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WHY AMERICANS SHOULD BEWARE HEALTH REFORM “TRIGGERS”

Having apparently lost the battle to persuade Americans to support job-killing employer mandates as a way of paying for a government-run national health care system, some lawmakers have conjured up a legislative device to achieve their goal. Their ploy is something called a “hard trigger.” This means that if some other approach enacted in legislation does not work exactly as planned, a mandate on employers to provide government-designed insurance automatically would go into effect on some future date—without further congressional approval.

Among the supporters of a hard trigger are some members of the Senate Finance Committee, as well as the Jackson Hole Group—the architects of “managed competition.” The trigger idea is said to be a compromise. It is not. It is simply a legislative trick to allow a minority in Congress who have failed to make a convincing case to prevail anyway within in a few years.

This is how the hard trigger would work. Congress would enact a health care reform that *would* command a majority in both houses and among the American people, say a package of modest voluntary insurance reforms to improve insurance access and to make policies more portable. But the legislation also would include a provision that would set a specific outcome that must be achieved by an exact date, say 95 percent of the population having comprehensive insurance by the year 2000. If the goal was not met by that date, then the hard trigger included in the law would require that other, standby provisions would be implemented by executive action without any further action by Congress. What proponents of hard triggers have in mind is that a sweeping system of employer mandates, price controls, standardized benefits packages, and other changes automatically would go into effect if some other approach had not convincingly succeeded by a certain deadline.

The hard trigger idea, which is like putting Congress on autopilot, would be bad health care reform and an abrogation of legislative responsibility by Congress. Among the many problems with the idea:

- X A hard trigger invites legislative and regulatory “sabotage.”** Supporters of an employer mandate and other features of the Clinton Administration’s health plan believe this is the right solution to the shortcomings of the current health care system. Not surprisingly, they have little faith in other approaches. What, then, if they do succeed in gaining legislation which would automatically implement employer mandates should some other approach fail? They would have no incentive to help write legislation or regulations to give that other approach the chance to show some early success. Indeed, they would reason that an early success for what they consider an ultimately flawed system would be misleading and only delay the day when a trigger would deliver the “better” solution. So they would have a strong incentive to weaken legislation and regulations setting up the competing system, so that the trigger would be sure to take effect.
- X A hard trigger allows a determined minority of lawmakers to prevail over the majority.** The minority who support the core elements of the Clinton Administration’s health plan would vote with other members for an weakened, ineffective alternative with an unrealistic timetable. To achieve the automatic implementation of the Clinton plan, all the minority would then have to do is block any future move to repeal the trigger through parliamentary tactics or a Senate filibuster.

- X A hard trigger locks in only one, perhaps outdated, option for later reform.** After some years of experience with one reform approach, Congress and the American people will have learned a great deal more about health reform. If the preferred reform, enacted in 1994, does not meet its targets, lawmakers may no longer consider employer mandates as the second-best approach to try. For example, there may be strong support at that future time for simply modifying the 1994 measure, switching to a system based more on individual choice, or perhaps introducing some other approach not even on today's menu of legislative choices. But a trigger provision would make it much harder for Congress to make any modifications or reforms other than to implement a mandate system already rejected in 1994.
- X The hard trigger allows lawmakers to hide their vote from constituents.** A hard trigger attached to legislation establishing, say, voluntary coverage by employers, allows lawmakers to tell constituents that they have not voted for a mandatory system. But these lawmakers know that the end result of their vote in reality will be an employer mandate.

The hard trigger idea thus effectively locks a future Congress and Administration into the automatic introduction of an employer mandate plan that cannot muster a majority of votes today. But if lawmakers are not willing to vote for a particular plan today, it would be an abrogation of their responsibilities as legislators to vote for a trigger that automatically would implement that plan in the future.

Another version of the trigger idea, however, is quite reasonable. Indeed it arguably should be a feature of all legislation. This is the so-called soft trigger. A soft trigger provision does not mean that a specific plan automatically replaces other legislation if the first approach does not achieve its goals. Instead, it requires Congress formally to *reconsider* the legislation if it should fail to meet its stated objectives.

That type of trigger should be a feature of every bill. All new programs should have explicit objectives to be achieved within a certain timetable, and a future Congress should be legally obligated to reassess the program at a later date and scrap it, modify it, or replace it if the legislation has not worked. That requirement should have been included, for instance, in the legislation setting up America's welfare programs. Clear targets and a future reassessment should also be included in any health care legislation. But if a 1994 health care reform fails, it is the future Congress assessing the program that should determine the best action to take. Future lawmakers should not be forced by a hard trigger to stand by while a plan that was unpopular and considered unworkable in 1994 automatically goes into place.

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