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# RSC Policy Brief: Highlights of H.R. 3962, The "Pelosi Government Healthcare Takeover Bill"

On October 29, 2009, the Democrats unveiled their "compromise" bill that, like H.R. 3200 earlier this year, would put Washington firmly in control of healthcare in the United States. H.R. 3962 was crafted in secret, without the input of Republicans, despite promises of openness and inclusion from President Obama and Democrat congressional leaders. Below are highlights of this new, 1,990-page bill. The RSC will do a complete analysis of the bill and any amendments next week.

## *How Much Does the Bill Really Cost?*

**The Bill Costs *Well* Over a Trillion Dollars**

- **The Real Cost is much closer to $1.3 trillion dollars.** Pelosi is trying to fool the American people by claiming that President Obama wanted the "cost *of coverage*" to be under $900 billion NOT the total cost of the bill.
- The true coverage cost according to CBO, is **$1.055 trillion**, and this is without including the Sustainable Growth Rate fix or "Doc Fix" (which was introduced separately yesterday as H.R. 3961 and will likely be subsequently added to the bill using a procedural maneuver to circumvent PAYGO's offset rules) which costs nearly $245 billion dollars over ten years.
- Furthermore CBO has not completed a comprehensive estimate of discretionary costs such as funding for a variety of agencies that would be responsible for implementing H.R. 3962, including funds for the IRS ($10 billion), HHS ($10 billion), and grant programs and other changes in Divisions C and D.
- CBO states that their preliminary analysis does not reflect a final and comprehensive cost estimate.
- Main Costs:
  - $426 billion over ten years for Medicaid / CHIP expansion
  - $605 billion over ten years in subsidies
- Cost to states would be $34 billion – although the true cost once fully implemented will be much greater as the Medicaid program is not expanded until 2013, and the states are not required to share kick in their 9% of funding until 2015. This cost is not included in CBO's overall cost of the bill.
- The bill increases taxes by $743.5 billion as follows:

- $561.5 billion of tax increases from direct tax provisions such as the surtax on the "wealthy" and small businesses and a tax on medical devices.
- $168 billion from penalty payments from the individual mandate and the employer mandate
- $14 billion in other indirect tax revenues from Medicare, Medicaid, etc.
- The bill also includes limitations on Health Savings Accounts (HSAs), Flexible Spending Accounts (FSAs), and Health Reimbursement Arrangements (HRAs) including:
  - Non-prescription medications would no longer be able to be purchased pre-tax using these accounts
  - Annual cap of $2500 on FSAs (currently uncapped).
  - Non-qualified distributions from HSAs would face an additional tax of 20% (current law is 10%).

- $426 billion mainly in cuts to Medicare / Medicaid, and $237.3 billion of this is from cuts to Medicare Advantage, when including direct cuts and "savings" due to interactions

**Bend the Cost Curve? Yeah… In the Opposite Direction**

- CBO on "federal budgetary commitment to health care": **"On balance, during the decade following the 10-year budget window, the bill would increase both federal outlays for health care and the federal budgetary commitment to health care, relative to the amounts under current law."**
- CBO on "effect of proposals on national health expenditures": Has not scored this

**Coverage**

- CBO estimates that 36 million currently uninsured individuals will gain coverage, *but* 15 million will be covered due to Medicaid expansion, and 9 million individuals will loose their employer-market coverage and be dumped into the exchange. Of the people in the exchange, 1 in 5, or 6 million, would be in the government-run plan.
- The Massive expansion of Medicaid means that by 2019, 1 in 6 people will be enrolled in the Medicaid and CHIP entitlement programs.

**The Government-Run Plan: Public Isn't Always Better**

- According to CBO, taxpayer money would be spent on a government-run insurance program that would cost more money, as "a public plan paying negotiated rates would attract a broad network of providers but would typically have premiums that are somewhat higher than the average premiums for the private plans in the exchanges…The public plan would have lower administrative costs than those private plans but **would probably engage in less management of utilization by its enrollees and attract a less healthy pool of enrollees."**

## *Who Is This Bill Bad For? EVERYONE!*

**Bad for Doctors**

The Pelosi Government Healthcare Takeover bill uses a budget trick to avoid offsetting the $245 billion cost of enacting a permanent repeal of the Sustainable Growth Rate (SGR), or "Doc Fix". The Democrats detached the permanent "doc fix" provision from the larger bill, H.R. 3962, and introduced it separately (without being paid for), with the intention of bringing it up at the same time as H.R. 3962, using a procedural maneuver (likely a "self-executing rule") that will cause the SGR fix to be incorporated into the larger bill without technically adding to the score.

