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Brief Overview/Introduction

Health care reform had never come so close to success as it has in the past year. Just prior to publication, a health care reform package finally passed the House of Representatives when House members voted to accept the Senate's health care reform bill. The President signed the bill into law on March 23, 2010. This article first provides a chronology of the health care reform process, especially during 2009 (Section I), then presents and compares the most recent versions of the full health care reform bills passed by the House and Senate (Section II) and, finally, assesses the most recent developments and the future of health care reform (Section III).

I. Chronology of the Health Care Reform Process

A. Presidential Campaign 2008

The story of American health care reform efforts is long, dating back at least to President Truman's administration in the 1950's. Despite intense interest and repeated attempts by many Presidents, Senators, and Members of Congress, comprehensive health care reform had remained unfulfilled.[1] The failure to achieve health care reform was glaring, particularly against the backdrop of the over fifty million Americans estimated to be without health insurance, impeding access to health care services.[2]

President Bill Clinton's efforts at health care reform in 1993–1994, shortly after coming into office, were particularly noteworthy. "Then-first lady Hillary Clinton, who headed the administration's task force on reforming the system, delivered a 1,000-page plan that was dubbed "Hillary Care,"" which included an individual mandate for citizens and permanent residents to obtain coverage by a health plan.[3] Congressional Republicans "decried the plan as overcomplicated and used it to tag the administration as big government-loving, tax-and-spend liberals."[4] Ultimately, President Clinton's reform efforts proved unsuccessful and, in the wake of the resulting health care debacle, the Republican Party gained Congressional majorities in both the House of Representatives and the Senate in November 1994.[5]

The impetus for national health care reform receded after the unsuccessful efforts of the Clinton Administration and did not fully resurrect until the 2008 Presidential election season. The Democratic primaries offered a new opportunity for Hillary Clinton, then a Presidential candidate, to propose a health care plan in her own right and making. She continued her efforts for universal health care, making it a centerpiece of her campaign. Then Illinois Senator Barack Obama offered opposition in that primary campaign and health care policy differences became acute. For sure, their plans had areas of agreement, such as prohibiting pre-existing condition exclusions and expanding accessibility, but the main distinction among these major candidates concerned the issue of the individual mandate.[6] Senator Obama refused to adopt an individual mandate for health insurance coverage, in contrast to Mrs. Clinton. Instead, Senator Obama asserted that Americans would buy insurance on their own volition once reforms brought insurance to affordable levels.[7] Later, when campaigning in the general election, he promised to make health care more affordable and accessible by lowering health insurance costs $2,500 on average[8] and implementing tax credits for health insurance premiums.[9] Importantly, Senator Obama stated he would "[e]stablish a National Health Insurance Exchange with a range of private insurance options as well as a new public plan based on benefits available to members of Congress that will allow individuals and small businesses to buy affordable health coverage."[10]

B. Efforts at Health Care Reform in 2009

Once Barack Obama assumed the Presidency on January 20, 2009, his nascent Administration began the task of establishing health care reform principles. This was not surprising, given the prominence of

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health care as an election issue. At the start, the Obama Administration secured tentative "deals" for the cooperation of the health care industry in health care reform with leaders of the insurance industry, physicians, hospitals, pharmaceutical companies, and labor unions. These industry leaders initially pledged to produce cost savings of two trillion dollars over ten years.[11] In his FY 2010 budget overview, President Obama instructed Congress to follow eight key principles in instituting comprehensive health care reform:

> "[R]educe long-term growth of health care costs for businesses and government; protect families from bankruptcy or debt because of health care costs; guarantee choice of doctors and health plans; invest in prevention and wellness; improve patient safety and quality care; assure affordable, quality health coverage for all Americans; maintain coverage when you change or lose your job; end barriers to coverage for people with pre-existing medical conditions."[12]

During the late spring and summer of 2009, Congress began to deliberate possible health care reform provisions. The House issued a multi-Committee, consensus proposal, H.R. 3200, "America's Affordable Health Care Choices Act," on June 19, 2009.[13] The most important provisions of HR 3200 would have established an individual mandate for health insurance coverage, created a national health insurance exchange, and provided tax credits to enable individuals and families earning up to 400% of the federal poverty level (FPL) to afford health insurance.[14] As part of the framework, a new public health insurance option plan would have been created, in addition to an employer mandate to either provide employees coverage or pay an annual fee up to eight percent of payroll expenses to support the new health exchange.[15] Additionally, there would have been an expansion of Medicaid to 133% of the FPL, as well as increased regulation of insurance companies to protect consumers.[16]

