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The Baucus Health Bill: A First Look

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Senator Max Baucus (D–MT), chairman of the Senate Finance Committee, has finally unveiled "America's Healthy Future Act of 2009," a major health care reform proposal.

While the Baucus bill is an ambitious attempt to resolve the legislative logjam in Congress, it still contains the most objectionable features of the liberal health policy agenda that Heritage Foundation analysts, and many others, have detailed elsewhere.[1]

A critical issue is whether the bill expands the size of government. The Baucus bill would clearly expand the size of government dramatically, and this is a huge failing. Another dimension is whether it would increase the budget deficit in the near term or the long run. On this, the jury is still out. The Congressional Budget Office (CBO) has provided a 10-year *preliminary* scoring of initial specifications of the Baucus proposal. Before the Senate Finance Committee begins to mark up a bill, the CBO should provide a detailed, comprehensive scoring of the Baucus proposal over 20 years and provide an estimate of the net deficit effects over the long run similar to the Trustee's projections for Social Security.

Same Flawed Approach. These policy flaws are embodied in several provisions of the Baucus health bill:

Higher Taxes. During the 2008 presidential campaign and at the inception of the current national health care reform debate, the President promised that with the enactment of his agenda, the typical American family would see an annual $2,500 reduction in health care premium costs.

The Baucus bill would, however, impose new fees on drugs and medical devices. Also, beginning in 2013, the bill would impose a new federal excise tax on high cost health insurance plans. The tax would be applied to health plans valued at $8,000 for single policies and $21,000 for family policies. Because not all workers in such plans are high income, many will likely be on the receiving end of a middle class income tax increase, which contradicts President Obama's promise that "if your family earns less than $250,000 a year, you will not see your taxes increased a single dime. I repeat: not one single dime."[2]

An Individual Mandate. Starting in 2013, almost everyone who does not have coverage would be required to purchase health insurance at a minimum level to be specified in the bill. However, this minimum level is not specified enough to estimate premiums.

The tax penalty would be based on two income bands. For those with incomes between one and three times the federal poverty level, the penalty would be $750 per person, with a maximum of $1,500 per family. This penalty could apply to individuals with incomes as low as $10,831 a year. For

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those with incomes above that level, it would be $950 per person with a maximum of $3,800 per family.

In order to enforce these provisions, the Baucus bill would require individuals, health insurers, employers, and government health agencies to report detailed health insurance information on all Americans to the IRS, adding significant administrative costs and reducing privacy protections. The IRS would also be required to report personal income data to state exchanges, insurance companies, and employers, because premium credits and out-of-pocket limits would depend on income.

An Employer Tax Penalty. Employers with more than 50 employees that do not offer health coverage would have to pay a tax for each employee whose family income is low enough to qualify for a premium credit.

The tax penalty would impose a substantial cost on employers who hire or continue to employ workers from low-income families. The penalty would be the harshest for companies with many higher-income employees who hire lower-income support staff. The inevitable result would be that these companies lay off support staff, and companies with mostly low-income employees would be forced to downsize or cut wages to make up for the new taxes. However, since the credits are based on family income rather than individual income, employers would be discouraged from hiring sole family income earners.

How would they know the income of potential hires? By requiring employers to pay taxes based on employees' family income, not just their pay, companies would have to be informed of their employees' family income from other sources. Employees might not want to provide this information to their employers, but it would be required in order to comply with the law.

Suppose an employer decides to provide insurance, instead of paying the tax. In that case, the employee will be required to enroll in the employer's plan regardless of cost and will get a tax credit if that cost exceeds 13 percent of family income. The employer will then be assessed a tax of that same amount. It is, in effect, a 100 percent tax on health insurance whose value exceeds 13 percent of income.

This tax could turn out to be substantially higher than the tax penalty for not providing insurance in the first place—and this tax would apply *only* to workers from lower-income families. The incentives for the employer are clear: offer less-generous health insurance to lower the amount of the tax, drop insurance completely if the tax is lower that way, and either cut the pay of the lowest-paid employees to make up for the tax or lay off workers from low-income families and avoid the tax completely, or both.

The net result is unambiguous: higher taxes, lower incomes, and job losses for low-income working families.

A Flawed Co-op for Insurance. The bill would create a new co-op for health insurance. A number of the conditions placed on co-ops are noncontroversial, but there are a couple that are unnecessary or even confusing.

While the Baucus provision does prohibit government sponsorship of a co-op in any form and at any level of government (it would be as strong as the Part D prohibition in the Medicare prescription drug program), it is still an invitation to federal control. There are two reasons why this is true. First, it provides for an unnecessary $6 billion in federal funding for startup loans and grants. Second, it gives broad latitude to the Secretary of Health and Human Services (HHS) to regulate co-ops and to try to promote them in all 50 states.

Public funding is not needed, however, as there is already sufficient private funding available.[3] Furthermore, the Baucus bill authorizes HHS "to use planning grants to encourage formation of new

1. Nina Owcharenko, "Five Major Faults with the Health Care Bills," Heritage Foundation *WebMemo* No. 2599, August 28, 2009, at *http://www.heritage.org/Research/HealthCare/wm2599.cfm.*
2. The White House, "Remarks of President Barack Obama: Address to Joint Session of Congress," February 24, 2009, at *http://www.whitehouse.gov/the_press_office/remarks-of-president-barack-obama-address-to-joint-session-of-congress* (September 16, 2009).

organizations or expansion of organizations currently participating in the CO-OP program."