The Democrats believe they can fool the American people into thinking that fixing the Medicare payment system is not part of "health care reform."

Without an SGR fix, some conservatives may question, "What is left in various health care reform bills for doctors to support?"

- Inability to privately contract? (Although the provision was agreed to in the Education and Labor Committee markup, that provision has not found its way into the final bill)
- Arbitrary cuts or payment reforms from the Center for Medicare & Medicaid Innovation, where the Secretary is granted substantial power over what programs are expanded and enacted?
- An unelected Comparative Effectiveness Research board that steps between patients and doctors and could lead to rationing of care?
- A government-run insurance plan?
- A vast expansion of Medicaid underpayments?
- **A lack of real medical liability reform?**
    - Not surprisingly, the Democrats have played lip-service to medical liability reform while including language that protects trial lawyers.
    - The bill gives money (Authorized at "such sums") to states that enact legislation *only* after the passage of this act that:
        - Requires a of "certificate of merit" (a document signed by a medical profession that says there is a probability that the standard of care was violated);
        - Requires a certificate of "early offer" (an early, confidential apology), or both; and
        - **Don't limit attorneys' fees; or**
        - **Impose caps on damages.**

**Bad for Business**

The cost of the mandate may force businesses to hire fewer workers, cut workers' hours, reduce the growth of wages or other benefits, and layoff current employees or pass along the costs to consumers.

- **Pay or Play Mandate**: Companies with a payroll of $500,000 or more must offer health coverage to employees (regardless of whether they can afford to or not), or pay

a penalty of at least 2% of payroll. If an employer with a payroll greater than $750,000 does not pay 72.5% of a single employee's health premium (65 percent of a family employee's), then the employer must pay an excise tax equal to 8% of average wages.

- **New Taxes:**
  - Contains $135 billion in new taxes for failure to comply with the "pay-or-play" employer mandate;
  - Denies of tax deduction for employer health plans coordinating with Medicare Part D;
  - Expands of 1099-MISC information reporting to corporations;
  - Delays for 9 years the implementation of the Worldwide Allocation of Interest, a corporate tax relief provision from the American Jobs Creation Act.
  - Overrides U.S. treaties for certain payments such that it increases taxes on U.S. employers with overseas operations;
  - Codifies of 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).
- **More Fines and Penalties:** Amends Employee Retirement Income Security Act (ERISA) to require the Secretary of Labor to "conduct investigations" and audits "to discover non-compliance" with the mandate. The bill provides a further penalty of $100 per employee per day for non-compliance with the "pay-or-play" mandate—subject only to a limit of $500,000 per year for unintentional failures on the part of the employer. Allows the new Commissioner to conduct audits of health benefits plans (paid for by the benefit plans).
- **Mandated Minimum Plan:** According to the National Federation of Independent Business (NFIB), 86% of small businesses who offer coverage only offer one plan, but the new bill will make it even harder for them to offer anything. The bill requires small employers to cover certain services they are currently exempt from under federal law.
- **The Health Choices Commissioner:**
  - Defines who is and is not a full-time and part-time employee and the minimum employer contribution.
  - Has the power to continuously change thresholds thus leaving small business owners in constant fear of ever-changing compliance requirements.
- **COBRA Extension:** Extends COBRA eligibility (extended post-employment health care coverage) to permit individuals to remain in their COBRA policy until the Health Insurance Exchange is up and running. This would force employers to spend more time and money to administer COBRA to former employees.