Significantly, under the leadership of the late Senator Ted Kennedy (D-MA), a long-standing leader of health care reform, the Senate Health, Education, Labor and Pensions (HELP) Committee produced an alternative bill on July 15, 2009, S. 1679, the "Affordable Health Choices Act".[17] S. 1679 would have established state-based health exchanges (termed "gateways" in this bill) and community health insurance option plans, in contrast to the national approach of HR 3200.[18] The bill would have expanded Medicaid greatly, to 150% of the FPL.[19] Other major provisions were similar to HR 3200, such as the creation of an individual mandate, an employer mandate or annual fee, and affordability tax credits up to 400% of the FPL.[20]

The White House and individual Representatives and Senators were exposed to many public opinions through the course of the summer 2009 "Town Hall" meetings. Organized conservative activists, particularly those belonging to a new group, the "Tea Party," attempted to protest any further attempts at health care reform, particularly the public plan option.[21]

By the end of summer 2009, progress on health care legislation appeared at an impasse. President Obama attempted to seize the moment with an unprecedented televised address to a joint session of Congress on the topic of health care reform.[22] The President stressed his commitment to universal health care, enumerating several reform goals: security and stability for those persons currently insured, insuring the currently uninsured, and lowering Americans' health care costs.[23] He reiterated his plans to prohibit health insurance discrimination based on pre-existing conditions[24] and to establish a national insurance exchange that would allow consumers to compare competing health insurance alternatives.[25] In contrast to his position during the Democratic Primary season, the President now espoused a federal requirement for insurance coverage for all Americans (i.e., the individual mandate).[26] Also while promoting universal coverage, President Obama stated his open-ended preference for the so-called "public option" or, a federally funded health insurance plan. Recognizing the controversial nature of the plan, and dubious support even within his own party, the President also indicated that the public option could be replaced by functional alternatives like co-ops.[27]

Senator Max Baucus, chairman of the powerful Senate Finance Committee, unilaterally delivered his signature plan almost immediately following the President's speech, despite the fact that, earlier in the summer he had failed to garner a bipartisan compromise plan. The Senate Finance Committee passed its final version of a health care reform bill, after considerable amendments, on October 13, 2009. The bill delivered a decidedly more moderate package, especially when compared with the House's multi-committee bill and the Senate HELP Committee's more liberal version.[28] The Senate Finance Committee bill built on some areas of consensus reflected in the President's plan and the existing Congressional bills. Similarly, it contained an individual mandate,[29] affordability tax credits up to

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400% of the FPL, [30] and expanded Medicaid to 133% of the FPL.[31] It also provided for state-level insurance exchanges.[32]

Perhaps the most distinctive feature of the Senate Finance bill was its adoption of non-profit, consumer operated and oriented plans (co-ops) instead of the public option plans envisioned by the preceding bills, HR 3200 and S. 1679.[33] These co-ops, however, were not mandatory for any state; rather, they were merely "encouraged" by $6 billion of seed grant money in the bill.[34] The Baucus plan was also noteworthy for its complex funding structure, including hundreds of billions of dollars in cuts to Medicare and Medicaid expenditures,[35] "fees" (criticized as taxes by Republicans) imposed on a variety of health care industries, such as insurance and drug companies,[36] and excise taxes on so-called "Cadillac insurance plans" (common term for high-premium insurance plans).[37] Subsequently, on November 7, 2009, the House of Representatives passed its official version of health care reform, H.R. 3962, a bill that House Speaker Nancy Pelosi modified from H.R. 3200.[38]

In an historic vote shortly before Christmas eve, the Senate passed its own version of health care reform, a synthesis of preceding Senate health bills under the leadership of Senate Majority Leader Harry Reid.[39] Owing to their differences, these official House (H.R. 3962) and Senate bills (H.R. 3590) required further legislative action prior to President Obama's promised signature of health care legislation. Whereas the enactment of health care reform was considered inevitable shortly after this Senate vote, it seemed quite uncertain after a special Senate election in Massachusetts installed Republican Scott Brown in the late Senator Kennedy's seat, which removed the Democratic Party's previous sixty-Senator, filibuster-proof Senate majority.[40]

II. Assessment of the House and Senate Bills

A. House of Representatives

The House health care bill (H.R. 3962) produced a comprehensive, albeit relatively expensive, health care reform bill. H.R. 3962 sets out total expenditures of approximately $900 billion over the next ten years, although concurrent cost cuts from Medicare/Medicaid and additional tax revenues would produce over $100 billion in federal deficit reductions. [41] The expanded benefits are partially funded through a surtax on individual taxpayers with over half a million dollars gross income and joint-filers with over one million dollars gross income.[42] On the other hand, the large costs of the House bill afford greater health care access by expanding health care insurance coverage to an estimated thirty-six million additional Americans.[43]

