



## HEALTH REFORM AMENDMENTS CONTRADICT MISINFORMATION, HIGHLIGHT COMPROMISES

National health reform will bring more security and stability to Texans who have health insurance coverage today and extend coverage to millions of uninsured Texans. To stop reform, some opponents have spread misinformation and downright lies about the bills. Understandably, this misinformation alarmed many recipients. This Policy Page highlights House Energy and Commerce Committee amendments passed just before the August recess that explicitly prohibit practices falsely alleged to be in health reform bills, including “rationing care,” “covering undocumented immigrants,” and other misinformation. This document also summarizes the significant amendments resulting from compromises with both the “Blue Dog” and progressive Democrats. (For CPPP’s summary of the House tri-committee bill, see <http://www.cphp.org/research.php?aid=900>.)

- **Amendments adopted by the House E&C Committee explicitly prohibit practices that have been the subject of scare tactics and falsehoods on health reform.**
- **Amendments adopted by the E&C Committee prohibit rationing, public subsidies for abortion, and public funding for coverage of undocumented immigrants.**
- **Negotiations with Blue Dog and progressive Democrats resulted in amendments that cut the cost of health reform and allocate savings from some reforms to make coverage more affordable for low- and moderate-income families.**

### Process Update

Before Congress adjourned for the August recess, four of the five committees with jurisdiction on health reform passed health reform bills. The Senate Committee on Health, Education, Labor, and Pensions Committee passed the *Affordable Health Choices Act* on July 15, 2009. The other Senate Committee working on health reform, the Senate Finance Committee, has not released a bill. Three Democrats and three Republicans on the committee are negotiating a bipartisan proposal with a tentative due date of September 15. The two Senate committee proposals must then be merged into one unified Senate bill, which, once passed, will be reconciled with the House version of the health reform bill in a conference committee.

All three House committees with jurisdiction over health reform (Ways and Means, Education and Labor, and Energy and Commerce Committees) passed versions of H.R. 3200, *America’s Affordable Health Choices Act of 2009*. When the House returns from the August recess, it will begin to merge the three committee bills into one House bill. The Energy and Commerce (E&C) Committee was the last of the three House committees to pass a health reform proposal. During the bill “mark up,” the committee accepted dozens of amendments, including several from Republicans. Amendments passed in the E&C Committee are notable for two reasons: (1) several amendments explicitly contradict widespread misinformation on bill provisions, and (2) E&C Chairman Henry Waxman negotiated significant amendments with conservative and progressive Democrats to secure votes for committee passage.

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Many legislative decisions on health reform will be made in the fall as bills are merged and passed. Ultimately, some amendments accepted in the House E&C Committee may not be in the final health reform bill. They are notable, however, as examples of provisions that directly contradict misinformation and scare tactics about health reform and compromises reached among liberal and conservative Democrats.

### **E&C Amendments Take on Misinformation**

Scare tactics and misinformation about health reform abound related to euthanasia, rationing, federal funding for abortion, coverage for undocumented immigrants, etc. Much of the rhetoric on these topics is not true, but it is widespread. The following are amendments to H.R. 3200 adopted by the House E&C Committee that explicitly prohibit practices that have become topics of viral misinformation.

- **Amendment by Reps. Ross (D-AR), Hill (D-IN), Matheson (D-UT), Space (D-OH), Barrow (D-GA), Gordon (D-TN), and Melancon (D-LA): Blue Dog Omnibus Amendment (other provisions of this amendment are discussed in the next section).**
- **End-of-life-care planning is voluntary and cannot promote suicide.** Ensures that information provided by health plans to individuals on end-of-life care, like advanced directives and physicians orders for life-sustaining treatment, “shall not promote suicide, assisted suicide or the active hastening of death.” Ensures that such end-of-life-care information “shall not presume the withdrawal of treatment” and must include options to maintain medical interventions. Clarifies that individuals are not required to complete advanced directives or any other type of end-of-life planning.
- **Public plan enrollment is voluntary.** Clarifies that enrollment in the public plan is voluntary and no one will be required to enroll in it.