**Bad for Individuals**

- **Individual Mandate:**
  - When the federal government requires individuals to purchase health insurance, it then must also define what qualifies as health insurance. This definition, which is not provided in the legislation, will surely force some

Americans to purchase plans that include coverage they cannot afford, or don't want or need.
    - Individuals who don't purchase "acceptable health care coverage" will be forced to pay a tax of 2.5% of modified adjusted gross income (MAGI), not to exceed the national average premium in the Exchange.
    - According to CBO, in H.R. 3862, the share of income that enrollees would have to contribute toward premiums was **increased** and indexed so that federal subsidies would grow more slowly over time.
- **Premium Increases:**
    - JCT and CBO reinforce what six other studies have shown: The Democrats' health care plan will increase premiums. Imposing a new $2 billion tax on insurance policies, $20 billion tax on devices, and various new insurance regulations will be drive up the cost for patients of all ages in the form of higher premiums.
    - Industry reports found that the youngest 30% of the population will see a 69% increase under the 2:1 age band included in the Pelosi Government Healthcare Takeover Bill.
- **If You Like What You Have, You Can't Keep It:**
    - **De facto Elimination of HSAs:** Under the bill, the minimum cost sharing actuarial equivalence for health plans is 70%. However HSAs cost sharing structures are anywhere from 55%-65%, thus essentially outlawing HSAs as a "qualified plan".
    - **De facto Elimination of The Private Individual Market:** Despite the claim that current health care plans are "grandfathered" in, if an individual's current insurance company makes any additions to its plan (such as including more people or adding a newly found cure for cancer), it would trigger the mandate to have a government approved plan.
    - After five years, all plans (including employer sponsored plans) must then meet a new federal definition for a "qualified" health care plan.
- **Mandated Health Plan Beneficiary Identification Card:** Mandates that individuals *must* (changed from the previous version which said "which may include") have a machine readable health plan beneficiary identification card or similar mechanism.
- **Omits Language to Protect Individuals From Government Rationing**
    - Speaker Pelosi's bill no longer contains a provision that states that the Health Benefits Advisory Committee - created to establish minimum benefit standards - should "ensure that essential benefits coverage does not lead to rationing of health care."
    - Democrats have once again refused to limit the scope of CER to "clinical" effectiveness. Since Washington bureaucrats view health care in terms of dollars and cents, this will lead to rationing boards that make one-size-fits-all judgments prohibiting treatment options on the basis of cost.

**Bad for Seniors**

Billions of dollars in Medicare cuts means less access to providers and choice.

- **Cuts to Medicare Advantage**: If seniors like the Medicare Advantage plan they have now, they certainly won't be able to keep it – the cuts to Medicare Advantage mean that the 22% of Medicare beneficiaries (11 million American seniors) enrolled in a Medicare Advantage plan will see their benefits cut. According to CBO, the House bill "could lead many plans to limit the benefits they offer, raise their premiums, or withdraw from the program". The CMS Actuary Report finds that "Medicare Advantage enrollment would decrease by 64% (from a projected level of 13.2 million to 4.7 million under the proposal.)"
- **Higher Medicare Part D Premiums**: Despite Speaker Pelosi's claim that the bill will close the Medicare Part D "donut hole", what she doesn't say is that, according to CBO, changes will raise Medicare Part B premiums by $25 billion and Part D premiums by 20 percent.

**Bad for States**

- At a minimum the cost to states would be $35 billion
- The newest version of the Pelosi Government Healthcare Takeover Bill's Medicaid increase is up to 150% of the Federal Poverty Level (FPL), up from 133% in the previous version of the bill, and up from 100% under current law.
- Imposing an unfunded mandate on the states to pay for the bill's Medicaid expansion will shift the burden to state taxpayers, who may experience further tax increases to cover the cost.