Some of the key features of the House bill include an individual mandate for insurance coverage, expansion of Medicaid up to 150% of the poverty line, creation of a national health insurance exchange, including a public option plan, new private insurance market regulations to protect consumers, and new employer requirements.[44] With respect to the individual mandate to begin in 2013, all individuals must carry health insurance or pay a penalty of 2.5% of adjusted gross income. [45] Similarly, the bill establishes a new employer mandate, which requires employers to provide employees minimal health insurance coverage or pay a penalty of up to eight percent of payroll, although smaller employers are exempted. [46] There would also be affordability tax credits to subsidize private health insurance premiums up to 400% of the FPL. [47] Among other provisions, HR 3269 eliminates the gap in Medicare Part D prescription coverage (the so-called "donut hole")[48] and prohibits exclusions for pre-existing conditions for private insurance coverage. [49] The House bill also removes the long-standing exemption for health insurance companies from anti-trust laws in order to promote competition and thereby reduce premium prices. [50]

Several large health care stakeholders weighed in on the House health bill. Indeed, it was historic that both the national groups representing the elderly (AARP) and physicians (the American Medical Association) supported the bill, helping ensure its passage.[51] On the other hand, there was significant health insurance industry opposition, including from America's Health Insurance Plans (AHIP) and the Blue Cross Blue Shield Association (BCBSA), which resented the detrimental effect of the public option on their businesses.[52] The Independent Insurance Agents & Brokers of America opposed the bill on similar grounds. This group opposed the employer mandate/fee for covering employees and the surtax on wealthy individuals, claiming that these provisions would hurt small businesses. [53] Similarly, the U.S. Chamber of Commerce also opposed the legislation, citing the impact of what it characterized as a "pay or play" employer mandate which it believed would force employers to react by outsourcing, providing lower wages, and laying off employees.[54] Due to a perceived effect of shifting costs onto the private sector, the Chamber also strongly opposed the notion of a government-run health insurance plan and its concomitant provisions to pay below-market rates. [55]

B. The Senate

The Senate bill, H.R. 3590, also provides for comprehensive health care reform and includes an individual mandate, affordability tax credits, creation of state insurance exchanges with funding to encourage co-ops, new insurance market reforms to protect consumers, and new employer requirements.[56] The Congressional Budget Office (CBO) estimates that this bill would insure thirty-one million additional Americans who are currently uninsured and require net expenditures of $871 billion by 2019, but also reduce the federal deficit by $132 billion. [57] The deficit reduction will come from cost cuts to the Medicare/Medicaid federal health programs and additional tax revenues. [58] For instance, there would be taxes on the "Cadillac" health care plans.[59] Unlike the House plan, there were no surtaxes on the wealthy.

This bill delays the effect of many reforms. Most notably, it delays the individual mandate an additional year until 2014.[60] There is a financial penalty for not obtaining insurance coverage, either $750 per person or two percent of gross income, whichever is greater.[61] There is ostensibly no mandate for employers to provide their employees with health insurance, but the effect may be the same.[62] In that regard, "large employers" (over fifty employees) not providing their own minimal health benefits must pay a financial penalty of $750 per uninsured full-time employee receiving an affordability tax credit or cost-sharing reduction.[63]

The Senate bill establishes state-based exchanges (American Health Benefits Exchanges) for consumers and small businesses to purchase

health insurance within one year of enactment.[64] Significantly, this provision is unlike the national exchange envisioned by the House. Also, the Senate bill would expand Medicaid up to 133% of FPL, which is somewhat lower than the House bill (150% of the FPL).[65] Like the House, affordability tax credits would be offered to subsidize insurance premiums for individuals and families up to 400% of the FPL. [66]

Further, the Senate bans exclusions for pre-existing conditions and directs the Secretary of the Department of Health and Human Services (HHS) to establish a temporary high-risk pool for such individuals until 2014.[67] Similarly to the House bill:

> New insurance market regulations will prevent health insurers from denying coverage to people for any reason, including their health status, and from charging people more based on their health status and gender. These new rules will also require that all new health plans provide comprehensive coverage that includes at least a minimum set of services, caps annual out of pocket spending, does not impose cost sharing for preventive services, and does not impose annual or lifetime limits on coverage (existing individual and employer sponsored plans do not have to meet the new benefit standards).[68]

