

RSC Policy Brief: President Obama's Proposal - Still a Government Takeover of Health Care

February 23, 2010

On February 22, 2010, the President unveiled an outline of a healthcare proposal, three days in advance of the White House-led healthcare “summit.” The President had not put forward actual bill language, but rather has re-branded and made changes to the Senate-passed bill, H.R. 3590, in order to gain the support of more liberal House members. Presumably, this means that all of the provisions previously included in the Senate bill that are not explicitly changed under the President’s proposal, will remain intact. No CBO score is available as, according to [CBO](#), “preparing a cost estimate requires very detailed specifications of numerous provisions, and the materials that were released this morning do not provide sufficient detail on all of the provisions. Therefore, CBO cannot provide a cost estimate for the proposal without additional detail, and, even if such detail were provided, analyzing the proposal would be a time-consuming process that could not be completed this week” – or in time for the health care “summit”. According to the White House’s own estimates, the proposal would cost \$950 billion over ten years (\$50 billion above Obama’s own target).

The President’s proposal still contains:

- **Mandates:** The proposal maintains the individual mandate and the Senate’s “free-rider” employer mandate.
- **Cuts to Medicare and tax increases to pay for the expansion and creation of new entitlement programs:** Specifically the proposal increases cuts Medicare Advantage plans and raises the Medicare payroll tax even higher (adding it to a tax on earned income in addition to a tax on “high income individuals”).
- **No real medical liability reform:** No changes to the insufficient medical liability provisions as passed in the Senate bill.
- **New bureaucratic boards that cede the definition of quality and gives more power to the federal government:** Maintains provisions such as the comparative effectiveness research board (Patient Centered Outcomes Research Institute, the Independent Medicare Advisory Board (IMAB) or “MedPAC on steroids”, and more.
- **A form of a government-run plan:** The proposal maintains the OPM overseen Multi-State Plans and Co-Ops.
- **Sweetheart deals:** including the “Louisiana Purchase”, various provisions of the “Cornhusker kickback”, carve outs for unions, and many more.
- **Broken promises:** Obama set several parameters, including that the bill would cost under \$900 billion, not raise taxes on those making under \$250,000, families’ health insurance premiums will go down by \$2,500 a year, and if individuals liked what they had they could keep it – however none of these promises are kept or restored by President’s rewrite of the Senate bill.

The President's proposal now has made the Democrat plan even worse by adding a new price fixing mechanism: the "Health Insurance Rate Authority". This populist knee-jerk reaction to questionable insurance rate increases at the state level is fraught with unintended consequences.

Furthermore, the President seems to believe that because his proposal includes minor provisions that Republicans have been supportive of or introduced as part of their own comprehensive health reform bills, that Republicans should suddenly drop all opposition and support a massive bill that they are fundamentally opposed to based on their core principles of limited government and patient-centered health care.

Some might compare the last-minute inclusion of Republican ideas (without their knowledge or input) on fraud, waste and abuse provisions and other insurance protections that have bipartisan agreement, and subsequent comments that Republicans are being partisan and obstructionist for not supporting the whole package, to saying that because a pizza is made with tomatoes, vegetarians should still want to eat a meat lovers pizza. **Nonsense – they just couldn't stomach it.**

Below are the *Highlights* of the President's Proposal:

Health Insurance Rate Authority: The Obama Administration proposal would create another federal board to allow for further regulation of private health care insurers. Many conservatives may see this provision as a political move that the President hopes will reinvigorate the debate by unifying Americans against "evil" insurance companies.

According to [reports](#) the Health Insurance Rate Authority Board will be similar to a bill yet to be introduced by Sen. Feinstein (D-CA) in response to the Anthem Blue Cross of California (link to HC article of the week) rate increases. The proposal would:

- Give the Health and Human Services Secretary Sebelius new powers to review private insurance companies' premium rate increases and block those that are deemed "unreasonable and unjustified", require that insurers lower premiums, provide rebates or take other actions to make premiums fall under the board's definition of affordable
- The board would be made up of 7 "health insurance experts", consisting of two consumer representatives, one insurance industry representative, one physician, and three additional experts who would be in charge of what "reasonable" increases mean throughout various unique markets and states.

However, this is not really a "new" provision, rather both the House and Senate bills already provide for similar oversight.