**More Unsustainable Entitlements? But of Course!**

- The CLASS Act, which is part of H.R. 3962, would create a government-sponsored long term care insurance program that would automatically enroll individuals unless they actively opt-out.
    - The CLASS Act is another unsustainable program being used to disguise the short-term costs of the broader bill through a budget gimmick. A group of 7 Democrat Senators stated in a letter to Senate Majority Leader Reid, "We have grave concerns that the real effect of the provisions would be to create a new federal entitlement program with large, long-term spending increases that far exceed revenues. This is especially the case if savings from the first decade of the program are spent on other health reform priorities."
    - According to CBO, the bill will begin to increase the deficit following FY2029.
    - The CLASS Act would only add to the confusion about Medicare coverage of long-term care without covering the true cost of care. Unfortunately, the $50-a-day allocation for long-term care insurance is only a portion of the actual cost of long-term care for senior.
- Despite an estimated **$80 billion** in taxpayer dollars lost *every year* due to Medicare and Medicaid fraud, the Pelosi Government Healthcare Takeover Bill drastically expands Medicaid.

## *Other Fun Facts*

- **Still Contains a Government-Run Insurance Plan:** The government plan would "negotiate" rates with providers - talk about an uneven playing field!
- **Still Allows Federal Funds to be Spent on Abortion Services.**
- **Adds Federal Funds for Indian Sexual Predators and Does Not Include a Permanent Ban on Abortion Services for Indian Health.**
  - The Indian Health Service reauthorization was added to the back of the health care bill without a provision that would permanently prevent the Indian Health Service from funding abortions.
  - The reauthorization would create a grant program that would support Indian child abusers
- **Adds Federal Funds for Veterinarians**: Expands eligibility for federal grant funding (authorizes $283 million over 5 years), including scholarships and loan forgiveness to veterinary students. During this time of high deficits and economic uncertainty some may find it fiscally irresponsible to be spending money this way.
- **Repeals of the Medicare Trigger**: Repeals Subtitle A of Title VIII of the *Medicare Prescription Drug, Improvement and Modernization Act of 2003*, commonly referred to as the "45% trigger," a cost-containment measure inserted into law by the Republican Study Committee.
- **Still Requires Nutrition Labels for Menus and Vending Machines.**
- **No "Deal" with PhRMA in This Bill**: According to media reports, pharmaceutical manufacturers will be subject to between $125 billion and $150 billion in cuts – nearly twice the $80 billion they agreed to under the Senate Finance / White House backroom deal. Starting in 2010, PhRMA will pay to close the beneficiaries' Part D "donut hole" by $500 with a 50% discount for brand-name drugs, with the donut hole completely closed by 2019. Dual-eligible and low-income seniors will receive drug rebates under Medicare and HHS will gain authority to "negotiate" Medicare drug prices.
- **Extends Health Benefits Applicable to Spouses and Dependents to Domestic Partners**: This provision will cost $4 billion.
- **Despite Criticism of Republicans' Similar Proposals, the Bill Contains an Interim High Risk Pool**: The high risk pool of sorts (costing $5 billion) to help individuals "with pre-existing coverage from 2010-2013 would help people turned down by private insurers due to pre-existing condition in the interim." Interesting, considering that when RSC offered such a proposal, House Majority Leader Hoyer criticized it. Click here for a must read.
- **Establishes A Temporary Reinsurance Program**: The bill sets up a temporary program to reimburse participating employer plans (authorizes $10 billion) for providing coverage to those between the ages of 55 and 64.
- **Establishes a "CO-OP Program"**: To help organizations and fund ($5 billion for FY 2010-2014) the creation of even more not-for profit insurance companies. The CO-OPs would only have to pay back the loans or grants if they violate the terms of the program. Otherwise they, like the government-run insurance plan, are financed on the back of the taxpayer.

- **Pays Lip Service to "Interstate Shopping":** Despite claims to the contrary, this bill would only provide for regional compacts that states can enter into if their state legislatures approve it. Compacts are only to exists after the federal government has established stringent national rules for minimum benefits and what constitutes a "qualified plan", virtually eliminated the individual market and created an national exchange, causing many to wonder how this would even be possible.
- **Anti-Trust Repeal**: Partially repeals the insurance anti-trust exemption for *only* health insurance and medical malpractice insurance to prohibit "price fixing, market allocation, or monopolization," which is already regulated by states – this appears to be a political move to intimidate insurers. The repeal may in fact have a negative effect on competition by prohibiting smaller insurance businesses from gaining access to enough information to accurately trend, forecast, or rate and potentially keeping new entrants to the market from being able to accurately rate or price.

**Stay tuned for more….**

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