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The House and Senate Health Care Bills: The Key Differences

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The giant House and Senate health care bills¹ reflect a common ideological foundation: a profound congressional faith in the efficacy and desirability of federal government control over the financing and delivery of Americans' health care, ranging from federal control over health benefits to the dramatic expansion of government coverage—notably Medicaid—for new classes of American citizens.

Nonetheless, there are consequential policy problems to be resolved. Before a final bill reaches the desk of the President, House and Senate negotiators must iron out these differences and engage in further compromise and concessions.

Six Key Differences

1. *The Nature and Scope of the Public Plan.* Both President Obama and congressional liberals proposed a new government run health plan (a “public option”) to compete against private health insurance nationwide. To gain the support of several key moderates, such as Senator Joseph Lieberman (I-CT), the Senate leadership dropped provisions to establish an explicit public plan from the final version of their bill. Instead, they substituted a new set of “multi-state” private health plans sponsored by the U.S. Office of Personnel Management that would compete against private health plans in the state-based exchanges that are mandated by the Senate bill.

In contrast, the House bill (H.R. 3962) includes an explicit government-run health plan. Moreover, the House-passed public plan is already less

“robust” than originally proposed; thus, additional House concessions on the provision may be even more difficult.² Even public opinion, which is vaguely supportive of the idea of a public plan competing against private insurance, is moving against the concept of the public plan.³

2. *The Size and Reach of New Federal Taxes.* Both the House and Senate bills would impose new taxes, which will hit the middle class, thus breaking the President's repeated promise to not raise taxes on families earning under \$250,000.

The Senate bill relies heavily on more than a dozen tax provisions, including a new excise tax on high cost health care plans: a 40 percent excise tax on plans exceeding \$8,500 for an individual and \$23,000 for a family. The tax would also apply to the private plans offered in the Federal Employees Health Benefits Program (FEHBP) and, according to the Congressional Budget Office (CBO), yield \$149 billion in new revenues over 10 years.

The Senate bill also has a new federal premium tax on all insurers, including those who cover seniors in the Medicare Advantage program and federal workers and retirees in the FEHBP. There is general agreement that this new premium tax, as

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well as others, will be passed on to consumers through higher premiums and health care costs.

Financing for the House bill depends on a heavy new income tax targeted at “wealthy” income taxpayers and small businesses. The House-passed bill would impose a 5.4 percent tax on individuals with incomes above \$500,000 and on families with incomes above \$1 million, and would yield \$461 billion in new revenues (according to CBO) over 10 years. As noted by analysts at The Heritage Foundation, the tax is structured in such a way that over time more and more Americans will be hit by this tax, and small business owners would be particularly affected.⁴

3. The Scope of the Employer Mandate. Both the House and Senate bills impose mandates on employers to offer government-approved health care coverage or pay a tax penalty.

The Senate bill imposes a \$750 penalty per worker on employers of 50 or more who do not offer federally qualified coverage. Even if the employer *does* offer federally qualified coverage, if a worker obtains the federal subsidy to buy coverage in the health insurance exchange, the employer would have to pay an annual penalty of \$3,000 for each worker who obtains a subsidy (up

to a maximum of \$750 times the total number of full-time workers).⁵

The House bill imposes a direct requirement on employers to offer federally qualified health care coverage to their employees and pay a specified percentage for single and family premiums or pay a payroll tax of up to 8 percent. In trying to recover from the recession, employers do not need yet another tax. Both the U.S. Chamber of Commerce and the National Federation of Independent Businesses have come out against the bills.⁶

4. The Penalties of an Individual Mandate. Both bills also impose a new legal requirement on individuals to either buy federally approved health insurance or pay a tax penalty.

Beginning in 2014, the Senate bill requires individuals to purchase a government-approved plan or pay a penalty. By 2016, the annual penalty would amount to \$750. The tax penalty, indexed for inflation, would increase over time.

Beginning in 2013, the House bill requires individuals to pay a penalty of 2.5 percent of their income for not obtaining federally “acceptable” health care coverage. Those with health insurance that does not meet the federal standards would still pay the tax penalty. Not surprisingly, many on the