Also, while one of the conditions is that co-ops be member-governed (that is a good thing), they could not be member-owned (that is a bad thing). The Baucus bill applies to them the 501(c)3 provisions prohibiting inurement, meaning that members cannot share in the profit of the co-op.

In sum, while the Baucus bill drops explicit endorsement of a public option, the legislation creates a co-op that is literally an acronym for a new federal program—not the empowerment of existing co-ops or a level playing field for the creation of new ones through changes in the federal tax code. It thus could be a back door to a public plan flying under a different flag.

Federal Insurance Rules. The Senate Finance bill would establish a federal comprehensive minimum benefit package. It would prohibit insurers from imposing annual or lifetime limits on benefits and set annual out-of-pocket cost-sharing maximums for all plans.

Coverage would be guaranteed issue, and insurers could not impose pre-existing condition exclusions on applicants. However, insurers would be allowed to adjust premiums charged for plans based on geography, age, and family composition.

These rules would be applied to both the individual market and the small group market, both inside and outside of the new exchanges. However, they would not be applied to the large group market.

Insurers would also be required to participate in a new reinsurance pooling mechanism designed by HHS, though funding would be entirely from transfers among participating insurers, with no taxpayer subsidies.

As with the other bills, the Baucus plan would federalize the regulation of health insurance in HHS. In addition, the bill would effectively annex state insurance departments to serve as branch offices of HHS, administering and supervising HHS programs (such as the reinsurance pooling) and enforcing the new and detailed federal health insurance laws and regulation.

Medicare and Medicare Advantage. The bill would add an annual wellness visit for Medicare beneficiaries without any co-payment or deductible, remove co-payment and deductibles for preventive screenings, apply "evidence based" research for the delivery of medical services, order a GAO study on the impact of immunizations, and authorize $100 million over five years for HHS to establish a "healthy lifestyle" initiative among Medicare beneficiaries.

The bill would also make numerous changes in physician and hospital payments. It would establish value-based purchasing for hospital and doctor services, requiring reporting and compliance with government guidelines on the delivery of medical services. Hospitals and physicians that do not comply would get lower Medicare payments.

The problem with this approach is that it could either bias or compromise the independent professional judgment of physicians or medical specialists in the delivery of patient care. For the record, this policy contradicts the longstanding statutory prohibition against federal interference in the practice of medicine.[4]

HHS would establish quality reporting standards for long-term care facilities, cancer hospitals, and skilled nursing facilities plus new authorities and funding for HHS to develop and enforce quality standards. The bill would also adjust physician payment and create new payment systems for hospitals to reduce patient readmission. It would also establish an "Innovation Center" to test new payment models, as well as a pilot program to test "payment bundling" for the treatment of various conditions.

3. For an elaboration of this point, see Edmund F. Haislmaier, "Health Insurance Co-ops: How Congress Could Adopt the Right Design," Heritage Foundation *Backgrounder* No. 2290, June 25, 2009, at *http://www.heritage.org/Research/HealthCare/bg2290.cfm.*
4. See Richard Dolinar, M.D., and S. Luke Leininger, "Pay for Performance or Compliance? A Second Opinion on Medicare Reimbursement," Heritage Foundation *Backgrounder* No. 1882, October 5, 2005, at *http://www.heritage.org/Research/HealthCare/bg1882.cfm.*

In Medicare Advantage, the bill would change current law to base Medicare payment to private health plans on competitive bids rather than the current statutory benchmarks. While this is an improvement over the provisions of the House bill, it does not go far enough: The competition among plans should not be confined to private plans alone but should also include traditional Medicare. The new payment should be transformed into financing a premium support system broadly similar to that which exists in the Federal Employees Health Benefits Program.

Medicaid Expansion. All adults with incomes at 133 percent of poverty ($14,440 for single person) would be eligible for Medicaid under the bill.

The current and very broken Medicaid program is unsustainable for states and poorly serves the needy and the indigent who depend upon it. The Medicaid expansion is based on budget assumptions that Medicaid is cheaper than private coverage because of low provider reimbursement rates.

But those lower rates also limit access. Those on private insurance are more likely to receive the preventive care all individuals should have. Since the private sector does it better, does it not make more sense to use the dollars for Medicaid in the private market instead?

Under the Baucus bill, there is no real relief for states in the cost of the current program. States will still face a steep budget cliff in December 2010 when the federal matching formula for Medicaid payment expires. Adding additional costs through expansion of eligibility and benefits is adding people to a sinking boat. Even with the federally financed enhanced match rates, states will still face increased costs. So will individuals and families.

The Baucus bill also fails to provide the states with the flexibility they desperately need to manage their current program in an effective and cost-efficient manner.

Unanswered Questions. Despite the Baucus bill being seen as a “great compromise,” the American public will continue to ask important questions such as “How much money will be spent to substitute public spending for private spending?” and “How many low-income Americans will be forced to spend more on health care than they currently do today?” Taxpayers should know more about the real impact of the Baucus bill on their lives before Senators vote on such a measure.

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