- **Amendment by Rep. Gingrey (R-GA): No rationing based on age, disability, or life expectancy.** Prohibits the Center for Quality Improvement (created in H.R. 3200 to identify, develop, evaluate, and implement best practices for quality improvement in health care service delivery) from using any measures that can be used to deny care based on a person’s age, life expectancy, current or predicted disability, or expected quality of life.
- **Amendment by Rep. Rogers (R-MI): Federal government cannot use research to ration or deny care.** Prohibits any “comparative effectiveness” research findings from being used by the federal government to deny or ration care.
- **Amendment by Rep. Gingrey (R-GA): No cost-based rationing in Medicare.** The federal government cannot use comparative effectiveness research to determine benefits covered under Medicare based on cost.
- **Amendment by Rep. Stearns (R-FL): No bailout of the public plan.** Prohibits the use federal funding to bail out the public plan in case of insolvency.
- **Amendment by Reps. Stupak (D-MI), Pitts (R-PA), and Terry (R-NE): Non-discrimination for not providing/covering abortion.** Prohibits health plans in the exchange from discriminating against doctors, hospitals, or other providers on the basis that they do not provide, pay for, or refer for abortion services.
- **Amendment by Rep Capps (D-CA): No federal funding used for abortion; neutrality on abortion coverage.** Clarifies that abortion coverage will not be part of the required minimum benefits package for health plans participating in the exchange. Thus, abortion coverage is neither mandated nor prohibited through health reform. Upholds current law that prohibits the use of federal

funding to pay for abortion services, except in the case of rape, incest, or when the woman's life is in danger. If a health plan or the public option does include abortion coverage, those services must be paid for through privately paid premiums, and not public funding including the subsidies that help low-income individuals afford coverage. The health insurance exchange must offer at least one plan option that covers abortion and one that does not. Prohibits the preemption of state abortion-related law, such as parental notification laws. For more information on current law prohibiting the use of federal funds for abortion, which has been upheld in health reform bills so far, see [www.texasvoiceforhealthreform.org/reports/educational-materials/abortion/](http://www.texasvoiceforhealthreform.org/reports/educational-materials/abortion/).

- **Amendment by Reps. Space (D-OH), McNERNEY (D-CA), and Hill (D-IN): No federal funding for coverage for undocumented immigrants.** Clarifies that health reform will not change the current prohibitions against covering undocumented immigrants in Medicaid or CHIP.

## **E&C Blue Dog and Progressive Compromise Amendments**

E&C Chairman Waxman negotiated significant compromise amendments with Blue Dog Democrats and progressive Democrats to pass the bill from committee.

### **Blue Dog Amendment**

A primary stated goal for the Blue Dogs was to trim the projected cost of health reform. Their amendment is estimated to cut \$100 billion over 10 years from reform costs. They also won assurances that the full House would not hold a floor vote on health reform before the August recess. In addition to the provisions clarifying end-of-life-care planning and voluntary enrollment in the public option discussed above, the Blue Dog amendment makes the following policy changes.

- **Increased small business exemption.** Increases the number of small businesses exempt from requirements to offer health insurance or pay an

assessment from firms with payrolls up to \$250,000 a year to those with \$500,000 a year. Small businesses with payrolls under \$500,000 a year will neither be required to offer health insurance, nor be subject to a penalty assessment if they do not. The amendment phases in the amount of the assessment for larger employers from 2 percent of payroll for firms with payrolls just over \$500,000 up to 8 percent for firms with payrolls over \$750,000 a year. *Under this provision, CPPP estimates that more than 80 percent of all Texas businesses will be exempt from requirements to offer coverage or pay a penalty. (Estimate from August 2009 Texas Workforce Commission data showing 82.5 percent of Texas employers contributing to Unemployment Insurance have payrolls under \$500,000 per year.)*

- **Negotiated reimbursements by the public plan.** Requires the federal government to negotiate payment rates with providers under the public plan using Medicare rates as a floor and average private health insurance rates as a ceiling, versus pegging public plan rates to Medicare.
- **Premiums subsidies reduced.** Reduces subsidies available for low- and moderate-income families necessary to help them afford health insurance coverage through the exchange. Caps premium payments as a percentage of income on a sliding scale starting at 3 percent of income for families at 133 to 150 percent of the federal poverty level (from about \$29,300 to \$33,100 for a family of four) up to 12 percent (increased from 11 percent in the initial bill) of income at 400 percent of the federal poverty level (\$88,200 a year for a family of four). However, other progressive compromise amendments described below would restore the subsidy levels if certain conditions are met.
- **State matching rate for Medicaid expansion.** Requires states to pay a share of the costs for individuals under 133 percent of the federal