Although there was consideration of a public option by the Senate,[69] ultimately the final version of the bill does not contain any mandatory provisions for state-based exchanges to contain government-run insurance plans.[70] As partial replacement, the final Senate bill tasks the Office of Personnel Management to ensure that each state-based exchange has at least two insurance plans, including a non-profit plan, through a private contracting process.[71]

The Senate bill contains no revocation of the exemption for private insurers from antitrust laws or any modification to the antitrust laws to spur further competition within the health insurance industry.[72] There also appears to be an attempt to reduce, albeit not eliminate, the donut hole in Medicare prescription drug coverage by having the Secretary of HHS negotiate discounted prices with manufacturers to reduce the gap.[73]

Concerning abortion, both the House and Senate bills contain stringent prohibitions on any coverage of abortion services. The last minute Stupak amendment to the House bill served to codify the Hyde amendment in the health care bill. Essentially, this would prohibit abortion services under the public option plan to the extent subsidized by affordability tax credits.[74] In the same vein, the Senate bill also raises a high wall between public funds and abortion services. A provision in the Senate bill prohibits private insurance plans from using public funds from affordability tax credits and cost-sharing reductions to subsidize any abortion services.[75]

> In plans that do cover abortion, beneficiaries would have to pay for it separately, and those funds would have to be kept in a separate account from taxpayer money. Moreover, individual states would be able to prohibit abortion coverage in plans offered through the exchange, after passing specific legislation to that effect. Exceptions would be made for cases of rape, incest and danger to the life of the mother.[76]

The House bill is the harsher of the two, prohibiting private insurers from covering abortion services if the new credits subsidize any portion of the insurance plan.[77] On the other hand, the Senate appeared to resolve the matter by proper accounting of public funds.

One noteworthy proposed amendment contained bipartisan language offered by Senators Ron Wyden (D-Ore.) and Susan Collins (R-Maine.).[78] These Senators joined together to propose a "Free Choice" amendment that "would permit employees already covered by their employers' health care policies to purchase insurance in the proposed exchange," by means of a voucher equal to the employer's annual health insurance cost for the employee.[79] The amendment would also allow consumers to purchase catastrophic coverage regardless of age.[80] Finally, the amendment would adjust the health care bill's tax on insurers to annual premium changes, so that the tax would rise or fall with premiums. [81] It does not appear that there was any subsequent action or vote upon this amendment.

In general, the Senate health bill was widely criticized for containing too much political backroom dealing, especially to win the holdout vote of Senator Ben Nelson of Nebraska. The general public and Republican opponents seized upon a provision that excuses Nebraska from the costs of expanding Medicaid programs, amounting to nearly $100 million over the next ten years.[82]

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> To balance it out a bit and retain the support of liberals, the leadership added a few sweeteners in the final version including more funding for Community Health Center and the Children's Health Insurance Program (CHIP). The final bill also bulked up some of the consumer protections in the bill. For example, patients would be guaranteed the ability to appeal coverage denials and requiring insurance companies to spend at least 80 percent of premiums on actual health care.[83]

There was opposition to the Senate health bill from a few key health care stakeholders. For instance, health insurance underwriters criticized the bill for its requirements that private insurers maintain high minimum loss ratios of at least eighty percent of premiums, as well as its ineffective and unworkable individual mandate that could cause premiums to "skyrocket."[84] Also, a leading small business association protested the bill on grounds that it would provide insignificant reductions in insurance costs for small businesses and, instead, would likely impose burdensome new duties on employers.[85] The U.S. Chamber of Commerce also opposed the bill, offering several suggestions for inclusion in health care reform, including the following principles: 1) control health care costs with medical liability reform, Food and Drug Administration pathway for biosimilars, health information technology, comparative effectiveness research, wellness and prevention coordination of care and medical homes, pay-for-performance reform, combating fraud and abuse, living wills and end-of-life issues, reinsurance, consumer-driven health options, small business pooling, administrative simplification, long-term care reform, and achieving tax parity by allowing individuals/small business to deduct the full cost of insurance expenses; 2) reform the health insurance system by eliminating the use of pre-existing conditions or health status, guaranteeing that any individual or entity will be issued a policy, guaranteeing that policies will not be revoked, placing reasonable limits on rating differences, subsidizing those who cannot afford coverage, and providing an individual obligation to obtain coverage; and finally; 3) create a vibrant marketplace by creating a national all-inclusive connector/exchange that removes fragmentation, allowing individuals and businesses from anywhere in the country to enroll, and facilitating improved pooling mechanisms, choice, and competition.[86]