- The Senate bill (Sec. 1003) would require a continuing premium review process in the exchanges to determine whether there is "particular health insurance issuers should be excluded from participation in the Exchange based on a pattern or practice of excessive or unjustified premium increases".
- Beginning in 2010, the House bill (sec. 104) sets up a similar review process for monitoring increases in health insurance premiums whereby insurers must submit justification for any increase prior to implementation. The bill increased states' power in determining whether an insurer should not be allowed to participate in the Exchange due to "excessive or unjustified premium increases" (i.e. price gouging). The Commissioner is also given the ability to monitor and keep track of these items starting in 2014, both inside and outside of the Exchange. Finally, it stipulated that when considering whether to include larger employees in the Exchange the Commissioner should take into account excess of premium growth outside the Exchange compared to inside.

The new board is a substantial departure from the current structure of state health insurance regulation and oversight. The proposal ignores the unique differences in each state (such as the geographical makeup, state market regulation and mandates) that drive up costs and continues a flawed push by the Democrats for a one-size-fits-all approach. The most dangerous outcome of this rate-setting board would be federally mandated price fixing that could further accelerate and eventually destroy the private insurance market.

The new unelected bureaucratic board, as we have seen with the current actions of Secretary Sebelius, will be a political tool that – depending on how it is crafted - will either be duplicative of or supplant state insurance regulators’ who often have a more thorough understanding of the market. Some conservatives may wonder why such a provision would be needed, unless the Democrats fear that their claim – that their bill will reduce health care premiums – is unlikely to occur. Contrary to their claims, CMS’ Office of the Actuary, CBO, and numerous independent studies have shown that various provisions in both bills will in fact increase premiums.

Abortion: President Obama’s plan includes the abortion provision from Senate bill, which does not include the Stupak language that passed the House with the support of 64 Democrats and thus still allows for the federal funding of abortion. For more information on the abortion language in the Senate bill click [here](#).

Still Has Mandates: The President’s proposal keeps intact both the employer and individual mandate proposed in the Senate, with increases to the subsidies and penalties for non-compliance.

- **Employer mandate:** The proposal reduces the tax penalty for non-compliance on businesses with more than 50 employees by subtracting out the first 30 workers from the payment calculation but at the same time increases the fines to \$2,000 up from \$750.
- **Individual mandate: In an effort to appease House concerns,** the proposal would reduce the amount individuals would be required to pay before they receive premium credits for federal subsidies. It would also lower the flat dollar tax penalty established in the Senate bill from \$750 to \$695 in 2016 while also raising the percent of income that is an alternative payment amount from 2% to 2.5%. There is some concern that this may ultimately increase overall premiums due to the young and healthy opting to pay the fine instead of purchasing coverage, leaving only the older, sicker patients in the pool.

Medicare: The Proposal still cuts Medicare by half a trillion dollars in order to finance new entitlement programs but tries to buy off seniors’ support through closing the Medicare Part D “donut hole”. This was done by increasing the amount of money provided to beneficiaries and by providing a \$250 dollar rebate in place of the House - and Senate – passed \$500 coverage limit increase and by reducing co-insurance payments by 2020 to the traditional Medicare 25% beneficiary / 75% federal government match rate and increasing taxes on pharmaceutical companies by an addition \$10 billion. When similar provisions were included in the House bill, CBO found that these changes will raise Medicare Part B premiums by \$25 billion and Part D premiums by 20%.

The proposal also increases cuts to Medicare Advantage (relative to the Senate bill) through linking benchmark payments to different percentages of traditional Medicare fee-for-service costs (similar to the House-passed bill) in a particular area with a variety of bonus payments and adjustments. The proposal would gain additional savings through giving the government the ability to cut payments for “unjustified coding patterns in Medicare Advantage plans that have raised payments more rapidly than the evidence of their enrollees’ health status and costs suggests is warranted”.

By cutting Medicare Advantage, **Democrats would effectively make the choice of additional coverage found under private insurance unfeasible for millions of senior citizens.** Ultimately, CMS [estimated](#) that enrollment under Medicare Advantage would decrease by 8.5 million, which would force many seniors back into traditional Medicare due to decreased benefits under the plans.

