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State Private-Market Health Insurance Reform: Lessons on Health Insurance Exchanges, Progress, and Next Steps

The Honorable Orrin G. Hatch

Abstract: *Perhaps the most powerful obstacle to state-based health care innovation is a federal government seeking to impose a single national system through regulations and mandates. There is an enormous reservoir of expertise, experience, and field-tested reform among the states, and we should take advantage of that by placing states at the center of health care reform efforts so that they can use approaches that best reflect their own needs and challenges. America's Founders created a system in which the federal government may exercise only delegated powers that James Madison described as "few and defined." The rest belong to the states or to the people. Not only does federalism protect liberty by limiting government, but it allows states to try different things, to test different solutions, to use different approaches.*

Thank you for the opportunity to speak with you today. I am honored to talk about the critical role and value of state-based health care reform efforts at The Heritage Foundation and applaud this institution's unwavering commitment to promoting and preserving our free-market and individual empowerment principles.

I would also like to take a moment to recognize Speaker Dave Clark from my home state of Utah, who has worked tirelessly with his very accomplished team to ensure that Utah is a shining example of why states, not Washington, should be put in charge of deciding how best to insure their own constituencies. His commitment to ensuring that Utah is at the forefront of state-based health care reform efforts is truly commendable.

Talking Points

- According to the Administration's own actuary at the Centers for Medicare and Medicaid Services, this health care bill will actually raise our total health care spending by \$222 billion over the next 10 years.
- According to the Senate Budget Committee, the full 10-year price tag is \$2.5 trillion.
- Perhaps the most powerful obstacle to state-based health care innovation is a federal government seeking to impose a single national system through regulations and mandates.
- If Congress may not only regulate economic or commercial activities in which we choose to engage, but also require us to engage in them, then Congress may do anything.
- Every state has its own unique mix of demographics, and each state has developed its own institutions to address its challenges. And each has its own successes.

This paper, in its entirety, can be found at:
<http://report.heritage.org/hl1153>

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To be honest, we've never seen anything like the issues facing our country right now. We are at a pivotal point as a nation. The line between private businesses and public government has never been so blurred. Government effectively owns several of our nation's financial institutions, insurance companies, and auto manufacturers. CEOs have been fired by government bureaucrats, and Washington is now in the business of running our health care system more than ever before.

Our fiscal outlook is bleaker than ever. According to the recent 10-year outlook by the Congressional Budget Office (CBO), the current Administration's policies would add \$8.5 trillion to our already record national debt. The report also confirmed that we will be facing a record deficit of \$1.5 trillion this year, along with a dire prediction of our deficits only getting worse in 2015 and beyond.

Let me put this in perspective. Our deficit this year is the largest yearly deficit since 1945. It is 10 percent of our entire economy. Our national debt is on a path to double in the next five years and triple in the next 10 years. According to CBO, our national debt will explode to \$20.3 trillion by 2020, or 90 percent of our GDP. We are literally drowning the future of this nation in a sea of red ink.

Institutionalizing Big Government

I deliver these remarks with a heavy heart because what could have been a strong bipartisan bill reflecting our collective and genuine desire for responsible health care reform turned into an extremely partisan exercise resulting in one of the largest big-government spending bills ever.

Polls continue to show that a majority of Americans are highly skeptical about the promises that this legislation will reduce our deficits and lower health care costs. Why? Because they know that there is no such thing as a free lunch, especially when Washington is the one inviting you over.

In fact, the most cynical joke played on the American people is the promise that this \$2.5 trillion tax-and-spend bill will actually reduce our deficit. According to the Administration's own actuary

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at the Centers for Medicare and Medicaid Services (CMS), this health care bill will actually *raise* our total health care spending by \$222 billion over the next 10 years.

It is only through a simple math trick that the other side of the aisle can make these specious claims. If something is too expensive to do for a full 10-year period, just do it for five or six years instead. Most of the major spending provisions in the bill do not go into effect until 2014 or later—coincidentally, after the 2012 presidential elections. So what we are seeing is not the full 10-year cost, but rather only the cost for six years. According to the Senate Budget Committee, the full 10-year price tag is \$2.5 trillion.

More important, let me also clarify what CBO has said on the nearly \$500 billion in Medicare cuts which my friends on the other side argue will magically not only extend Medicare's solvency, but also pay for a large part of this bill. This is double counting, my friends, plain and simple. This is like telling American families that they can spend the same magical dollar to pay not only their mortgage, but also their credit cards. It is nonsensical. Here is what the experts at CBO said:

The key point is that the savings to the [Medicare Hospital Insurance] trust fund...would be received by government only once, so they cannot be set aside to pay for future Medicare spending and, at the same time, pay for current spending on other parts of the legislation or on other programs.¹

By the way, at a time when major government programs like Medicare and Medicaid are already on a path to fiscal insolvency, more than half of those who gain coverage—16 million out of the 32

1. Congressional Budget Office, "Effects of the Patient Protection and Affordable Care Act on the Federal Budget and the Balance in the Hospital Insurance Trust Fund," December 23, 2009, p. 2, at http://www.cbo.gov/ftpdocs/108xx/doc10868/12-23-Trust_Fund_Accounting.pdf (April 19, 2010).

million—are simply being pushed into the Medicaid program. Utah will see its Medicaid program expand by nearly 50 percent under this bill, and if anyone thinks that states, which are facing more than \$200 billion in deficits, will not be left holding the bag, then I have a bridge to sell to you.

Violating Federalism and the Constitution

Perhaps the most powerful obstacle to state-based health care innovation is a federal government seeking to impose a single national system through regulations and mandates. This is the opposite of how America's Founders designed our nation to operate. They created a system in which the federal government may exercise only delegated powers that James Madison described as "few and defined."² The rest belong to the states or to the people. The federal government needs permission to act, and the states need a prohibition to be kept from acting. This system that we call federalism was one of several ways that America's Founders put in place to keep government, especially the federal government, limited.

The benefits of this system—at least as it was designed to work—should be obvious. Not only does federalism protect liberty by limiting government, but it allows states to try different things, to test different solutions, to use different approaches. More liberty and more effective government—now, *that* is a great system.

This is why I have argued since last summer, including here at Heritage in December, not only that Washington-dictated health care legislation is terrible policy, but that it is unconstitutional. Specifically, Congress does not have authority to require that individuals purchase not only health insurance in general, but a certain level of health insurance in particular.

None of Congress's powers listed in the Constitution justifies this federal insurance mandate. The Constitution allows Congress to regulate interstate commerce, and the Supreme Court

allows Congress to regulate activities that substantially affect interstate commerce. But before the law that President Obama just signed, Congress had never attempted, and the courts have never approved, regulating the decision whether to engage in such activities.

If Congress may not only regulate economic or commercial activities in which we choose to engage, but also require us to engage in them, then Congress may do anything. Every decision we make, including the decision not to purchase something, has economic consequences. Why would Congress bother with incentives if it can use mandates? Requiring, after all, is so much easier than encouraging. There was no need for the Cash for Clunkers program if Congress has the power to tell us what goods or services to buy. Let me emphasize that this is not only about good policy; this is about liberty itself.

Congress does not have authority to require that individuals purchase not only health insurance in general, but a certain level of health insurance in particular.

The lawsuits by states, including Utah, challenging the federal government's authority to impose the insurance mandate are defending not only the states' freedom to pursue their own policy solutions, but the liberty of every American. Only a couple of weeks ago, George Washington University law professor Jonathan Turley wrote in *USA Today* that the federal insurance mandate is "the greatest (and perhaps the most lethal)" threat to federalism in U.S. history. Federalism, he wrote, "was already on life support," and this mandate could amount to a do-not-resuscitate order.³

That is a startling admission from a liberal scholar who defends the health care law as good policy and last fall dismissed constitutional arguments against it as hardly worth discussing.

2. James Madison, *Federalist* No. 45, at <http://www.constitution.org/fed/federa45.htm> (April 19, 2010).

3. Jonathan Turley, "Is Mandate Constitutional?" *USA Today*, March 31, 2010, at <http://blogs.usatoday.com/oped/2010/03/column-is-mandate-constitutional.html#more> (April 19, 2010).

Greater Choice Through State Innovation

Giving states flexibility to design their own unique approaches to health care reform is essential. Utah is not Massachusetts, and Massachusetts is not Utah. It is important to recognize that every state has its own unique mix of demographics, and each state has developed its own institutions to address its challenges. And each has its own successes.

For example, although both the Utah Health Exchange and the Massachusetts Connector serve the same basic purpose of giving consumers greater choice by creating a health insurance marketplace, there are several key differences in their design and responsibilities that are specific to the needs of the state. A one-size-fits-all Washington-dictated model is not the answer.

Giving states flexibility to design their own unique approaches to health care reform is essential.

There is an enormous reservoir of expertise, experience, and field-tested reform. We should take advantage of that by placing states at the center of health care reform efforts so they can use approaches that best reflect their needs and challenges. I know I am preaching to the choir here since Heritage has been such a valuable partner in these efforts.

I have said all along that this is not a fight between Republicans and Democrats, but a fight between the Democrats and a majority of Americans who oppose this bill. In town hall after town hall and poll after poll and election after election, Americans begged Washington to listen to their voices, but Washington ignored them and used every means necessary—from backroom deals to budget gimmickry to procedural trickery—to get this bill passed.

We need to remember the real implications of these policies, not simply in terms of political legacies and ideological holy grails, but in terms of their impact on the future of our children and grandchildren. We need to ensure that they have the same opportunities to prosper that we have all been blessed with.

Despite all the rosy promises, we all know that this health care bill will do nothing to control sky-high health care costs. So in a couple of years, when the American people continue to see their insurance premiums rise, you will simply hear the other side once again blame the private sector instead of their own big-government policies. I am very concerned that this bill will simply become a failed experiment that will be used not as a lesson, but as a justification for more government intervention and higher spending: in other words, another giant leap toward a one-size-fits-all single-payer system.

Let me finish my remarks with a quote from the great Ronald Reagan: “[T]he federal government did not create the states; the states created the federal government.”⁴ This simple pearl of wisdom should be at the forefront of our policymaking process in Washington, and I will fight every day to make sure that we preserve our core principles that make our nation great: small government, fiscal responsibility, and individual freedom.

—*The Honorable Orrin G. Hatch represents the State of Utah in the United States Senate, where his assignments include (among others) service as a senior member of the Committee on the Judiciary and the Committee on Health, Education, Labor, and Pensions, both of which he formerly served as chairman. He delivered these remarks at a conference on state health insurance reform at The Heritage Foundation.*

4. Ronald Reagan, Inaugural Address, January 20, 1981, at http://www.ronaldreagan.com/sp_27.html (April 19, 2020).