Despite the criticisms, other health care stakeholders supported the Senate health bill. The powerful pharmaceutical industry was surprisingly in favor of the bill, noting the expansion of insurance coverage and market reforms as helping the overall health care system.[87] Physicians, represented by the AMA, also supported the bill, citing benefits from expanded access to health insurance coverage, reforms to private insurance market practices, and wellness promotion and preventative measures.[88] The AARP praised the bill for instituting private insurance market reforms and beginning to close the doughnut hole in Medicare Part D coverage.[89] The American Hospital Association also supported the passage of HR 3590.[90]

C. Republican Alternatives

There is no updated or unified Republican health care bill to contrast with either the official House or Senate health bills, or the President's proposal. The Senate Republicans did not produce their own alternative to what was crafted by Senate Majority Leader Reid. On the other hand, the House Republicans attempted, albeit unsuccessfully, to pass their own proposal as an amendment to HR 3962.[91] The amendment focuses heavily on reducing costs within the health care system, as opposed to the Democrats' focus on expanding access, but it is dramatically more modest in the scope of both the text and the plan itself.[92] CBO expects the House Republican plan would reduce the number of uninsured by only three million people. Notably, the plan would be less expensive with a net cost of only eight billion dollars, while reducing the deficit sixty-eight billion dollars by 2019.[93]

The House Republican bill proposes to lower health care premiums; establish universal access programs to guarantee access to affordable health care for those with pre-existing conditions and expand and reform high-risk pools and reinsurance programs to improve access to affordable care and lower costs; end costly "junk lawsuits" and reduce the practice of defensive medicine through medical liability reforms, modeled after successful state laws in California and Texas; prevent insurers from revoking insurance policies; encourage small business health plans; give small businesses the power to pool together and offer health care at lower prices; encourage innovative state programs; reward innovation by providing incentive payments to states that reduce premiums and the number of uninsured; allow Americans to buy insurance across state lines; promote healthier lifestyles; enhance Health Savings Accounts (HSAs); and allow dependents to remain on their parents' policies through the age of twenty-five.[94]

III. Developments in 2010

A. Negotiations Begin to Resolve House-Senate and Democratic-Republican Differences

After the passage of both the House and Senate health reform bills, significant differences between the bills needed to be resolved. Usually a Conference Committee process provides the mechanism for resolving such differences. Rather than deal with the procedural demands of a Conference Committee, the Democrat leadership initially decided to use an informal "ping-pong" strategy where multiple issues are slowly but informally resolved.[95] After the special election for the Massachusetts Senate seat in January 2010, the Democrats needed at least one Republican vote to gain the sixty votes to break a filibuster and pass a final version of health care reform, under the normal rules of the Senate. This introduced considerable uncertainty and challenge into the process of enacting health care reform. Nonetheless, President Obama responded by affirming his commitment to passing health care reform during his 2010 State of the Union speech and asserted his willingness to entertain Republican alternatives.[96]

B. President's Proposal

The White House submitted its own proposal in advance of a high-profile health care summit, held in February 2010, with both Democratic and Republican leaders. The President's proposal attempted to bridge the differences between the official House and Senate health reform bills. The most distinctive features of his plan included an increased penalty of 2.5% to enforce the individual mandate, the notable absence of a public option, higher premium tax credit levels, state-based exchanges, a new rate-setting commission to oversee insurance company premium hikes, closure of the Medicare prescription drug "donut hole" coverage gap, raising the threshold for "Cadillac plan" excise taxes, and several programs to fight fraud, waste, and abuse in Medicaid and Medicare.[97] Significantly, the President's proposal also prohibited pre-existing condition exclusions.[98] With respect to employer obligations, the White House was "consistent

with the Senate bill in that it does not impose a mandate on employers to offer or provide health insurance, but does require them to help defray the cost if taxpayers are footing the bill for their workers." [99] The White House claimed these proposals would reduce budget deficits by $100 billion over the next ten years, although there is no CBO score of the plan to confirm these figures. [100]

Importantly, the President's proposal recognized differences in the House and Senate approaches to making health care more affordable through tax credits for premiums and cost sharing assistance. In fact, the President's proposal would have increased tax credits to lower the effective price of health insurance premiums, compared to both the House (families earning $55,000–$88,000) and the Senate ($44,000–$66,000).[101] The proposal would also provide insurers with additional funding to improve cost sharing assistance for lower-income families earning less than $55,000. [102]

With the goal of incentivizing insurers to lower premiums, Obama's proposal contained an excise tax on Cadillac plans. It differed in two respects: first it raised the threshold from $8,500 to $10,200 for individuals and from $23,000 to $27,500 for families; [103] second it extended the effective date for the tax from 2013 until 2018.[104]

The President declined to adopt the House bill's 5.4% surcharge on wealthy Americans (individuals with over $500,000 AGI). President Obama did call for a 2.9% "Medicare unearned income tax" that would have assessed income from interest, dividends, etc. from high-income taxpayers ($200,000 AGI for individuals and $250,000 AGI for married couples filing jointly) to obtain additional revenues to sustain the Medicare trust fund, which were not already subject to the Medicare payroll tax on earned income.[105]

Recognizing the political backlash against the Senate bill's heavy criticized political concession to Senator Nelson, the President's proposal explicitly purported to be fairer by providing uniform 100% federal support for all states in their Medicaid expansion for newly eligible individuals through 2017.[106] The plan only expanded Medicaid to 133% of the FPL, which is the same as the Senate plan but less than the House plan (150%).[107]

The President's proposal also proudly displayed an entire section showing adoption of Republican ideas, including personal responsibility incentives in assigning premiums, implementation of medical liability reforms at the state level by providing grants, extended dependent coverage to age twenty-six, and automatic enrollment by employers in health insurers with the opportunity for employee opt-out.[108]

C. February 2010 Health Care Summit with Obama, Democrats, and Republicans

In an attempt at garnering bipartisan support for health care reform, the President invited several Republican and Democratic Congressional leaders to a health care summit on February 25, 2010. The ensuing discussion was a day-long, nationally televised event that ultimately failed to bridge fundamental partisan and substantive differences between President Obama and Republican opponents.[109] Republican Congressional leaders emphasized their view that the Democratic plans were simply too large in scope and that the proper structural mechanism for reforming health care was to start over using an incremental approach. Republicans, however, did offer several ideas for reform, including medical malpractice tort reform, enabling small business insurance compacts, and expanding high-risk pools to insure those with pre-existing conditions. The President offered to incorporate provisions to foster medical liability reforms at the state level."[110]

One outstanding area of contention was cost-containment and deficit reduction. Representative Paul Ryan (R-WI) criticized the plan for failing to control runaway health inflation and excessive health care costs, especially from Medicare and Medicaid growth.[111] Congressman Ryan remarked that the Senate health care bill "treats Medicare like a piggy bank" and "raids a half a trillion dollars out of Medicare, not to shore up Medicare solvency, but to spend on this new government program." [112] The President indicated Congressman Ryan's assertion was specious, noting that significant reductions in Medicare costs would come from eliminating subsidies to Medicare Advantage private insurers.[113] In that regard, the Senate plan would reduce Medicare Advantage payments by $118 billion.[114]

In analyzing any eventual health care reform, whether proposed by Republicans or Democrats, it is crucial to understand that access, quality, and costs are countervailing factors. In health policy circles, the "iron triangle of health care" refers to an equilibrium of the three pillars of access to health care, quality of services provided, and the underlying cost of providing any health care services.[115] For instance, expanding access to health care, as proposed by the Democrats, would require a concomitant expansion of financing. Conversely, reigning in costs of the health care system, as demanded by the Republicans, would in turn produce tremendous pressure to reduce access. The Republican House proposal expands access to only a tenth of those covered by the Democratic plans. In this regard costs remain an eternal concern for the American public. The annual inflation rate of health care service costs averaged nearly nine percent over the last decade.[116] Unless reforms are instituted to reduce these costs, annual premium costs for families could balloon to over $30,000 by 2019. [117]

In a post-summit address on health care reform, President Obama suggested that his plan was a middle path that rejected the liberal notion of government-run health care on the one hand and the conservative notion of easing insurance regulations to reduce costs on the other.[118] The President rejected Republican suggestions to take a "piecemeal approach" and to "start over," because the health care system must be reformed comprehensively to make any effective improvements and because health insurance premium increases and coverage abuse are too acute a problem. [119]

The President asserted that his proposal would affect three major changes to the health care system. First, the proposal would curb abusive practices by insurance companies by denying coverage for pre-existing conditions, rescinding coverage based on health status, allowing unlimited out-of-pocket payments, and imposing arbitrary and excessive premium increases. [120] Second, he stated that his "proposal would give uninsured individuals and small business owners the same kind of choice of private health insurance that members of Congress get for themselves…"[121] Third, his proposal promised to reduce health care costs across the board, by eliminating "waste and abuse" in the health care system. [122]

D. 2010 Congressional Actions

President Obama and the Democratic leadership in the House and Senate ultimately agreed to a framework for final passage of health care reform.