More Taxes: Several health care and non-health care House-passed tax increases are included in the President's proposal which:

- Maintains the Senate bill's Medicare payroll tax increase of 0.9% on individuals making \$200,000 and families making \$250,000 (**which creates a new marriage penalty**) and adds an additional 2.9% tax (equal to the combined employer and employee share of the existing HI tax) on earned income for these same "wealthy" individuals. Despite the Administration's claim that this additional tax revenue would be used to make Medicare more sustainable, according to CBO such money would in fact go towards the expansion and creation of new entitlement programs.
- Raises taxes by *\$2.2 billion* by eliminating the exclusion for subsidies employer plans receive in connection with offering qualified retiree prescription drug coverage under the Part D retiree drug subsidy program (RDS). Under current law, this government subsidy is not subject to corporate income tax. Some conservatives may be concerned that eliminating this favorable tax treatment will lead to employers dropping drug benefits for retirees.
- Raises taxes by *\$23.9 billion* by prohibiting so-called "black liquor" – a wood pulp byproduct that can be used as an alternative bio-fuel – from becoming eligible to receive a tax credit for cellulosic bio-fuel production that was established in the 2008 farm bill.
- Raises taxes by *\$5.7 billion* by codifying the "Economic Substance Doctrine," which allows the IRS to disallow a tax deduction or other tax relief simply because the IRS deems that the motive of the taxpayer was not primarily business-related (as opposed to tax-related).

Medicaid: While the proposal makes a big ado about removing the Nebraska FMAP deal, all other "deals" remain intact. Click [here](#) for the previous list of special "deals" that still exists except for the "cornhusker kickback". Despite vocal state opposition, the proposal simply pushes back the date at which all states must begin to pick up the tab for the costs associated with the mandated expansion to 133% FPL with maintenance of efforts phasing down the federal share in 2018 from 95% down to 90% indefinitely after 2020.

Addition of New "Immediate Investments": Similar to the House-passed bill's "immediate investments", six months after passage, the President's proposal would do the following:

- Prohibits recession of insurance.
- Requires yearly submission of private insurance premium increases with justification prior to implementing (requires states to conduct an annual review).
- Allows "young adults" to stay on their parents' insurance plan until age 27, if the individual who (but for age) would be treated as a dependent child of the participant under such plan or coverage and doesn't have other coverage.

Once the Exchange is up and running all plans despite being "grandfathered in" will have to offer preventive services at no cost.

Unions and the "Cadillac tax" on high-cost plans: The Senate - passed bill was already chock-full of union carve outs (provisions to hurt small non-union construction firms and a higher threshold before the "Cadillac" tax hits for "high risk professionals" such as longshoremen). But under the new proposal the "deal" made in January between the White House and unions would be maintained, including:

- According to reports the previous union “deal” that would exempt collectively bargained (union) health plans (including state and local government employees) from the “Cadillac” tax (although the duration of which is unclear at this point) is still in place.
- The deal would be even further sweetened by delaying implementation of the “Cadillac tax” for 5 years (from 2013 to 2018) and increasing the thresholds from the previously agreed upon \$24,000 for family coverage (up from \$23,000) and \$8,900 for individuals (up from \$8,500) to \$27,500 and \$10,200 respectively.
- Dental and vision plans (estimated to be an additional \$1,500 carve out) will be removed from the calculation of the threshold costs for the “Cadillac” tax for union, state and local government employees.
- Other thresholds may be tweaked upwards to take into account other factors that may increase the cost of a plan, such as age and gender, which would benefit union plans with high percentages of older workers.
- If health costs rise faster than expected, the thresholds may be further increased (likely removing a large portion of the expected revenue from the tax).
- Finally, if the new proposal maintains the previous “deal,” 17 “high cost” states will have a transition period where they will have a higher threshold than other states.

Maintains the unsustainable Long Term Care Entitlement Program, the “CLASS Act”: The

CLASS Act faced major opposition from Senate Democrats, including Senator Conrad, the Chairman of the Budget Committee, who called it a “Ponzi Scheme”. It would create a government-sponsored long term care insurance program that would automatically enroll individuals unless they actively opt-out. Individuals must first pay premiums (set by the federal government) for five years in exchange for a meager \$50-a-day benefit to partially cover the cost of care. The provision would only add confusion about Medicare coverage of long-term care without covering the true cost of care and may cause seniors to drop their current coverage, amounting to a federal take-over of the private long-term health insurance system. The CLASS Act is another unsustainable program being used to disguise the short-term costs of the broader bill through a budget gimmick. It would raise billions over the first ten years (while paying out \$0 in benefits for half of that time), but then will begin to increase the deficit following FY2029.

Despite claiming it would strengthen the provision it is unclear how as previous attempts have not absolved concerns raised by numerous organizations including CBO, the Concord Coalition, as well as the American Academy of Actuaries, who found that due to its program design, the program would require massive premium increases and benefit decreases by 2019 to remain solvent.

The summaries and other information on the president’s plan are now available at <http://www.whitehouse.gov/health-care-meeting/proposal>.

RSC Staff Contact: Emily Henehan Murry, emily.murry@mail.house.gov, (202) 225-9286