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poverty level (up to \$29,300 a year for a family of four) who will become Medicaid-eligible. In the first two years, the federal government will pay the full cost of the expansion, but starting in the third year, states will have to cover 10 percent of Medicaid costs for the newly eligible population. In the initial bill, the Medicaid expansion was fully federally funded for the 10-year period governed by the legislation.

- **Level playing field for the public option.** Requires the public plan to adhere to several provisions in the same manner as private health insurance plans [such as guaranteed issue, limits on premium variation (insurance rating rules), provider network adequacy, standardized benefits, and disclosure of certain plan policies and documents] so that the public plan will compete with the private sector on a level playing field.
- **Maintains the role of agents and brokers.** Clarifies that health reform will have no impact on the role of health insurance agents and brokers in state law, including their role in enrolling people in private plans and the public option.
- **Provider opt-out of public plan.** Clarifies that doctors, hospitals, and other providers participating in Medicare can opt-out of participation in the public plan.
- **Establishing cooperative health plans.** Establishes start-up grants and loans for non-profit, member-run, state-based health insurance cooperatives that will provide coverage through the health insurance exchange.
- **Medicare and Medicaid payment incentives.** Establishes a Center for Medicare and Medicaid Payment Innovation to test the effect of different payment models on program costs and quality of care, evaluate findings, and expand effective models.

## Progressive Compromise Amendments

House Progressive Caucus members expressed concern that Chairman Waxman's compromise with Blue Dogs eroded strong affordability protections for low- and moderate-income families who will receive subsidies to help with the purchase of health insurance. As part of the agreements negotiated by Chairman Waxman, the E&C Committee adopted two amendments offered by progressives to help address their concerns.

- **Amendment by Reps. Baldwin (D-WI), Castor (D-FL), Weiner (D-NY), Murphy (D-CT), Schakowsky (D-IL), Capps (D-CA), Harman (D-CA), Matsui (D-CA), Sutton (D-OH), Welch (D-VT), Sarbanes (D-MD), and DeGette (D-CO): Savings allocated to premium subsidies.** Increase premium subsidies for low- and moderate-income families annually using savings realized through adopting a prescription drug formulary in the public plan; requiring pharmacy benefit managers to share information on drug costs and utilization rates with health plans and the Health Choices Commissioner; establishing an accountable care organization pilot program in Medicaid; and establishing administrative simplification standards for health plans.
- **Amendment by Reps. Schakowsky (D-IL), Welch (D-VT), Murphy (D-VT), Castor (D-FL), Harman (D-CA), Sutton (D-OH), Weiner (D-NY), Capps (D-CA), Baldwin (D-WI), Sarbanes (D-MD), Matsui (D-CA), Braley (D-IA), and DeGette (D-CO): Savings allocated to premium subsidies.** Increase premium subsidies for low- and moderate-income families annually using savings realized through requiring that substantial premium increases (in excess of 150 percent of medical inflation) for health plans in the exchange be approved before going into effect; and allowing Medicare to negotiate drug prices with pharmaceutical companies for Medicare Part D and Medicare Advantage plans.

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The ultimate fate of the compromises and agreements made by the Energy and Commerce Committee will be decided this fall when Congress returns to work (both

chambers resume work on September 8) and final versions of health reform bills start to take shape.

*Sources of information on E&C amendments include amendment language available on the E&C committee website ([http://energycommerce.house.gov/index.php?option=com\\_content&view=article&id=1687&catid=156&Itemid=55](http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1687&catid=156&Itemid=55)); the Kaiser Family Foundation's side-by-side comparison of the House Tri-committee bill (<http://www.kff.org/healthreform/sidebyside.cfm>), and "Key Amendments to America's Affordable Health Choices Act (H.R. 3200) Adopted by the Energy and Commerce Committee," House Democratic Leadership and Energy and Commerce Committee, August 5, 2009.*

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The Center for Public Policy Priorities is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans.