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What House Passage of the Senate Health Bill Means for America

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This week House Speaker Nancy Pelosi (D–CA) and the House leadership are working feverishly to enact H.R. 3590, the highly unpopular Senate health bill. It includes new middle-class taxes and government spending, bunches of federal boards and bureaucracies, mandates and penalties, an entitlement expansion, and unprecedented taxpayer funding of abortion. It is also characterized by flagrant inequities: special back-room deals at the expense of federal taxpayers for Florida, Nebraska, and Louisiana.

Nonetheless, House leaders will insist that Members of the House enact the 2,700-page Senate health bill, promising to "fix" its ugly and objectionable features with the second bill, which they would enact through the extraordinary budget reconciliation process. The Senate must fully cooperate with this scheme.

No Guarantees. Once the House passes the Senate bill—however it is "passed"—and sends it to the President's desk for a signature, it becomes the law of the land. No fixes are guaranteed. A reworked House bill to amend the Senate bill may or may not survive the Senate's budget reconciliation debate; provisions can be blocked on a point of order or struck down as incompatible with the reconciliation rules.

Moreover, even if a subsequent bill to amend the Senate bill somehow makes it through a very difficult reconciliation process, it will change little in terms of overall health policy. For all intents and purposes, the legislative debate for this year would be over. For this reason, ordinary Americans and lawmakers alike should understand what the Senate bill has in store for the nation's health care system.

The Cost to Americans:

Bending the Curve Upwards. The Senate bill manifestly does nothing to bend the health care cost curve downward. According to the latest Congressional Budget Office (CBO) report, the Senate bill would increase health care spending by $210 billion over the next 10 years.[1] This follows a previous report from the chief actuary at the Center for Medicare and Medicaid Services, who estimates that the Senate bill would result in $222 billion in additional health care spending over 10 years.

The Senate health bill does not even begin to address the distortions in health care markets and perverse economic incentives that drive costs up.[2] In fact, the Senate bill adds heavy new federal regulations on insurers and fees on high-ticket medical expenditures such as medical devices, prescription drugs, and high-cost insurance plans. As a result, the costs for patients and taxpayers would be higher than they would be under current law.

Even More Deficits. Congressional leaders claim that the Senate bill is "deficit neutral" because,

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among other things, it assumes current law governing Medicare physician payment rules, which would automatically result in an initial annual reduction in Medicare physician payment of 21 percent. This is an absurd assumption. Congress is not going to allow its own ridiculous Medicare physician payment update rules to go into effect. But if Congress were to repeal this rule, the so-called "doc fix," it would add a 10-year cost to Medicare in excess of $200 billion. Assuming that the Congress does not "pay for" the doc fix—the most realistic scenario—that is the end of deficit neutrality.

In addition, the Senate bill includes additional billions in non-coverage spending and, as Congressman Paul Ryan (R–WI) has explained, "double-counts" savings from Medicare spending cuts, which cannot simultaneously enhance Medicare trust fund solvency while financing other program expansions.[3]

Finally, the CBO cost estimate looks at a 10-year window that includes *10* years of revenue collection but only *six* or *seven* years of outlays.

When all spending and offsets are properly accounted for, the true cost of the Senate bill skyrockets to over $2 trillion.[4] Further adding to this cost is the political implausibility of the projected 10-year savings, such as the $463 billion in cuts to Medicare.[5]

Taking into account these facts about the Senate bill, the most plausible expectation is that, over time, it would add significantly to the federal deficit.

New Middle-Class Taxes. The President solemnly promised that he would not impose any new taxes on American households making less than $250,000. The Senate bill shatters this promise.

For example, the excise tax on high-cost health insurance plans would overwhelmingly hit middle-class taxpayers. Likewise, special federal premium taxes in the Senate bill would also be passed down to consumers, resulting in premium increases that would be higher than they would otherwise be.[6] In addition to taxes on health insurance, the Senate bill would also create new taxes on medical necessities such as prescription drugs and medical devices.[7]

Beyond these new taxes, the President's proposal would add yet another provision (presumably for consideration in the budget reconciliation process) that would tax investment income. This would result in 115,000 lost job opportunities and a net reduction of $17.3 billion annually in household disposable income.[8] Amidst a recession, this is a stunningly bad idea.

1. See Douglas W. Elmendorf, director, Congressional Budget Office, letter to the Honorable Harry Reid, U.S. Senate, March 11, 2010, at *http://www.cbo.gov/ftpdocs/113xx/doc11307/Reid_Letter_HR3590.pdf* (March 15, 2010).
2. For an extensive discussion of the underlying reasons for increased health care spending, see Robert Book and Jason Fodeman, "'Bending the Curve': What Really Drives Health Care Spending," Heritage Foundation *Backgrounder* No. 2369, February 17, 2010, at *http://www.heritage.org/Research/Reports/2010/02/Bending-the-Curve-What-Really-Drives-Health-Care-Spending.*
3. CQ Transcriptions, "Rep. Paul Ryan on Health Inflation at White House Health Summit," *The Washington Post*, February 25, 2010, at *http://www.washingtonpost.com/wp-dyn/content/article/2010/02/25/AR2010022504074.html* (March 15, 2010).
4. See James C. Capretta, "The Real Budgetary Impact of the House and Senate Health Bills," Heritage Foundation *WebMemo* No. 2756, January 14, 2010, at *http://www.heritage.org/Research/Reports/2010/01/The-Real-Budgetary-Impact-of-the-House-and-Senate-Health-Bills.*
5. See Elmendorf, letter to Reid.
6. Edmund F. Haislmaier, "The Senate Health Bill: Cost of the Insurance Premium Tax to Individuals and Families," Heritage Foundation *Backgrounder* No. 2350, December 9, 2009, at *http://www.heritage.org/Research/Reports/2009/12/The-Senate-Health-Bill-Cost-of-the-Insurance-Premium-Tax-to-Individuals-and-Families.*
7. Curtis S. Dubay, "Taxes Proposed to Pay for Health Care Reform," Heritage Foundation *WebMemo* No. 2706, November 20, 2009, at *http://www.heritage.org/Research/Reports/2009/11/Taxes-Proposed-to-Pay-for-Health-Care-Reform.*
8. See Karen Campbell and Guinevere Nell, "The President's Health Proposal: Taxing Investments Undermines Economic Recovery," Heritage Foundation *WebMemo* No. 2817, February 25, 2010, at *http://www.heritage.org/Research/Reports/2010/02/The-Presidents-Health-Proposal-Taxing-Investments-Undermines-Economic-Recovery.*

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Increased Health Insurance Premiums. The President initially promised that Americans would see a $2,500 annual reduction in their family health care costs. But under the Senate bill, premiums would go up for millions of Americans. In fact, according to the CBO, estimated premiums in the individual market would be 10–13 percent higher by 2016 than they would be under current law.[9]

The Senate bill changes health insurance rules and adds a guaranteed issue of coverage provision combined with an individual mandate to purchase a federally designed health insurance benefit package. This combination could result in all sorts of unintended consequences, including even greater instability in the health insurance markets and even higher numbers of uninsured.

The reason: the economic incentives for younger and healthier individuals could encourage them to pay the cheaper mandate penalty rather than buy the more expensive government required health insurance, knowing that they could always sign up later under the guaranteed issue rule.[10] This in turn could further destabilize the health insurance market, which would then be populated by disproportionately larger numbers of the elderly and sickly in insurance risk pools.

Under such circumstances, premiums would increase even more, further discouraging healthy individuals from obtaining coverage. The danger is that more and more Americans could choose to remain uninsured rather than pay the higher price of carrying coverage.

New Problems for Employer-Sponsored Insurance. The Senate bill would introduce perverse incentives within the group insurance market as well. For example:

- *Incentives to drop coverage.* The structure of the employer mandate would create strong incentives for firms that hire a large proportion of low-income workers to drop their employee health plan altogether.[11] The penalty employers would face for failing to offer coverage to employees would be $750 a person. However, if employers did offer coverage, but the employee-paid portion accounted for a larger percentage of a worker's income than deemed acceptable by the bill, the worker would be eligible to drop out of employer-sponsored insurance and obtain a subsidy to buy insurance in the exchange instead. Under this scenario, the employer would pay a $3,000 fine for every worker that bought insurance in the exchange, capped at one-fourth of the workforce. If more than 25 percent of the workforce was comprised of low-income workers, the employer could end up paying the same amount regardless of whether they offer insurance or not—not including the expense and effort of offering insurance. It would thus be more beneficial simply to not offer insurance at all, much to the detriment of employees who would not be eligible for subsidies in the exchange.
- *Discrimination against low-income workers.* The bill would also discourage employers from hiring workers from low-income families in the first place.[12] Eligibility for subsidies in the exchange is dependent on family income, so employers would benefit by hiring workers from higher-income families rather than low-income

9. See Congressional Budget Office, "An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act," November 30, 2009, p. 23, at *http://www.cbo.gov/ftpdocs/107xx/doc10781/11-30-Premiums.pdf* (March 15, 2010).
10. See Rea S. Hederman, Jr., and Paul L. Winfree, "How Health Care Reform Will Affect Young Adults," Heritage Foundation *Center for Data Analysis Report* No. 10-02, January 27, 2010, at *http://www.heritage.org/Research/Reports/2010/01/How-Health-Care-Reform-Will-Affect-Young-Adults*.
11. See Robert A. Book, "How the Senate Health Bill Punishes Businesses That Hire Low-Income Workers," Heritage Foundation *WebMemo* No. 2716, December 3, 2009, at *http://www.heritage.org/Research/Reports/2009/12/How-the-Senate-Health-Bill-Punishes-Businesses-That-Hire-Low-Income-Workers*.
12. 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/Reports/2009/12/Employment-Discrimination-in-the-Senate-Health-Care-Bill*.

families. This would mean that a single mother would be less likely to be hired than an equally eligible job applicant looking to earn a second income, and a teenager would be more appealing as an employee than an adult. This penalty hurts those who need jobs the most by giving employers financial reasons not to hire them.

- *New inequities.* The generous subsidies available to purchase insurance in the federally designed state-based health insurance exchanges would be limited to a subset of Americans that fall within an eligible income bracket, creating gross inequity among workers of equal income. Workers who were offered insurance through their employers would be able to opt out and enter the exchange only if their portion of employer-sponsored insurance premiums is greater than a specified percentage of their income. This would mean that one worker could receive thousands of dollars in additional federal assistance, while another with the same income would receive little to no assistance.[13] Of course, workers getting employer-sponsored insurance benefit from group coverage; but, of course, when an employer provides insurance, the worker still pays for it through lower wages and other compensation.

Expansion of Entitlement Programs and Government Control:

New Regulations. The combination of an excise tax on high-cost insurance plans, a federally defined minimum medical loss ratio, age compression in rating, and federally defined required benefits would not only raise premiums but also make it exceedingly difficult for insurers to remain solvent and stay within the law.[14] At the same time, presumably through the reconciliation process, the President is proposing new federal health insurance rate authority that would, working with the state officials, monitor and reverse "unjustified" premium increases.[15]

The assumption is that government officials will set the right premium rates. If they set them above the market rate, Americans would pay too much for insurance. If they set them below the market rate, insurers would be forced to cut costs by clamping down on reimbursements for doctors, hospitals, and medical services, thus creating access problems for enrollees.

Or, if they run shortfalls because of federal officials' miscalculations, they could lobby Congress for taxpayer bailout to cover the shortfalls. If banks are "too big to fail," it is hard to imagine how health insurers, covering millions of people, would not also become the next big industry recipients of taxpayer bailouts.

Expanding Medicaid. Under the Senate bill, the federal government would initially cover most of the cost of expanding Medicaid, but thereafter states would have to pick up a portion of the cost. This comes at a time when states are cutting spending in Medicaid and other areas to accrue savings and avoid increasing debt.[16] In fact, a Heritage analysis of the options shows that states could save significantly if they were to drop their Medicaid programs altogether, which could become an appealing option after adoption of the Senate bill.[17]

13. See James C. Capretta, "The Senate Health Care Bill's 'Firewall' Creates Disparate Subsidies," Heritage Foundation *WebMemo* No. 2730, December 11, 2009, at *http://www.heritage.org/Research/Reports/2009/12/The-Senate-Health-Care-Bills-Firewall-Creates-Disparate-Subsidies.*
14. See Robert A. Book and Kathryn Nix, "Squeezing out Private Health Plans," Heritage Foundation *WebMemo* No. 2774, January 22, 2010, at *http://www.heritage.org/Research/Reports/2010/01/Squeezing-out-Private-Health-Plans.*
15. The White House, "The President's Proposal," February 22, 2010, at *http://www.whitehouse.gov/sites/default/files/summary-presidents-proposal.pdf (March 15, 2010).*
16. See Dennis G. Smith, "Medicaid Expansion Ignores States' Fiscal Crises," Heritage Foundation *WebMemo* No. 2744, January 5, 2010, at *http://www.heritage.org/Research/Reports/2010/01/Medicaid-Expansion-Ignores-States-Fiscal-Crises.*
17. See Dennis G. Smith and Edmund F. Haislmaier, "Medicaid Meltdown: Dropping Medicaid Could Save States $1 Trillion," Heritage Foundation *WebMemo* No. 2712, December 1, 2009, at *http://www.heritage.org/Research/Reports/2009/11/Medicaid-Meltdown-Dropping-Medicaid-Could-Save-States-1-Trillion.*

An Un-level Playing Field for Insurance. The Senate bill requires the Office of Personnel Management (OPM) to sponsor at least two health plans that would compete nationwide against private health plans in the state health insurance exchanges established under the Senate bill. This would greatly expand the powers of OPM and could lead to a *de facto* "public plan" with separate rules for benefits, profits, and medical loss ratios.[18] The advantage of government-sponsored plans in the market could undermine the ability of private insurers to compete. There is nothing, of course, in the Senate language that would preclude taxpayer bailouts of the government-sponsored plans if they incurred shortfalls.

Penalizing Marriage. The Senate's structure of the subsidies for health insurance is inequitable, offering more financial assistance to non-married couples than to married couples with comparable income.[19] This is bizarre social policy.

Sidecar Sideshow. House enactment of the Senate health bill means that it becomes the law of the land, regardless of further House efforts to craft a "sidecar" bill to make changes. It is quite possible that House action, followed by a presidential signature, simply ends this year's health care debate.

Given the inherent difficulties in enacting complex legislative changes under the rules that govern reconciliation, the basic contours of the Senate bill would remain. And the relationship between the federal government and American citizens would increasingly be a relationship of dependence and, thus, subservience.

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18. Robert E. Moffit and Kathryn Nix, "The Public Health Plan Reincarnated: New—and Troubling—Powers for OPM," Heritage Foundation *Backgrounder* No. 2364, January 21, 2010, at *http://www.heritage.org/Research/Reports/2010/01/The-Public-Health-Plan-Reincarnated-New-and-Troubling-Powers-for-OPM*.
19. Robert Rector, "The New Federal Wedding Tax: How Obamacare Would Dramatically Penalize Marriage," Heritage Foundation *WebMemo* No. 2767, January 20, 2010, at *http://www.heritage.org/Research/Reports/2010/01/The-New-Federal-Wedding-Tax-How-Obamacare-Would-Dramatically-Penalize-Marriage*.