most frequently discussed federal law pertaining to abortion funding, other federal laws reflect the same policy that is found in the Hyde Amendment. See, i.e. §§ 613 and 614 (Federal Employee Health Benefits Program) at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1105.enr>:

⁶ Under §§1303(b)(2)(B)-(D), **ALL** individuals who participate in plans in the Exchange that include coverage for Hyde-prohibited (elective) abortions, even if they do so unwittingly, will **directly pay** part of their own premiums into an account that pays for elective abortions. Every enrollee in such a plan (or their employer on their behalf) must write a separate check, for no less than \$12.00 per year, for elective abortion coverage, even if that enrollee never intends to have an abortion. This system will no longer be necessary if the Hyde Amendment is eliminated – plans in the exchanges would be free to cover all abortions.

⁷ **Pro-abortion lawmakers are committed to getting rid of the Hyde Amendment, and it is perhaps not cynical to see this as the first step in a two-step plan to do that. If they succeed in getting rid of the Hyde Amendment, these new federal subsidies will directly pay for any and all covered abortions.**

⁸ The Hyde Amendment and the House language provide that *no funds in the entire underlying bill* may be used to pay for abortions. In contrast, the Senate language prohibits the use of *funds appropriated in specific sections of the bill* to pay for abortions. By not including a broad prohibition on the use of all funds for abortions in the Senate bill, Congress leaves open the possibility that federal funding for abortions could be made available under other sections of the Senate bill.