1. For a description of the House bill, see Staffs of the Center for Health Policy Studies and Center for Data Analysis, “A Closer Look at The House Democrats’ Health Care Bill,” Heritage Foundation *WebMemo* No 2684, November 6, 2009, at <http://www.heritage.org/Research/HealthCare/wm2684.cfm>. For a description of the Senate bill, see Staffs of the Center for Health Policy Studies and the Center for Data Analysis, “An Analysis of the Senate Democrats’ Health Bill,” Heritage Foundation *Background* No 2353, December 18, 2009, at <http://www.heritage.org/Research/HealthCare/bg2353.cfm>.
2. The original House version envisioned the public plan using Medicare payment rates, which are well below the rates paid to doctors and hospitals in the private sector, to drive down costs and make its premiums less expensive than private health plans.
3. See CNN Research Poll, December 10, 2009, at <http://i2.cdn.turner.com/cnn/2009/images/12/10/rel18h.pdf> (December 21, 2009).
4. See Rea S. Hederman, Jr., and Guinevere Nell, “Pelosi Health Care Plan: Who Pays the Surtax?,” Heritage Foundation *WebMemo* No. 2687, November 6, 2009, at <http://www.heritage.org/Research/HealthCare/wm2687.cfm>.
5. See Robert A. Book, “Employment Discrimination in the Senate Health Care Bill,” Heritage Foundation *WebMemo* No. 2737, December 17, 2009, at <http://www.heritage.org/Research/HealthCare/wm2737.cfm>.
6. See U.S. Chamber of Commerce, “Letter Opposing H.R. 3962, the Affordable Health Care for America Act,” November 5, 2009, at <http://www.uschamber.com/issues/letters/2009/091105hr3962.htm> (December 22, 2009); U.S. Chamber of Commerce, “Key Vote Letter Opposing the Patient Protection and Affordable Care Act,” December 18, 2009, at http://chamberpost.typepad.com/files/091218_kv_hr3590_patientprotectionandaffordablecareact_senate.pdf (December 22, 2009); National Federation of Independent Businesses, “NFIB Statement: Senate Health Bill,” November 19, 2009, at <http://www.nfib.com/issues-elections/issues-elections-item/cmsid/50237> (December 21, 2009); National Federation of Independent Businesses, “Letter to House Opposing H.R. 3962,” November 5, 2009, at <http://www.nfib.com/issues-elections/issues-elections-item/cmsid/50168> (December 22, 2009).

Right and the Left oppose this mandate.⁷ Ironically, both sides seem to agree that congressional action to coerce individuals to buy insurance is bad policy or just plain wrong.

5. *The Expansion of the Medicaid Entitlement.* Both bills greatly expand eligibility for Medicaid, the welfare program that provides health care services to the poor and the indigent.

The Senate bill would require states to expand their Medicaid programs to cover all Americans up to 133 percent of the federal poverty level (FPL), or \$29,326 for a family of four. The House bill would require states to expand eligibility for Medicaid to 150 percent FPL, or \$33,075 for a family of four.

Such an expansion of Medicaid “crowds out” private coverage and faces resistance by governors who are struggling with budget demands.⁸ Moreover, any “sweetheart” deals to provide additional assistance to the states, like the one extended to Senator Ben Nelson (D-NE), only shift the real cost from state taxpayers to federal taxpayers.

6. *Taxpayer Funding for Abortion.* The President promised that there would be no federal taxpayer funding for abortion. In the House bill, by virtue of the Stupak-Pitts amendment, there is a genuine firewall between federal funding and abortion cov-

erage. In the Senate bill, by virtue of the agreement between Senate Majority leader Harry Reid and Senator Nelson, there is no such firewall; the bill allows federal taxpayer funding for abortion. For the pro-life advocates on both sides of the aisle, the Reid-Nelson language falls far short of the House language.

Rising Unpopularity. Even if concessions and compromises can be made between the Senate and House versions, public opinion is solidifying against the legislation. A recent Rasmussen poll found that only 34 percent of voters say passing a health care bill is better than doing nothing.⁹ This is on the heels of a CNN poll that found 61 percent opposed to the bill¹⁰ and a NBC/*Wall Street Journal* poll that found that only 32 percent think the health care bills are a “good idea.”¹¹

With public opinion opposing the bills mounting, Americans can hope Congress will stop and enact true, bipartisan health reform, reform that does not constitute a federal takeover of American health care.

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7. See, for example, Randy Barnett, Nathaniel Stewart, and Todd F. Gaziano, “Why the Personal Mandate to Buy Health Insurance Is Unprecedented and Unconstitutional,” Heritage Foundation *Legal Memorandum* No. 49, December 9, 2009, at <http://www.heritage.org/Research/LegalIssues/lm0049.cfm>.
8. Estimated Medicaid spending in the states for fiscal year 2009 increased by over 7 percent. See National Association of State Budget Officers, “The Fiscal Survey of States: Fall 2009,” December 2009, at <http://www.nasbo.org/Publications/PDFs/fsfall2009.pdf> (December 22, 2009).
9. Rasmussen Reports, “Just 34% Say Passing Health Care Bill Is Better Than Passing Nothing,” December 18, 2009, at http://www.rasmussenreports.com/public_content/politics/current_events/healthcare/december_2009/just_34_say_passing_health_care_bill_is_better_than_passing_nothing (December 21, 2009).
10. CNN Research Poll.
11. MSNBC, “NBC Poll: Public Sours on Health Care Reform,” at <http://firstread.msnbc.msn.com/archive/2009/12/16/2153563.aspx> (December 21, 2009).