> A number of legal challenges loom before federal health care reform becomes fully effective.

The House would initially pass the Senate's version of a health care reform bill (H.R. 3590), which the President would sign into law. That would be followed by a planned enactment of a "Reconciliation" bill to bridge differences between the House, Senate and President's plans.[123] The reconciliation process was chosen since it only required the Senate to make a simple fifty-one vote majority, allowing the Democratic majority to evade the filibuster process and Republican opposition.[124] In a momentous vote on Sunday, March 21, 2010, the House passed H.R. 3590 by a 219-212 vote. [125] This was followed shortly thereafter by passage with a 220-211 vote of the companion Reconciliation bill making changes to the Senate bill.[126] The original Senate bill (H.R. 3590) has now been enacted. On March 23, 2010, President Obama at last signed federal health care legislation into law,[127] making the "Patient Protection and Affordable Care Act" Public Law 111-148.[128] On March 25, 2010 Senate Republicans forced two minor provisions unrelated to health care reform to be removed from the Reconciliation bill because they violated the rules of reconciliation.[129] Despite this, the House and Senate passed the Reconciliation bill later that day.[130] President Obama signed the reconciliation bill into law on March 30, 2010.[131]

The House-passed Reconciliation bill, H.R. 4872, the "Reconciliation Act of 2010,"[132] was scored by CBO prior to its passage. CBO estimates that, with the Reconciliation bill's modifications to H.R. 3590, the health plan would produce gross costs of $940 billion and $138 billion in deficit reductions from 2010 to 2019.[133] The modified version of H.R. 3590 would result in coverage of thirty-two million more Americans. [134]

The Reconciliation bill includes many of the major provisions outlined by the President's plan, including the individual mandate for coverage, [135] greater levels of affordability tax credits, [136] and an employer fee for uninsured workers who obtain health care premium tax credits. [137] There will be expanded federal funding assistance available to all states, not just Nebraska as in the Senate bill, for expanding the Medicaid coverage.[138] In 2010, Medicare beneficiaries would receive a $250 coverage gap rebate to begin filling in the Medicare Part D "donut hole."[139] The reconciliation bill would gradually reduce the out-of-pocket costs for Medicare Part D beneficiaries through 2020 to only twenty-five percent of the costs of drugs in the donut hole.[140]

By design, the enacted health plan has some of the most broadly supported provisions taking effect within six months of enactment. These include: 1) extension of dependent coverage to age twenty-six;[141] 2) prohibition on lifetime benefit caps or unreasonable annual benefit caps;[142] 3) prohibition on insurance policy rescissions for those who become sick, absent fraud;[143] 4) prohibition on pre-existing condition exclusions for children;[144] 5) placing pre-existing conditions for all others into an interim high-risk pool to allow coverage (within ninety days of enactment).[145]

In stark contrast, less popular provisions will not take effect for several years, allowing the public and insurance market sufficient time to adjust. For example, the individual mandate and associated monetary penalty for noncompliance are phased in gradually, starting in 2014.[146] By 2013, the enacted plan imposes an excise tax on Cadillac plans, defined as premiums over $8,500 for individuals and over $23,000 for families. [147] In contrast, the Reconciliation bill waits nearly a decade from now to begin imposing an excise tax on insurers of employer-sponsored health plans with high-cost premiums, defined as premiums over $10,200 for individuals and over $27,500 for families. [148] Effective in 2013, the plan raises the Medicare Part A (hospital benefits) earned income tax rate by 0.9% (up to 2.35% total) on individuals and married couples, earning over $200,000 and $250,000 AGI, respectively.[149] In 2013 the Reconciliation bill also assesses a 3.8% tax on unearned income (i.e., interest, dividends, rents, royalties, annuities, etc.) to add further revenues to the Medicare fund. [150]

It is worth noting that the House's passage of the health care reform bill remained uncertain, requiring extensive campaigning and compromises by the President. At the eleventh hour, a deal on abortion ensured passage. Pro-life Democrats led by Representative Stupak agreed to support the Reconciliation and Senate bills in exchange for President Obama's promise of an Executive Order to prohibit any federal health care funding to cover abortions.[151] An Executive Order was issued on March 24, 2010, the day after President Obama signed the Senate bill into law.[152] This compromise implements the Hyde amendment into health care reform[153] Specifically, the Executive Order states, "[t]he Act maintains current Hyde Amendment restrictions governing abortion policy and extends those restrictions to the newly created health insurance exchanges." [154] In a move that has alienated some pro-choice groups, women must personally pay for elective abortion coverage under a separate policy and insurance companies must maintain these personal funds separately from federal tax funding.[155]

Criticisms of the health care package remain. The prime criticism is that the program will be underfunded like Social Security and Medicare.[156] CBO answered Republican Congressman Paul Ryan's skepticism on the bill's accounting by revealing that the health plan would result in a fifty-nine billion dollar deficit if Congress rescinds scheduled cuts of twenty-one percent to Medicare physician pay rates, as Congress has repeatedly done in similar situations.[157] Another mounting concern is that in a time of rising national deficits, debts, and general economic woe the enacted plan does not account for new "hidden taxes" in coming years.[158] In particular, critics argue that the individual mandate constitutes a massive transfer of wealth of $1.5 trillion from workers to private insurance companies, effectively a "hidden tax." [159] This must be balanced against the average $1,000 in higher premiums that the average insured American family pays to compensate for the care of the uninsured in the absence of universal coverage. This constitutes yet another "hidden tax," which primarily operates in the absence of health care reform, especially as enacted.[160]

A number of legal challenges loom before federal health care reform becomes fully effective. Idaho was the first state to enact legislation to block implementation of an individual mandate for health care coverage by the federal government, with over thirty states contemplating similar legislation.[161] More immediately, litigation has already been jointly filed by Republican Attorneys General from thirteen states against the federal government, naming the Secretary of HHS as a defendant, to challenge the individual mandate provision as unconstitutional.[162] The Attorneys General for Florida, South Carolina, Nebraska, Texas, Utah, Alabama, Louisiana, Michigan, Colorado, Pennsylvania, Washington, Idaho, and South Dakota filed a complaint in the U.S. District Court for the Northern District of Florida.[163] The litigation brief argues that the individual mandate provision is unconstitutional. [164] The multistate brief specifically states:

> The Constitution nowhere authorizes the United States to mandate, either directly or under threat of penalty, that all citizens and legal residents have qualifying healthcare coverage. By imposing such a mandate, the Act exceeds the powers of the United States under Article I of the Constitution and violates the Tenth Amendment to the Constitution. [165]

The brief also asserts that the federal government exceeds its authority under Article I, Section 8's Interstate Commerce Clause, the tax and spending clause, and any other Constitutional provision. [166]

A separate lawsuit was filed by the Virginia Attorney General Ken Cuccinelli, in the U.S. District Court in the Eastern District of Virginia.[167] He contends, "if a person decides not to buy health insurance, that person – by definition – is not engaging in commerce, and therefore, is not subject to a federal mandate." [168] Many legal experts and the White House expect the courts to uphold the constitutionality of the health care reform law. [169] Anonymous White House administration officials asserted that constitutional law supports a broad grant of authority to Congress to regulate the nation under the Commerce Clause, especially under the favorable precedents from two cases.[170] *United States v. South-Eastern Underwriters Association* allegedly supports the notion of congressional regulation of insurance. [171] *Gonzales v. Raich* held that "Congress can regulate purely intrastate activity that is not 'commercial,'"[172] when failure to do so could "undercut" its regulation of the interstate market of that activity.[173]"

IV. Conclusion

The path to achieve health care reform involved a tremendously bitter political and policy debate.[174] Quite unfortunately, falsehoods and half-truths were pervasive, especially those that stated the plan would constitute a government takeover of private providers and insurance companies.[175] Not surprisingly, the ultimate shape of health care reform was at best an imperfect solution to American's problems, falling far short of a national consensus before passage. Over time, it is possible that the country will treasure the health care reform package, much as Medicare and Social Security have garnered broad-based support after contentious starts.

The debate over the future of health care reform will surely continue into the 2010 Congressional elections as Republicans seek to gain control of the House and Senate and at least modify, if not repeal, the newly enacted health care plan. One conclusion is inescapable: health care reform policy debates have only just begun. As the health care insurance exchanges are implemented across the country, there will no doubt be resistance, confusion, and unseen problems to be resolved. With the gradual infusion of nearly a trillion dollars in additional health care spending and thirty-two million more Americans consuming additional health care resources, the financing and operation of the health care system may be pushed to its limits. The result could be a fundamental restructuring of the health care system, particularly if costs from health inflation continue unabated or even expand. This means universal health care reform will be revisited in the near future.[176]

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